

SENATE BILL 5313

State of Washington

52nd Legislature

1991 Regular Session

By Senator Moore.

Read first time January 28, 1991. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to the regulation of oil company practices; adding
2 a new chapter to Title 80 RCW; creating new sections; prescribing
3 penalties; 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.** INTENT. Currently there is a need to assure
6 that gasoline and petroleum products are readily available at fair
7 prices to all consumers in Washington. Oil companies should not be
8 allowed to use practices that unfairly raise prices to consumers
9 throughout the state or in select areas. While oil companies should
10 receive a fair return on their investments, they should not be allowed
11 to use the event of an oil spill to raise prices to Washington
12 consumers.

13 Oil spills pose an extreme threat to Washington's seaborne
14 petroleum supplies, coastal waters, seabeds, shorelines, scenic beauty,
15 fisheries, and tourism. Prevention is the only method of avoiding the

1 harm caused by oil spills. Those responsible for oil spills should
2 bear the full cleanup expense. A powerful incentive to avoid oil
3 spills will exist if oil spill cleanup costs cannot be passed onto the
4 public.

5 The regulation of oil company practices is necessary to accomplish
6 the goals of this act. Criminal penalties for willful violators are
7 needed as a deterrent to those who would profit by breaking the law.

8 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless specifically defined
9 otherwise or unless the context clearly indicates otherwise, the
10 definitions in this section apply throughout this chapter.

11 (1) "Affiliate of the person, firm, or corporation" means a person,
12 firm, or corporation, that controls or is controlled by an oil company,
13 and includes any subsidiary or affiliated corporation in which the oil
14 company or its shareholders, officers, agents, or employees hold or
15 control more than twenty-five percent of the voting shares.

16 (2) "Class of trade" has the same meaning as used by oil companies
17 and the industry. Motor fuel retailers operated by an oil company, its
18 subsidiary, or its affiliate shall be considered in the same class of
19 trade as motor fuel retailers as defined in RCW 19.120.010(7).

20 (3) "Commission" means the Washington utilities and transportation
21 commission.

22 (4) "Fund" means the "consumer protection fund" as established in
23 section 4 of this act.

24 (5) "Oil company" means any person, firm, or corporation, including
25 any affiliate of the person, firm, or corporation engaged in the
26 refining of crude oil into petroleum products. Each oil company shall
27 be deemed a public service company under this title.

1 (6) "Petroleum" or "petroleum products" means gasoline, lube oils,
2 diesel, heating oil, and liquid petroleum, however modified, except
3 aviation fuel, propane, coke, and bunker fuel.

4 (7) "Price" has the same meaning as in RCW 19.120.010(10). The
5 value of petroleum products, services, or facilities supplied,
6 exchanged, or transferred to a retail motor fuel outlet operated by the
7 same oil company, its subsidiary, or its affiliate shall be considered
8 the price.

9 (8) "Retail motor fuel outlet" has the same meaning as in RCW
10 19.120.010(12).

11 NEW SECTION. **Sec. 3.** OIL COMPANIES--REPORTS OF GROSS REVENUE--
12 FEES. (1) Every oil company subject to regulation by the
13 commission shall, on or before the first day of April of each year,
14 file with the commission a statement under oath, in a form that has
15 been prescribed under RCW 80.04.090, showing the company's gross
16 operating revenue from intrastate operations for the preceding calendar
17 year.

18 (2) Unless decreased as provided in subsection (3) of this section,
19 every oil company subject to regulation by the commission shall pay to
20 the commission a fee equal to one-tenth of one percent of the first
21 fifty thousand dollars of gross operating revenue, plus two-tenths of
22 one percent of any gross operating revenue in excess of fifty thousand
23 dollars. The fee shall in no case be less than one dollar.

24 (3) The percentage rates of gross operating revenue as set forth in
25 subsection (2) of this section may be decreased by the commission for
26 oil companies by general order entered before March 1st of such year.

27 (4) The statement filed with the commission under subsection (1) of
28 this section shall be made available to the public by the commission as
29 soon as possible.

1 (5) All moneys collected under the provisions of this section shall
2 within thirty days be paid to the state treasurer and credited to the
3 consumer protection fund established by section 4 of this act.

4 NEW SECTION. **Sec. 4.** CONSUMER PROTECTION FUND. The consumer
5 protection fund is created in the custody of the state treasurer to be
6 used by the commission or attorney general as a revolving fund for
7 carrying out the purposes of this chapter. Fees paid pursuant to
8 section 3 of this act and any cost recovery awarded the attorney
9 general under section 13 of this act shall be deposited into the fund.
10 Only the secretary of the commission or the attorney general may
11 authorize expenditures from the fund. The fund is subject to allotment
12 procedures under chapter 43.88 RCW, but no appropriation is required
13 for expenditures.

