
HOUSE BILL 1924

State of Washington

52nd Legislature

1991 Regular Session

By Representatives Grant, Belcher, Rasmussen, Ludwig, Bray, Rayburn and Inslee.

Read first time February 14, 1991. Referred to Committee on Energy & Utilities\Revenue.

1 AN ACT Relating to the marketing of motor fuels; adding a new
2 chapter to Title 78 RCW; adding a new chapter to Title 82 RCW; creating
3 new sections; providing an effective date; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** DECLARATION OF POLICY. The legislature
6 finds and declares that the distribution and sale of motor fuels in the
7 state of Washington vitally affects the general economy of the state
8 and the public interest and the public welfare, and that in order to
9 promote the public interest and public welfare, it is necessary to
10 eliminate excessive wholesale prices and prevent unfair allocation of
11 motor fuels.

12 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions set forth in
13 this section apply throughout this chapter.

1 (1) "Affiliate" means a person, firm, or corporation controlling or
2 controlled by an oil company, and includes a subsidiary or affiliated
3 corporation in which the oil company or its shareholders, officers,
4 agents, or employees hold or control more than twenty-five percent of
5 the voting shares.

6 (2) "Brand name" or "trademark" means a trademark, trade name,
7 service mark, or other identifying symbol or name.

8 (3) "Company-operated station" means a service station that is
9 operated by an oil company, its subsidiary, or its affiliate.

10 (4) "Cost of selling motor fuel to the public" means the fair
11 market value of transporting the motor fuel from the terminal to the
12 company-operated station, goods, services, facilities, space,
13 construction, utilities, insurance, labor, repair, maintenance, and all
14 products, services, or materials consumed, furnished, expended, or
15 incurred by an oil company to own and operate a company-operated
16 station and sell motor fuel at that facility. "Cost of selling motor
17 fuel to the public" does not include the cost of refining crude oil
18 into motor fuel, the cost of delivering motor fuel to the truck loading
19 terminal, or the cost of selling products or services other than motor
20 fuel at the company-operated station.

21 (5) "Dealer price" means the net price per gallon of motor fuel
22 sold to an independent dealer and delivered to a service station by an
23 oil company after adjustment for the fair market value of
24 transportation of the motor fuel from the truck loading terminal,
25 commissions, brokerages, rebates, discounts, services or facilities
26 furnished, or other such adjustment. An adjustment of the dealer price
27 must take into account the service station rents, credit fees,
28 franchise fees, or other charges related to the sale of motor fuel paid
29 to the oil company by the independent dealer.

1 (6) "Discriminatory wholesale price" means a price that is
2 prohibited by section 4 of this act.

3 (7) "Independent dealer" means a person who or entity that operates
4 a service station, whether or not the station is owned by an oil
5 company, its subsidiary, or its affiliate. "Independent retail
6 operator" does not include an oil company.

7 (8) "Motor fuel" means a particular blend of gasoline or diesel
8 fuel used in motor vehicles, however modified, that meets industry
9 standards for composition and octane and that is marketed under the
10 same brand name or trademark.

11 (9) "Oil company" means a person, firm, or corporation, including
12 an affiliate of the person, firm, or corporation, engaged in the
13 refining of crude oil into motor fuel.

14 (10) "Retail price" means the net price per gallon of motor fuel
15 sold by an oil company at a company-operated station to a retail
16 customer, after adjustment for the costs of selling motor fuel to the
17 public.

18 (11) "Service station" means a facility that sells motor fuels that
19 are dispensed directly into motor vehicles and not operated by an oil
20 company.

21 (12) "Truck loading terminal" means the point of transfer of motor
22 fuel from a pipeline or a tank storage facility into a truck or other
23 vehicle for delivery to a wholesale purchaser or retail service
24 station.

