

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 a.m. on January 27, 2004 in Room 241-N of the Capitol.

All members were present except:

Representative Broderick Henderson- excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Norm Furse, Revisor of Statutes
Renae Jefferies, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Representative Doug Patterson
Tom Palace, Petroleum Marketers and Convenience Store Association of Kansas
Lori Milke, Hays, store owner
Curt Wright, Taylor Oil, Wellsville
Mark Augustine, Triplett Inc., Salina
Representative Tom Holland
Bob Alderson, Casey's General Stores
Constantine Cotsoradis, Weights and Measures, Department of Agriculture

Others attending: See Attached List.

The Chairman called the meeting to order and stated the committee would be very busy the next couple of weeks and asked members to please ask questions during testimonial, but refrain from giving your personal feelings. We will save giving personal opinions until the bill is debated.

The Chairman asked if there was anyone wishing to introduce bills.

The Chairman opened the hearing on **HB 2330 - Prohibited acts and remedies for certain acts involving sale of motor fuel below costs.**

Representative Doug Patterson testified as a proponent and stated he became familiar with this issue in his private practice. These large retailers sell motor fuel below cost to get consumers into their store to make other purchases. Small retailers cannot compete very long with competitors across the street selling fuel below cost.

Thomas M. Palace, Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA), testified as a proponent to **HB 2330**. The practice of selling motor fuel "below cost" has but one goal: the elimination of competition. The evolution of the "big box retailers" or discount retailers is taking its toll on the small independent station marketer that has served his community for years. Independent marketers can show you that the competition they face comes down to gasoline being sold at 2-10 cents below cost. A small retailer cannot compete for long with that kind of pricing. In many cases a retailer is unable to even purchase fuel at the price their competitor is charging.

Below cost selling of gasoline has occurred for years, and is usually specific in nature and ongoing in certain areas. Some of our PMCA members have been guilty of lowering the price of fuel occasionally to gain more market share. Border marketers are currently hampered by an 8 cent disparity in cost in both Missouri and Oklahoma on gasoline. Marketers must make difficult decisions on pricing because on the Kansas side they not only compete with the discount retailers, but they also have to contend with the 8 cent disadvantage due to lower fuel tax rates in neighboring states.

There is a fiscal note on the bill. The Department of Agriculture Division of Weights and Measures is currently checking fuel pumps for quality and quantity testing, a plan PMCA initiated in 1996. The fund

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generates approximately \$860,000 annually. Of this amount, \$250,000 goes directly to the general fund and leaving what is left to run the program.

Hypermart-type retailers are here to stay. What this bill proposes is to make sure there is a counterbalance, providing competitive pricing and a ready supply of fuel to Kansas Consumers. An amendment was offered (Attachment 1).

Lori Milke, Hays, store owner, testified as a proponent stating she and her husband own three convenience stores in small towns with population ranging from 1200 to 1800 people.

In the past fuel invoices from the supplier were \$6500.00 - \$7900.00 due and payable in ten days. The last invoices have been between \$12,000 - \$14,000 and over. These invoices are due in ten days. The fuel sales have not doubled. It is becoming increasingly difficult to stay competitive with the hypermarts and stay in business.

If the hypermart-type retailers continue to put all the hometown business owners out of business, are we foolish enough to believe these big corporations are going to keep their prices down at the loss-leader level. No way. It is believed if all competition is gone, big retailers would make big profits on the fuel and other items they've had reduced for too long. Then the only place left to shop would be the hypermarts and the prices would be arising (Attachment 2).

Curt Wright, Vice President, Operations, Taylor Oil, Inc., Wellsville, KS, as a proponent testified they are a family owned and operated petroleum distributor. Taylor Oil operates four convenience stores and one full service gas station. They employ approximately fifty people.

Taylor Oil passed up the opportunity of buying one of the two convenience stores they operated in Ottawa because of this problem. The store was sold to a much larger out-of-state company after they decided not to buy the store. This location was actually their best store in terms of sales; over 160,000 gallons per month and over 60,000 dollars a month inside the store. The total sales were over 3,500,000 dollars per year.

The decision not to buy this location in Ottawa was based solely on the margin issue they have experienced in Ottawa since the hypermarket competitor opened in 2001. By the end of February 2004, half of the convenience stores in Ottawa will have changed operators this past year. This instability in the market has changed operations dramatically.

The marketplace in Ottawa is overwhelming proof that there is a real problem. Taylor Oil urges support of **HB 2330** so that good operators at least have an opportunity to compete (Attachment 3).

Mark Augustine, Triplett Inc, Salina, testified as a proponent to **HB 2330**.

Representative Tom Holland testified in strong support of **HB 2330** as it would truly benefit small Kansas businesses and reduce a wide-spread and truly predatory marketing tactic in Kansas.

Thousands of small business owners who are Kansas residents also do business in the state of Kansas. Kansas small businesses are the largest employers of Kansas residents and by far pay the bulk of business-related taxes. Kansas small business owners live and work in their communities and are the very fabric of our great state (Attachment 4).

Bob Alderson, Casey's General Store, an opponent to **HB 2330** testified that he opposed government intervention.

Constantine Cotsoradis, Weights and Measures, Department of Agriculture (DOA), testified they were neither a proponent nor an opponent of **HB 2330**. The background for **HB 2330** is current law in Minnesota. Minnesota state regulators suggested, based on their experience, that complaints should be accepted only in written form and only if the conditions have persisted for at least 36 hours. Without

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these changes to limit the potential number of investigations, it is unlikely that the DOA would have the needed time or resources to properly investigate the number of cases we would receive.

Current fees are not sufficient to fund this new program. It is estimated the fee would have to increase from \$0.015 per barrel of oil to \$0.017 per barrel to fund two new full-time employees to investigate the complaints likely received. An increase in the expenditure limit for the fund would need to be increased to cover costs.