14 Moneys in the fund not needed to meet the obligations of the
15 commission or attorney general in the exercise of their powers, duties,
16 and functions under this chapter shall be deposited with the state
17 treasurer to the credit of the fund and may be invested in such manner
18 as is provided for by law. Interest received on such investment shall
19 be credited to the fund.

20 NEW SECTION. **Sec. 5.** ALLOCATION AND USE OF FUND. (1) Moneys in
21 the consumer protection fund shall be disbursed for the following
22 purposes and no others:

23 (a) Costs of the commission related to the fulfilling of its powers
24 and duties under this chapter; and

25 (b) Costs of the attorney general related to the fulfilling of its
26 powers and duties under this chapter.

27 (2) The money remaining after the disbursement under subsection (1)
28 (a) and (b) of this section shall be allocated by the state treasurer,

1 to be used for fulfilling the purposes of this chapter, as follows:
2 Seventy-five percent of the moneys shall be allocated to the commission
3 and twenty-five percent to the attorney general.

4 NEW SECTION. **Sec. 6.** POWERS AND DUTIES. The commission and the
5 attorney general shall:

6 (1) Exercise all the powers and perform all the duties prescribed
7 by this chapter;

8 (2) Make rules necessary to carry out the purposes, powers, or
9 duties assigned by this chapter;

10 (3) Regulate in the public interest, as provided by the public
11 service laws or this chapter, the prices, rates, services, and
12 practices of all oil companies within the state in the business of
13 supplying petroleum products or any service or facility connected to or
14 with petroleum products to any person, firm, or corporation within the
15 state for compensation, excluding transactions occurring between one
16 oil company and a different oil company. Except as provided in
17 sections 6 through 11 of this act, the commission does not have the
18 power to set or establish prices, rates, charges, rentals, or tolls of
19 an oil company; and

20 (4) Regulate, make rules, or enforce this chapter consistent with
21 the powers and duties granted to the commission and attorney general
22 for public service companies under this title.

23 NEW SECTION. **Sec. 7.** OIL COMPANY PROHIBITIONS. An oil company
24 shall not:

25 (1) Directly or indirectly, include in the price of petroleum,
26 petroleum products, services, or facilities any costs accruing from oil
27 or petroleum spills resulting from the negligent or intentional acts of
28 the oil company or any person, firm, or corporation affiliated with or

1 performing services for the oil company. Nothing herein shall prevent
2 an oil company from including in the price of petroleum, petroleum
3 products, or services its actual costs of establishing oil spill
4 contingency plans required under any federal, state, or local law;

5 (2) Directly or indirectly, include in the price of petroleum,
6 petroleum products, services, or facilities any costs accruing from the
7 fees established in section 3 of this act;

8 (3) Directly or indirectly, or by special rate, rebate, drawback,
9 or other device or method including but not limited to increased or
10 reduced charges, allowances, or compensation for other services,
11 facilities, or products provided by the oil company, discriminate in
12 availability or price of petroleum or petroleum products among or
13 between different persons or corporations within a class of trade, or
14 among or between different geographical areas of the state. Price
15 differentials are permitted to the extent that such differentials make
16 only due allowance for actual costs of manufacture, sale, or delivery
17 resulting from the differing methods or quantities in which such
18 products are sold or delivered to such purchasers. Nothing herein
19 shall prevent price or availability changes from time to time where the
20 oil company satisfies the burden of proving that the differential is
21 based on transactions occurring at materially different times and such
22 differential is reasonably related to changes in availability or
23 differences in actual costs of manufacture, sale, or delivery, and is
24 not arbitrary;

25 (4) Charge, demand, collect, or receive a greater, lesser, or
26 different compensation for any service rendered or to be rendered than
27 the prices, rates, and charges applicable to such service as specified
28 in the schedule filed under section 8 of this act and in effect at the
29 time, nor shall any such company directly or indirectly refund or remit

1 in any manner or by any device any portion of the prices, rates, or
2 charges so specified;

3 (5) Extend to any person or corporation any form of contract or
4 agreement or any rule or regulation or any privilege or facility except
5 those regularly and uniformly extended to all persons and corporations
6 under like circumstances; and

7 (6) Make or grant any undue or unreasonable preference or advantage
8 to any person, corporation, or locality, or to any particular class of
9 trade or description of service in any respect whatsoever, or subject
10 any particular person, corporation, or locality or any particular class
11 of trade or description of service to any undue or unreasonable
12 prejudice or disadvantage in any respect whatsoever.

