

SENATE No. 619

The Commonwealth of Massachusetts

SENATE, May 1, 1950.

The committee on Mercantile Affairs, to whom was referred the petition (accompanied by bill, House, No. 1344) of the Retail Gasoline Dealers Association of Massachusetts Inc. for preventing unfair discrimination and methods of competition and destructive trade practices in the production, manufacture, distribution or sale of petroleum products, report the accompanying Bill (Senate, No. 619).

For the committee,

WILLIAM KEENAN.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty.

AN ACT TO PREVENT UNFAIR DISCRIMINATION, UNFAIR METHODS OF COMPETITION AND DESTRUCTIVE TRADE PRACTICES IN THE RETAIL SALE OF MOTOR FUEL.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. *Definitions.* — When used in this chap-
2 ter, unless the context shall otherwise require, the
3 following words or terms shall have the following
4 meaning: —

5 (a) The term "retail dealer" shall mean any per-
6 son operating a service station, filling station, store,
7 garage or other place of business for the retail sale
8 of motor fuel or the sale of or dispensing of motor fuel
9 for delivery into the service tank or tanks of any
10 motor vehicle which is propelled by an internal com-
11 bustion motor other than such a motor vehicle be-
12 longing to the person owning or operating said place
13 of business.

14 (b) The term "motor fuel" shall mean (a) a light-
15 distillate of petroleum or allied substance with suitable
16 volatility and other characteristics to be used as a
17 fuel for operating internal combustion engines, whether
18 or not it is mixed with other materials; or (b) any
19 other product or liquid when sold for use as a motor

20 fuel in any type of internal combustion engine fur-
21 nishing power to operate a motor vehicle.

22 (c) The term "cost to the retail dealer" shall mean
23 the cost of such motor fuel to the dealer plus the cost
24 of doing business, including that part of the overhead
25 of such dealer properly attributable to the sale of
26 such motor fuel according to generally accepted
27 methods of accounting procedure, which overhead
28 shall include without limitation, labor (including the
29 salaries of proprietors and corporate officials and
30 others or a reasonable value for the services of such
31 where no direct wage or salary is paid to them), rent
32 (or a reasonable return on capital invested in real
33 property used in said business) depreciation, selling
34 costs (including gifts or premiums or other valuable
35 considerations passing from the dealer to the pur-
36 chaser in connection with the sale of motor fuel),
37 maintenance of equipment, delivery costs, all types of
38 licenses, taxes, insurance, and advertising.

1 SECTION 2. *Advertising, offering to sell, or selling*
2 *Motor Fuel at Retail at Less than Cost, with Intent to*
3 *injure Competitors.* — It shall be unlawful for any
4 retail dealer, with intent to injure competitors or
5 destroy substantially or lessen competition, to adver-
6 tise, offer to sell, or sell at retail motor fuel at less than
7 cost to such retail dealer.

1 SECTION 3. *Use in Evidence of Cost Survey.* —
2 Where the retail dealers or any part thereof in a
3 trading area have made or caused to be made a cost
4 of doing retail business in such area in accordance with
5 generally accepted methods of accounting in which
6 survey all retail dealers in said area have been given

7 an opportunity to furnish to the surveyor information
8 from their books and records with respect to their
9 cost of doing business and the said retail dealers have
10 thereafter been given an opportunity to adopt or
11 reject said survey by written approval. Such cost-
12 survey shall be deemed competent evidence in proving
13 the cost to any such retailer.

1 SECTION 4. *Sales Exceptions.* — The provisions of
2 this chapter shall not apply to sales at retail made: —

3 (a) Where motor fuel is advertised or offered for
4 sale or sold upon the final liquidation of the business
5 of said retail dealer.

6 (b) Where motor fuel is sold in good faith to meet
7 the price of a competitor.

8 (c) Where motor fuel is advertised or offered for
9 sale or sold by any fiduciary or other officer acting
10 under the order or direction of any court.

1 SECTION 5. *Injunction.* — On complaint of any
2 retail dealer the superior court shall have the jurisdic-
3 tion to restrain and enjoin any act declared illegal by
4 any provision of this chapter, and it shall be the duty
5 of the several district attorneys, in their respective
6 districts, to enforce this act and prosecute all violators
7 of any provision of this chapter.

1 SECTION 6. *Conflicting Laws.* — Whenever the ap-
2 plication of the provisions of any other law of this
3 commonwealth conflicts with the application of the
4 provisions of this chapter, said provisions of this
5 chapter shall prevail.

1 SECTION 7. *Effect of Partial Invalidity.* — If any
2 provision of this chapter or the application of such

3 provision of this chapter to any person or circumstance
4 shall be held invalid, the remainder of the provisions
5 or the application of such provisions to persons or
6 circumstances other than those as to which it is held
7 invalid, shall not be affected thereby.

1 SECTION 8. *Penalties.* — Any retail dealer who,
2 with intent to injure competitors or destroy competi-
3 tion, violates any of the provisions of this chapter
4 shall be punished by a fine of not more than one
5 thousand dollars.

1 SECTION 9. *Cited as Unfair Sales Act for the Retail*
2 *Sale of Motor Fuels.* — Sections one through eight
3 shall be known and may be cited as the “Unfair Sales
4 Act for the Retail Sale of Motor Fuels.”





