

109TH CONGRESS
1ST SESSION

H. R. 3780

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 2005

Mr. THOMPSON of California (for himself, Mrs. CAPPS, Ms. ESHOO, Mr. DEFazio, Mr. MCINTYRE, Mrs. DAVIS of California, Mr. LIPINSKI, Mr. HONDA, Ms. WOOLSEY, Mr. CASE, Ms. LINDA T. SÁNCHEZ of California, and Mr. STARK) introduced the following bill; which was referred to the Committee on Energy and 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-

1 including those related to supply, refining, consumer
2 demand, and oil company cost, pricing, and mar-
3 keting practices;

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

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

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

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

22 (6) the oil companies engage in a practice
23 known as redlining, whereby a refiner refuses to sell
24 motor fuel to distributors or particular geographic
25 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 any
13 person at a price in excess of the price it charges
14 any other person, including a distributor or retailer
15 which it owns or with which it is affiliated.

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

22 (3) EXCEPTION.—A sale shall not be in viola-
23 tion of this subsection if it is made pursuant to the
24 terms of a franchise or sales contract entered into
25 before the date of the enactment of this Act.

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

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

7 (d) EFFECTIVE DATE.—This section shall take effect
8 6 months after the date of the enactment of this Act.

9 **SEC. 4. FULL DISCLOSURE.**

10 (a) REQUIREMENT.—The Federal Trade Commis-
11 sion, in consultation with the Secretary of Energy, shall
12 issue regulations requiring full disclosure by refiners and
13 distributors of their wholesale motor fuel pricing policies,
14 with a separate listing of each component contributing to
15 prices, including the cost of crude oil (with exploration,
16 extraction, and transportation costs shown separately if
17 the refiner or distributor is also the producer of the crude
18 oil), refining, marketing, transportation, equipment, over-
19 head, and profit, along with a description of any rebates,
20 incentives, and market enhancement allowances. Such reg-
21 ulations shall establish procedures for determining the
22 price an owner or operator of a terminal facility charges
23 a distributor or retailer which it owns or with which it
24 is affiliated.

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

4 (c) PUBLIC DISSEMINATION.—

5 (1) REQUIREMENTS.—Except as provided in
6 paragraph (2), the Federal Trade Commission shall
7 ensure that all information acquired pursuant to the
8 regulations issued under subsection (a) is made
9 available to the public as follows:

10 (A) Such information may be disseminated
11 to the public through the Energy Information
12 Administration.

13 (B) Such information shall be required by
14 the Federal Trade Commission to be—

15 (i) conspicuously posted at all retail
16 motor fuel facilities in a manner so as to
17 be clearly available and understandable to
18 retail consumers; and

19 (ii) included in or with each invoice
20 for the wholesale sale of motor fuel.

21 (2) EXCEPTION.—The requirements of para-
22 graph (1) shall not apply to trade secrets and com-
23 mercial or financial information protected from dis-
24 closure under subsection (b)(4) of section 552 of

1 title 5, United States Code (commonly referred to as
2 the Freedom of Information Act).

3 **SEC. 5. DEFINITIONS.**

4 For purposes of this Act, any term defined in section
5 101 of the Petroleum Marketing Practices Act (15 U.S.C.
6 2801) shall have the meaning given the term in that Act.

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