13 NEW SECTION. **Sec. 8.** OIL COMPANY DISCLOSURE. Each oil company
14 shall file with the commission, and the commission shall provide for
15 public inspection, schedules in such form as the commission prescribes,
16 showing:

17 (1) All prices, rates, and charges made, established, or enforced,
18 or to be charged or enforced, all forms of contract or agreement, all
19 rules relating to prices, rates, charges, or service used or to be
20 used, and all general privileges and facilities granted or allowed by
21 such oil company;

22 (2) All actual costs accruing from oil or petroleum spills
23 resulting from the negligent or intentional acts of the oil company or
24 any person, firm, or corporation affiliated with or performing services
25 for the oil company and identification of the method such costs were
26 paid and accounted for;

27 (3) All actual costs of establishing oil spill contingency plans
28 required under any federal, state, or local law and identification of
29 the method such costs were paid and accounted for; and

1 (4) Any other information deemed by the commission to be necessary
2 to fulfill its duties under this chapter.

3 NEW SECTION. **Sec. 9.** TARIFF CHANGES--NOTICE. No change shall be
4 made in any price, rate, or charge or in any form of contract or
5 agreement or in any rule relating to any price, rate, charge, or
6 service or in any general privilege or facility that must have been
7 filed by an oil company in compliance with the requirements of section
8 8 of this act except after prior notice to the commission. The notice
9 shall plainly state the changes to be made in the schedule then in
10 force, the reasons for such changes including identification of any
11 changes in the actual costs of doing business since the filing of the
12 current schedule, and the time when the change will go into effect.
13 All changes shall be shown by filing new schedules. The commission
14 shall make available to the public any changes or new schedules in the
15 shortest time possible and not later than the effective date of changes
16 shown in the new schedule. Nothing in this section shall prevent the
17 commission from adopting notice requirements that comply with state or
18 federal antitrust laws.

19 NEW SECTION. **Sec. 10.** COMPLAINTS--HEARINGS. Complaint may be
20 made by the commission of its own motion or by any person or
21 corporation, chamber of commerce, board of trade, or any commercial,
22 mercantile, agricultural or manufacturing society, or any political
23 subdivision or municipal corporation, or by the public counsel section
24 of the office of the attorney general, or its successor, by petition or
25 complaint in writing, setting forth any act or thing done or omitted to
26 be done by any oil company in violation, or claim to be in violation,
27 of any provision of the law or of any order or rule of the commission.
28 No complaint shall be entertained by the commission except upon its own

1 motion, as to the reasonableness of the schedule of the rates or
2 charges of an oil company, unless the same be signed by the mayor,
3 council, or commission of the county, city, or town in which the oil
4 company complained of is engaged in business, or by not less than
5 twenty-five consumers or purchasers of such petroleum service.

6 All matters upon which complaint may be founded may be joined in
7 one hearing, and no motion shall be entertained against a complaint for
8 misjoinder of complaints or grievances or misjoinder of parties. In
9 any review by the courts of orders of the commission the same rule
10 shall apply and pertain with regard to the joinder of complaints and
11 parties as herein provided. All grievances to be inquired into shall
12 be plainly set forth in the complaint. No complaint shall be dismissed
13 because of the absence of direct damage to the complainant.

14 Upon the filing of a complaint, the commission shall cause a copy
15 thereof to be served upon the oil company complained of, which shall be
16 accompanied by a notice fixing the time and place a hearing will be had
17 upon such complaint. The time fixed for such hearing shall not be less
18 than ten days after the date of the service of such notice and
19 complaint, except as herein provided. Rules of practice and procedure
20 not otherwise provided for in this title may be prescribed by the
21 commission.

22 At the time fixed for the hearing, the complainant and the oil
23 company complained of shall be entitled to be heard and introduce such
24 evidence as he, she, or it may desire. The commission shall issue
25 process to enforce attendance of all necessary witnesses. At the
26 conclusion of such hearing the commission shall make and render
27 findings concerning the subject matter and facts inquired into and
28 enter its order based thereon.

1 NEW SECTION. **Sec. 11.** COMMISSION TO REVIEW RATES. The commission
2 shall:

3 (1) Upon finding after a hearing had upon its own motion or upon
4 complaint, that the prices, rates, or charges demanded, exacted,
5 charged, or collected by any oil company for petroleum products or any
6 equipment, services, real estate, or facilities used in conjunction
7 with the sale of petroleum products, or that an oil company's rules,
8 regulations, practices, or contracts affecting the availability,
9 prices, rates, or charges are unjust, unreasonable, unjustly
10 discriminatory, or unduly preferential, or in any wise in violation of
11 the provisions of the law or this chapter, or that such prices, rates,
12 or charges are insufficient to yield a reasonable compensation for the
13 service rendered, supply its findings in a written order to the public,
14 the attorney general, appropriate standing committees of the
15 legislature, and the oil company. Nothing contained in this subsection
16 shall detract from the powers, duties, and functions given to the
17 commission or the attorney general in this chapter, this title, or any
18 other law;

19 (2) Compare the lowest price, rate, or charge offered in an
20 adjacent state or other states located within petroleum allocation
21 defense district 5 by an oil company and the highest price, rate, or
22 charge offered in Washington state by the same oil company for similar
23 products or services, along with other factors when determining whether
24 prices, rates, or charges are reasonable, just, sufficient, or
25 discriminatory.