25 (13) "Wholesale price" means the net price per gallon of motor fuel
26 sold to a wholesale purchaser by an oil company at a truck loading
27 terminal after adjustment for the fair market value of commissions,
28 brokerages, rebates, discounts, services or facilities furnished, or
29 other such adjustment. An adjustment of the wholesale price must take
30 into account the service station rents, credit fees, franchise fees, or

1 other charges related to the sale of motor fuel paid to the oil company
2 by the wholesale purchaser.

3 (14) "Wholesale purchaser" means a person, firm, or corporation
4 that purchases motor fuel from an oil company for resale to the public
5 or others. "Wholesale purchaser" does not include government agencies,
6 railroad companies, airlines, public utilities, or an oil company.

7 NEW SECTION. **Sec. 3.** SUPPLY LIMITATIONS--UNIFORMITY. If the
8 supply of motor fuel is limited by an oil company for any reason, the
9 oil company shall impose the limitations equally and uniformly on
10 company-operated stations, independent dealers, and all wholesale
11 purchasers that have a supply agreement with the oil company and are
12 supplied motor fuel from the same truck loading terminal.

13 NEW SECTION. **Sec. 4.** DISCRIMINATORY OIL COMPANY WHOLESALE PRICES.
14 (1) When establishing a retail price, dealer price, or wholesale price
15 for motor fuel sold at or delivered from the same truck loading
16 terminal, an oil company may not:

17 (a) Discriminate in dealer price between independent dealers or
18 charge a dealer price that is higher than its retail price;

19 (b) Discriminate in wholesale price between wholesale purchasers or
20 charge a higher wholesale price than either its dealer price or its
21 retail price.

22 (2) Nothing in this section prevents differentials that make only
23 due allowance for differences in an oil company's actual cost of
24 manufacture, sale, or delivery resulting from the differing methods or
25 quantities in which motor fuels are sold or delivered to independent
26 dealers or wholesale purchasers.

1 NEW SECTION. **Sec. 5.** DISCRIMINATORY WHOLESALe PRICES--ILLEGALITY.

2 It is unlawful for an oil company to charge an independent dealer or
3 wholesale purchaser a discriminatory wholesale price. Charging a
4 discriminatory wholesale price is a violation of this chapter.

5 NEW SECTION. **Sec. 6.** RECORDS. An oil company that sells motor

6 fuel in this state shall keep for three years from the date of sale a
7 written record consisting of its wholesale prices, its dealer prices,
8 and its retail prices for each location in this state at which it sells
9 or delivers motor fuel and for each grade of motor fuel sold.

10 NEW SECTION. **Sec. 7.** CIVIL ACTIONS BY THE ATTORNEY GENERAL. (1)

11 The attorney general may bring an action in the name of the state
12 against an oil company to restrain and prevent an oil company from
13 violating any provision of this chapter. In the discretion of the
14 court, the attorney general may recover the costs of the action,
15 including a reasonable attorney's fee.

16 (2) The court may make such additional orders or judgments as may
17 be necessary to restore to a person in interest any moneys or property,
18 real or personal, that may have been acquired by an oil company as a
19 result of violations of this chapter.

20 NEW SECTION. **Sec. 8.** CIVIL ACTIONS BY A PURCHASER. An

21 independent dealer or wholesale purchaser of motor fuel from an oil
22 company who has been damaged by a violation of this chapter may bring
23 an action in superior court to enjoin further violation of this chapter
24 and to recover damages sustained, including costs of the suit and
25 reasonable attorneys' fees.

1 NEW SECTION. **Sec. 9.** DAMAGES. (1) In an action brought under
2 this chapter, upon proof that a discriminatory wholesale price has been
3 charged and paid, the court shall conclusively presume that the damages
4 sustained are at least equal to the number of gallons sold at the
5 discriminatory wholesale price times the amount that the price exceeds
6 either:

7 (a) The dealer price under section 4 of this act, if the motor fuel
8 was delivered to the purchaser; or

9 (b) The wholesale price under section 4 of this act, if delivery of
10 the motor fuel was taken at the truck loading terminal.

