

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 490

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S.P. 146

In Senate, February 6, 2001

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### **An Act to Preserve Competition in the Retail Marketing of Motor Fuels.**

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Reference to the Committee on Business and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator SHOREY of Washington.  
Cosponsored by Representative DUGAY of Cherryfield and  
Senators: KNEELAND of Aroostook, YOUNGBLOOD of Penobscot, Representatives:  
GOODWIN of Pembroke, WHEELER of Eliot.

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

4 **Sec. 1. 10 MRSA §1672, sub-§2-A** is enacted to read:

6 2-A. Cost. "Cost" for a particular grade of motor fuel means the sum of the rack price for that grade of motor fuel, the expense of transportation from the motor fuel storage facility to the retail outlet, taxes and overhead expense, all as calculated on a per gallon basis.

10 **Sec. 2. 10 MRSA §1672, sub-§§4-A and 4-B** are enacted to read:

12 4-A. Overhead expense. "Overhead expense" means 6% of the sum of the rack price and transportation expense.

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16 4-B. Rack price. "Rack price" for retail outlets located in York, Cumberland, Oxford, Androscoggin, Kennebec, Sagadahoc and Lincoln counties means the average industry reported price per gallon for a particular grade of motor fuel posted on the previous day by wholesalers for sales at motor fuel storage facilities located in Cumberland County. "Rack price" for retail outlets located in Penobscot, Piscataquis, Somerset, Franklin, Knox, Waldo, Hancock, Washington and Aroostook counties means the average industry reported price per gallon for a particular grade of motor fuel posted on the previous day by wholesalers for sales at motor fuel storage facilities located in Penobscot County. "Rack price" is as otherwise specified by the Attorney General pursuant to section 1682. "Rack price" includes all state and federal taxes and fees.

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28 **Sec. 3. 10 MRSA §1672, sub-§§7-A, 7-B and 7-C** are enacted to read:

30  
32 7-A. Sale of motor fuel at retail. "Sale of motor fuel at retail" means the sale of motor fuel in quantities not to exceed 200 gallons to any consumer or end user in any one sale.

34  
36 7-B. Taxes. "Taxes" means all federal and state excise and sales taxes imposed on the possession, sale or use of motor fuels.

38  
40 7-C. Transportation expense. "Transportation expense" means the lower of:

42  
44 A. The actual cost per gallon for freight charges for the transportation of motor fuel from the motor fuel storage facility to the retail outlet incurred for the most recent delivery of motor fuel to the retail outlet; and

2 B. In the case of a retail outlet providing its own  
3 transportation or using the services of an affiliate for the  
4 transportation of motor fuel from the motor fuel storage  
5 facility to the retail outlet, the average cost per mile  
6 incurred by the retail outlet or transportation affiliate  
7 for all transportation of gasoline over the previous 3  
8 months on a fully allocated cost basis, multiplied by the  
9 number of miles from the motor fuel storage facility to the  
10 retail outlet.

11 **Sec. 4. 10 MRSA §§1676-A and 1676-B** are enacted to read:

12 **§1676-A. Prohibition of sales of motor fuel at retail below cost**

13 Retail motor fuel outlets operating in the State may not  
14 sell motor fuel at retail below cost.

15 **§1676-B. Remedies for selling motor fuel at retail below cost**

16 Notwithstanding the provisions of section 1679, a retail  
17 motor fuel outlet in the State that sells motor fuel at retail  
18 below cost is subject this section.

19 **1. Injunctive action.** The Attorney General, or a person  
20 adversely affected by the sale of motor fuel at retail below  
21 cost, may initiate action in Superior Court for an injunction  
22 against further violations of section 1676-A. In an action  
23 brought under this section, the court may award temporary,  
24 preliminary and permanent injunctive relief. To the extent  
25 practicable, an action brought under this section must be  
26 advanced on the docket so as to provide the complainant prompt  
27 relief. In an action brought under this section, irreparable  
28 harm and injury to the public interest is presumed if the  
29 complainant establishes that the defendant sold motor fuel at  
30 retail below cost in the State at any time within 20 days of the  
31 filing of the complaint. Unless otherwise ordered by the court,  
32 an injunction issued under this section expires 180 days from the  
33 date of issuance. In the event that the defendant sells motor  
34 fuel at retail below cost in violation of an injunction issued  
35 pursuant to this section, the defendant is subject to a penalty  
36 for civil contempt of not less than \$5,000 per day for each  
37 retail outlet found to have sold motor fuel below cost in  
38 violation of the injunction.

39 **2. Damages.** A person adversely affected by the sale of  
40 motor fuel at retail below cost may seek monetary relief from a  
41 defendant determined to have violated section 1676-A. This relief  
42 may include:

2 A. For each day and for each retail outlet in which the  
4 defendant sold motor fuel at retail below cost, statutory  
damages as determined by the Superior Court of no less than  
\$500 and no more than \$2,500; or

6 B. Compensatory damages for lost gross profit from either  
8 reduction in sales or reductions in margins, or both,  
attributable to the defendant's violation of section 1676-A.

10 3. Defenses. In an action under this section, the  
12 complainant shall elect either statutory or compensatory damages  
no later than the time the case is submitted to Superior Court  
14 for verdict or judgment. In an action for statutory or  
compensatory damages under this section, it is a defense to  
damage liability if the defendant proves that:

16 A. The defendant did not know, and in the exercise of  
18 reasonable care could not have known, that the defendant  
made sales of motor fuel at retail below cost; or

20 B. The defendant's prices, though below cost, were reduced  
22 to match the then-currently posted prices of the defendant's  
competitor.

24 4. Attorney's fees. In an action under this section, a  
26 prevailing plaintiff is entitled to recover reasonable attorney's  
fees, expert witness fees and court costs from defendant.

28 5. Limitations. An action for damages under this section  
30 may not be instituted for a sale of motor fuel at retail  
occurring more than 6 months prior to the date of the filing of  
32 the complaint.

34 **Sec. 5. 10 MRSA §1682**, as enacted by PL 1991, c. 836, §3, is  
36 amended to read:

38 **§1682. Rules**

40 The Attorney General may adopt rules necessary to implement  
42 this chapter. Rules adopted pursuant to this chapter are routine  
technical rules as defined in Title 5, chapter 375, subchapter  
44 II-A. The Attorney General's rule-making authority includes  
making rules for the specification of rack price by alternative  
46 means if the Attorney General determines that an alternative  
method reflects the actual product costs likely to be incurred by  
retail motor fuel outlets more accurately than the methods  
48 established in section 1672, subsection 4-B.

## SUMMARY

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4       This bill prohibits the retail sales of motor fuel below  
6       cost. It establishes remedies for actions brought under the  
8       provisions of the bill. The bill provides for statutory and  
      compensatory damages for a plaintiff bringing a successful  
      action. The bill also defines "rack price" for motor fuels and  
      authorizes the Attorney General to invoke rule-making authority  
      to establish an alternative means of calculating the rack price.