26 NEW SECTION. **Sec. 12.** CRIMINAL PENALTIES IMPOSED. (1) Any oil
27 company, or any of its employees, who willfully violates any of the
28 provisions of this chapter, except for those violations enumerated in

1 subsection (2) of this section, is guilty of a gross misdemeanor, and
2 upon conviction shall be punished as provided in RCW 9A.20.021.

3 (2) Any oil company, or any of its employees, who willfully commits
4 any of the following is guilty of a class C felony and upon conviction
5 shall be punished as provided in RCW 9A.20.021:

6 (a) Falsifying any information contained in a schedule filed with
7 the commission or failing to file schedules required under section 3 or
8 8 of this act;

9 (b) Violating section 7 of this act.

10 (3) Each day upon which a willful violation of the provisions of
11 this chapter occurs may be deemed a separate and additional violation.

12 For the purposes of this section, "willful" or "willfully" is
13 defined in the manner as those terms are defined in RCW 9A.08.010.

14 NEW SECTION. **Sec. 13.** ATTORNEY GENERAL EMPOWERED TO RESTRAIN
15 PROHIBITED ACTS--COSTS--RESTORATION OF PROPERTY. (1) The attorney
16 general may bring an action in the name of the state against any oil
17 company to restrain and prevent the doing of any act herein prohibited
18 or declared unlawful. The attorney general may in the discretion of the
19 court, recover the costs of an action including reasonable attorneys'
20 fees.

21 The court may make such additional orders or judgments as may be
22 necessary to restore to any person in interest any moneys, real
23 property, or personal property, which may have been acquired by means
24 of an act prohibited or declared to be unlawful by this chapter.

25 (2) Nothing in this chapter limits the power of the state to punish
26 any oil company for any conduct that constitutes a crime by statute or
27 at common law.

1 NEW SECTION. **Sec. 14.** CIVIL ACTIONS AVAILABLE. (1) Any person
2 or corporation may commence a civil action against the commission to
3 compel performance of any nondiscretionary duty under this chapter.

4 (2) Any person or corporation who is injured by the commission of
5 any action of an oil company in violation of any portion of this
6 chapter or this title, or any person or corporation so injured because
7 he or she refuses to accede to a proposal or arrangement with an oil
8 company which, if consummated would be a violation of this chapter or
9 this title, may bring a civil action in superior court to enjoin
10 further violations, to recover the actual damages sustained by him or
11 her, or both. The court may in its discretion increase the award of
12 damages to an amount not to exceed three times the actual damage
13 sustained.

14 (3) A civil action under this section may be brought in the
15 superior court of: (a) Thurston county, (b) the county in which the
16 alleged violation occurred, or (c) the county in which any injury or
17 damage occurred or may occur. At least thirty days before commencing
18 the action, the person or corporation filing suit under this section
19 must give notice to the apparent defendant or defendants of the intent
20 to sue. The courts shall award attorney fees, expert witness fees, and
21 the other costs of the suit to a prevailing plaintiff.

22 NEW SECTION. **Sec. 15.** This act shall be known as the "gasoline
23 consumers bill of rights act."

24 NEW SECTION. **Sec. 16.** Sections 2 through 14 of this act shall
25 constitute a new chapter in Title 80 RCW.

26 NEW SECTION. **Sec. 17.** SEVERABILITY CLAUSE. If any provision of
27 this act or its application to any person or circumstance is held

1 invalid, the remainder of the act or the application of the provision
2 to other persons or circumstances is not affected.

3 NEW SECTION. **Sec. 18.** PROSPECTIVE APPLICATION. This act
4 applies prospectively to all actions and conduct occurring after the
5 effective date of this section.

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

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

11 NEW SECTION. **Sec. 21.** EFFECTIVE DATE. (1) Except as provided
12 for in subsection (2) of this section, this act is necessary for the
13 immediate preservation of the public peace, health, or safety, or
14 support of the state government and its existing public institutions,
15 and shall take effect immediately.

16 (2) Sections 7, 8, and 9 of this act shall take effect thirty days
17 after the effective date of the remainder of this act.