11 (2) In addition to the damages established under subsection (1) of
12 this section, the plaintiff may establish any further damages sustained
13 as a result of a violation of this chapter, including but not limited
14 to costs of the suit and reasonable attorneys' fees.

15 NEW SECTION. **Sec. 10.** MOTOR FUEL ANTITRUST ENFORCEMENT TRUST
16 ACCOUNT. (1) The motor fuel antitrust enforcement trust account is
17 established in the custody of the state treasurer. All funds
18 appropriated for this chapter shall be deposited in the account.
19 Expenditures from the account shall be used exclusively by the attorney
20 general for the purposes of this chapter. The account is subject to
21 allotment procedures under chapter 43.88 RCW. No appropriation is
22 required for expenditures from the account. The earnings on any
23 surplus balances in the trust account shall be credited to the account
24 notwithstanding RCW 43.84.090.

25 (2) Each calendar quarter, the attorney general shall report to the
26 senate ways and means and house of representatives revenue committees
27 expenditures and balances for this account. The attorney general shall
28 notify the department of revenue of this amount by the fifteenth day of
29 each calendar quarter.

1 NEW SECTION. **Sec. 11.** INTENT. It is the intent of this chapter
2 to impose a tax only once for each petroleum product possessed in this
3 state and to tax the first possession of all petroleum products. This
4 chapter is not intended to exempt any person from tax liability under
5 any other law.

6 NEW SECTION. **Sec. 12.** DEFINITIONS. Unless the context clearly
7 requires otherwise, the definitions in this section apply throughout
8 this chapter.

9 (1) "Petroleum product" means plant condensate, lubricating oil,
10 gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil,
11 residual oil, liquefied or liquefiable gases such as butane, ethane,
12 and propane, and every other product derived from the refining of crude
13 oil, but the term does not include crude oil.

14 (2) "Possession" means the control of a petroleum product located
15 within this state and includes both actual and constructive possession.
16 "Actual possession" occurs when the person with control has physical
17 possession. "Constructive possession" occurs when the person with
18 control does not have physical possession. "Control" means the power
19 to sell or use a petroleum product or to authorize the sale or use by
20 another.

21 (3) "Previously taxed petroleum product" means a petroleum product
22 in respect to which a tax has been paid under this chapter and that has
23 not been remanufactured or reprocessed in any manner (other than mere
24 repackaging or recycling for beneficial reuse) since the tax was paid.

25 (4) "Wholesale value" means fair market wholesale value, determined
26 as nearly as possible according to the wholesale selling price at the
27 place of use of similar products of like quality and character, in
28 accordance with rules of the department.

1 (5) Except for terms defined in this section, the definitions in
2 chapters 82.04, 82.08, and 82.12 RCW apply to this chapter.

3 NEW SECTION. **Sec. 13.** ANTITRUST TAX ON MOTOR FUEL. (1) A tax is
4 imposed on the privilege of possession of motor fuel in this state.
5 The rate of the tax shall be ten one-hundredths of one percent
6 multiplied by the wholesale value of the motor fuel.

7 (2) Moneys collected under this section shall be deposited in the
8 trust account established under section 10 of this act.

9 (3) Chapter 82.32 RCW applies to the tax imposed by this section.
10 The tax due dates, reporting periods, and return requirements
11 applicable to chapter 82.04 RCW apply equally to the tax imposed by
12 this section.

13 (4) Within thirty days after the end of each calendar quarter the
14 attorney general shall determine the "quarterly balance," which shall
15 be the balance in the trust account as of the last day of that calendar
16 quarter. Balance determinations by the attorney general under this
17 section are final and shall not be used to challenge the validity of
18 any tax imposed under this section. For each subsequent calendar
19 quarter, the tax shall be imposed under this section during the entire
20 calendar quarter unless:

21 (a) Tax was imposed under this section during the immediately
22 preceding calendar quarter, and the most recent quarterly balance is
23 more than one million dollars; or

24 (b) Tax was not imposed under this section during the immediately
25 preceding calendar quarter, and the most recent quarterly balance is
26 more than five hundred thousand dollars.

