

106TH CONGRESS
2D SESSION

H. R. 5479

To prohibit certain discriminatory pricing policies in wholesale motor fuel sales, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 17, 2000

Mr. THOMPSON of California (for himself, Mrs. CAPPS, and Mr. FILNER) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To prohibit certain discriminatory pricing policies in wholesale motor fuel sales, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Wholesale Motor Fuel
5 Fairness and Competition Restoration Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) both wholesale and retail motor fuel prices
9 are the result of a number of complex factors, in-
10 cluding those related to supply, refining, consumer

1 demand, and oil company cost, pricing, and mar-
2 keting practices;

3 (2) certain cost, pricing, and marketing prac-
4 tices employed by the oil companies are unfair and
5 anticompetitive, and contribute to the unjustified
6 price of retail motor fuel charged the American con-
7 sumer;

8 (3) among the unfair and anticompetitive oil
9 company practices are price zoning, redlining, dis-
10 criminatory wholesale motor fuel pricing, and a com-
11 plex system of cost allocation that hides the factors
12 on which wholesale costs are based;

13 (4) the oil companies' practice known as price
14 zoning is one by which prices for motor fuel are set
15 solely because of the retail station's geographic loca-
16 tion unrelated to cost-of-business factors;

17 (5) price zoning allows an oil company to artifi-
18 cially increase or depress retail motor fuel prices in
19 order to secure an unfair market advantage against
20 competitors;

21 (6) the oil companies engage in a practice
22 known as redlining, whereby a refiner refuses to sell
23 motor fuel to distributors or particular geographic
24 markets;

1 (7) redlining allows an oil company to force
2 concessions from a distributor and affords the com-
3 pany the opportunity to exert undue influence in a
4 particular area or region;

5 (8) the oil companies engage in a practice of
6 discriminatory wholesale pricing of motor fuel based
7 on the relationship of the purchaser to the oil com-
8 pany and the degree of competition they provide;

9 (9) discriminatory pricing allows oil companies
10 to charge different wholesale prices to company
11 owned and operated retail stations, franchisees, and
12 independent retailers though all may be situated in
13 the same community and face the same competitive
14 and operating factors;

15 (10) the oil companies engage in a complex sys-
16 tem of cost allocations by which they employ rebates,
17 incentives, credits, and market enhancement allow-
18 ances that hide the factors on which wholesale prices
19 are based or published;

20 (11) the complex system of cost allocation al-
21 lows oil companies to post a “wholesale price” that
22 is far different from the actual wholesale price that
23 would be revealed if the cost factors were publicly
24 identified and appropriately allocated; and

1 (12) it is appropriate for the Federal Govern-
2 ment to prohibit these unfair oil company cost, pric-
3 ing, and marketing practices, to restore fair and
4 competitive practices to the wholesale sale of motor
5 fuel, and to allow American consumers to assess for
6 themselves the factors that contribute to the price
7 changes they pay at the retail pump.

8 **SEC. 3. PRICE DISCRIMINATION PROHIBITION.**

9 (a) PROHIBITION.—

10 (1) IN GENERAL.—It shall be a violation of this
11 Act for an owner or operator of a terminal facility
12 to sell motor fuel from the terminal facility to a dis-
13 tributor or retailer at a price in excess of the price
14 it charges any other distributor or retailer, including
15 a distributor or retailer which it owns or with which
16 it is affiliated.

17 (2) PRICE DETERMINATION.—For purposes of
18 this subsection, the price an owner or operator of a
19 terminal facility charges a distributor or retailer
20 which it owns or with which it is affiliated shall be
21 the price determined pursuant to the regulations
22 issued under section 4(a).

23 (3) EXCEPTION.—A sale shall not be in viola-
24 tion of this subsection if it is made pursuant to the

1 terms of a franchise or sales contract entered into
2 before October 17, 2000.

3 (b) CIVIL PENALTY.—The Federal Trade Commis-
4 sion may assess a civil penalty, not to exceed \$1,000,000,
5 for each violation described in subsection (a).

6 (c) CRIMINAL PENALTY.—Whoever knowingly vio-
7 lates subsection (a) shall be fined under title 18, United
8 States Code, or imprisoned not more than 5 years.

9 (d) EFFECTIVE DATE.—This section shall take effect
10 6 months after the date of the enactment of this Act.

11 **SEC. 4. FULL DISCLOSURE.**

12 (a) REQUIREMENT.—The Federal Trade Commis-
13 sion, in consultation with the Secretary of Energy, shall
14 issue regulations requiring full disclosure by refiners and
15 distributors of their wholesale motor fuel pricing policies,
16 including rebates, incentives, and market enhancement al-
17 lowances. Such regulations shall establish procedures for
18 determining the price an owner or operator of a terminal
19 facility charges a distributor or retailer which it owns or
20 with which it is affiliated.

21 (b) EFFECTIVE DATE.—The regulations issued under
22 subsection (a) shall take effect 6 months after the date
23 of the enactment of this Act.

24 (c) PUBLIC DISSEMINATION.—The Federal Trade
25 Commission shall ensure that all information acquired

1 pursuant to the regulations issued under subsection (a)
2 are made available to the public, except trade secrets and
3 commercial or financial information protected from disclo-
4 sure under subsection (b)(4) of section 552 of title 5,
5 United States Code (commonly referred to as the Freedom
6 of Information Act). Such information may be dissemi-
7 nated through the Energy Information Administration.

8 **SEC. 5. OWNERSHIP STUDY AND REPORT.**

9 Not later than 18 months after the date of the enact-
10 ment of this Act, the Federal Trade Commission, in con-
11 sultation with the Secretary of Energy, shall transmit to
12 the Congress a report containing the results of a study
13 of whether ownership or operation by a refiner of a facility
14 for the retail sale of motor fuel has anticompetitive effects
15 on the price of motor fuel. Such report shall include any
16 recommendations for legislative or administrative actions
17 the Federal Trade Commission, in consultation with the
18 Secretary of Energy, considers appropriate.

19 **SEC. 6. DEFINITIONS.**

20 For purposes of this Act, any term defined in section
21 101 of the Petroleum Marketing Practices Act (15 U.S.C.
22 2801) shall have the meaning given the term in that Act.

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