

MAINE STATE LEGISLATURE

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(EMERGENCY)
(New Title)
New Draft of H. P. 1065, L. D. 1253
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1610

H. P. 1479

House of Representatives, May 15, 1981

Reported by Representative Gwadosky from the Committee on Business
Legislation. Printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Amend the Unfair Sales Act.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, effective enforcement of the Unfair Sales Act prohibiting predatory pricing is vital to the preservation of a healthy and competitive sales economy in this State; and

Whereas, there is a clear potential for serious and imminent harm to sellers of motor fuel in particular, unless effective enforcement of the Unfair Sales Act is made possible by the following legislation; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 10 MRSA § 1208 is enacted to read:

§ 1208. Summons

1. Authority. Whenever the Attorney General reasonably believes that a

violation of section 1204-A may be occurring in the sale of motor fuel, he may require by summons the attendance and testimony of witnesses and the production of books and papers before him relating to any and all costs of operation of any motor fuel retailer or wholesaler.

2. **Penalty.** Any person who fails to comply with a summons issued under this section is subject to a civil penalty of not more than \$5,000, payable to the State to be recovered in a civil action.

Sec. 2. 10 MRSA § 1209 is enacted to read:

§ 1209. **Reports**

1. **Requirement.** Whenever the price of motor fuel sold at a retail outlet operated or controlled by a wholesaler of motor fuel is less than the dealer tankwagon price charged for the same motor fuel to any independent retail outlet supplied by the wholesaler and located within one mile of the wholesaler's outlet, the wholesaler shall file a written report with the Attorney General setting forth the information specified in subsection 2. This section shall apply only when the price at the wholesaler's outlet is less, for one full business day, than the most recent dealer tankwagon price to the independent outlet, provided that such sale was made to the independent retail outlet within 30 days prior to the date the lower price was posted by the wholesaler. "Dealer tankwagon price" means the wholesaler's price for motor fuel delivered to the independent retail outlet.

2. **Contents.** The report required from the wholesaler shall contain the following information:

- A. The date on which the underpricing occurred;
- B. The name and location of the wholesaler's retail outlet;
- C. The wholesale cost of the motor fuel sold at that outlet;
- D. The retail price the wholesaler charged on the date the underpricing occurred;
- E. The name and location of the independent outlet which the wholesaler has underpriced;
- F. The most recent dealer tankwagon price and date of sale to the independent retail outlet; and
- G. The retail price of the independent on the date the underpricing occurred.

The report shall be filed within 3 business days of the date on which the underpricing occurred.

3. **Penalty.** Any person who fails to report as required by this section shall be subject to a penalty of not more than \$500 a day for each day after the first 3 days on which he fails to report, payable to the State to be recovered in a civil action.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

This new draft permits the Attorney General to receive and review cost information of distribution and sale of motor fuel at any time to determine whether or not predatory pricing is occurring. Further, it requires distributors who underprice competing independent retailers whom they supply to automatically report that underpricing to the Attorney General, thereby expediting his investigation of potential predatory pricing situations. The new draft is an emergency measure.