27 NEW SECTION. **Sec. 14.** EXEMPTIONS. The following are exempt from
28 the tax imposed in this chapter:

1 (1) Successive possession of a previously taxed petroleum product.
2 If tax due under this chapter has not been paid with respect to a
3 petroleum product, the department may collect the tax from a person who
4 has had possession of the petroleum product. If the tax is paid by a
5 person other than the first person having taxable possession of a
6 petroleum product, the amount of tax paid constitutes a debt owed by
7 the first person having taxable possession to the person who paid the
8 tax.

9 (2) Possession of a petroleum product by a natural person under
10 circumstances where the substance is used, or is to be used, for a
11 personal or domestic purpose (and not for any business purpose) by that
12 person or a relative of, or person residing in the same dwelling as,
13 that person.

14 (3) Persons or activities that the state is prohibited from taxing
15 under the United States Constitution.

16 (4) Persons possessing a petroleum product where the possession
17 first occurred before the effective date of this section.

18 (5) Possession of (a) natural gas, (b) petroleum coke, or (c)
19 liquid fuel or fuel gas used in petroleum processing.

20 (6) Possession of petroleum products that are exported for use or
21 sale outside this state as fuel.

22 (7) Possession of petroleum products packaged for sale to ultimate
23 consumers.

24 NEW SECTION. **Sec. 15.** CREDITS. (1) Credit shall be allowed in
25 accordance with rules of the department of revenue for taxes paid under
26 this chapter with respect to fuel carried from this state in the fuel
27 tank of an airplane, ship, truck, or other vehicle.

28 (2) Credit shall be allowed, in accordance with rules of the
29 department, against the taxes imposed in this chapter for petroleum

1 product tax paid to another state with respect to the same petroleum
2 product. The amount of the credit shall not exceed the tax liability
3 arising under this chapter with respect to that petroleum product. For
4 the purpose of this subsection:

5 (a) "Petroleum product tax" means a tax:

6 (i) That is imposed on the act or privilege of possessing petroleum
7 products, and that is not generally imposed on other activities or
8 privileges; and

9 (ii) That is measured by the value of the petroleum product, in
10 terms of wholesale value or other terms, and in the determination of
11 which the deductions allowed would not make the tax an income tax or
12 value added tax.

13 (b) "State" means (i) a state of the United States other than
14 Washington, or a political subdivision of such other state, (ii) the
15 District of Columbia, and (iii) a foreign country or political
16 subdivision thereof.

17 NEW SECTION. **Sec. 16.** SHORT TITLE. This act shall be known as
18 the "Gasoline Price and Supply Fairness Act."

19 NEW SECTION. **Sec. 17.** SEVERABILITY. If any provision of this act
20 or its application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 18.** PROSPECTIVE APPLICATION. This act applies
24 prospectively to all actions and conduct occurring after the effective
25 date of this act.

1 NEW SECTION. **Sec. 19.** LIBERAL CONSTRUCTION. This act shall be
2 liberally construed to give full effect to the objectives and purposes
3 for which it was enacted.

4 NEW SECTION. **Sec. 20.** CAPTIONS. Section headings used in this
5 act do not constitute any part of the law.

6 NEW SECTION. **Sec. 21.** CODIFICATION. Sections 1 through 10 of
7 this act shall constitute a new chapter in Title 78 RCW, mines,
8 minerals, and petroleum law. Sections 11 through 15 of this act shall
9 constitute a new chapter in Title 82 RCW, excise taxes.

10 NEW SECTION. **Sec. 22.** EFFECTIVE DATE. This act is necessary for
11 the immediate preservation of the public peace, health, or safety, or
12 support of the state government and its existing public institutions.
13 Sections 1 through 10 and 16 through 21 of this act shall take effect
14 immediately. Sections 11 through 15 of this act shall take effect July
15 1, 1991.