The bill provides for the DOA to conduct investigations and the Attorney General (AG) to prosecute cases. The committee may wish to consider having the AG both investigate and prosecute below-cost fuel complaints. It is believed the investigations really are audits, rather than the inspections typically performed. Also, it is believed there may be efficiencies to be gained by having one agency responsible for investigating and prosecuting cases (Attachment 5).

Marlee Carpenter, Vice President of Government Affairs, Kansas Chamber of Commerce and Industry, provided written testimony opposing **HB 2330**. This bill would create another mandate on how Kansans must do business. It is believed that the free market is the proper venue for determining the price of gasoline. Government intervention in setting a minimum price for gasoline is intrusive and anti-competitive.

Anti-competitive below-cost pricing is already illegal under the federal antitrust laws. The FTC and the Department of Justice's Antitrust Division continues to investigate allegations of predatory conduct. It is believed the federal law is adequate and another state level of bureaucracy to govern the cost of gasoline is not needed (Attachment 6).

The Chairman closed the hearing on **HB 2330**.

Mr. Palace will provide information on the border prices of gasoline in Missouri. Missouri sells gasoline below price and the Chairman asked how does this affect the competition in Kansas?

The meeting adjourned at 10:40 a.m. and the next meeting will be January 28, 2004.



MEMO TO: House Commerce Committee
FROM: Thomas M. Palace, Executive Director of the Petroleum Marketers and
Convenience Store Association of Kansas
DATE: January 27, 2004
RE: HB 2330

Mr. Chairman and members of the House Commerce Committee:

My name is Tom Palace and I am the Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA), a statewide trade association that represents over 300 independent petroleum marketers and convenience store owners throughout Kansas.

We appreciate the opportunity to appear before you as a proponent to HB 2330.

I want to commend and thank Representatives Doug Patterson and Tom Holland for their efforts to get this bill in front of this committee today.

The Problem

The practice of selling motor fuel "below cost" has but one goal: the elimination of competition. The evolution of the "big box retailers" or discount retailers is taking its toll on the small independent gas station marketer that has served his community for years. The consumer has long been the benefactor of price wars, over-supply of gasoline, an inflation-proof commodity and now the "big box" retailer. In today's environment, consumers chase price, and discount retailers use gasoline as a "loss leader" to get more people into their stores to purchase other items that have higher profit margins. Independent marketers can show you that the competition they face comes down to gasoline being sold at 2-10 cents below cost. A small retailer cannot compete for long with that kind of pricing. In many cases, a retailer is unable to even purchase fuel at the price their competitor is charging.

Below cost selling of gasoline has occurred for years, and is usually specific in nature and ongoing in certain areas. I would be remiss if I did not say that some of our PMCA members have been guilty of lowering the price of fuel occasionally to gain more market share. But they do not and cannot continue this practice over an extended period of time. Discount pricing also occurs at grand openings, on anniversaries and customer appreciation days. We have accounted for the special "promotional" days in the bill, but limit how long they can be permitted. However, since the big box retailers have added fuel pumps at their sites, special promotions appear more and more often on a prolonged period of time and such activity affects almost every county in the state...or will when a discount retailer comes to town. This problem is exacerbated when competing on the borders of Kansas. Border marketers are currently hampered by an 8

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cent disparity in cost in both Missouri and Oklahoma on gasoline. Marketers must make difficult decisions on pricing because on the Kansas side they not only compete with the discount retailers, but they also have to contend with the 8 cent disadvantage due to lower fuel tax rates in neighboring states.

OVERVIEW OF HB 2330

1. HB 2330 was introduced in the House Commerce Committee during the 2003 Legislative Session. Representatives Doug Patterson and Tom Holland are the sponsors.
2. HB 2330 states that no marketer or retailer of motor fuel shall sell or offer for sale, by posted price or indicating meter, motor fuel at a price below cost.
3. Included in the bill are special exceptions when below cost selling does not apply: grand openings, sales made to introduce a new or remodeled business, sales made during special promotions (customer appreciation, anniversary) which cannot exceed three days per calendar quarter, or sales made in good faith to meet an equally low retail price.
4. Cost is defined as: (1) product cost and actual freight or transportation cost plus applicable taxes and fees, (2) If actual product and freight figures are unavailable, "cost" means the invoice price or the average of the *three lowest terminal prices posted by supplier* on the day at the terminal from which the most recent supply of motor fuel delivered to the retail location was acquired as published by a nationally recognized petroleum price reporting service; plus actual freight charges equal to or *offered from a common carrier for hire designated for the terminal from which the most recent supply of motor fuel delivered to the retail location* plus applicable taxes and fees pursuant to federal, state and local law, and (3) *credit cards fees*.
5. Kansas Division of Weights and Measures (W/M) will be the primary enforcement arm. A marketer can make a formal complaint to Weights and Measures, and if W/M/ has reason to believe that a marketer or retailer has violated this act, they can demand that such marketer or retailer raise their price. Within 10 business days, the marketer or retailer is required to submit all records and documentation to W/M determine if a violation has occurred.

-W/M has the authority to "red tag," (take pumps out of service) if a marketer or retailer does not comply with the act.

-If it is determined that the act has been violated, W/M shall notify the attorney general and provide all documentation to that office.
6. The attorney general may bring an action, to obtain a declaratory judgment, obtain a restraining order against a marketer, recover any penalty provided by the act, and recover reasonable expenses and investigation fees of the division of W/M and the attorney general.

7. Violation of the act shall render the violator liable for a payment of a civil penalty in the sum of \$5,000 for each violation (sale).

Opposition

There is a misconception that if passed this law will increase prices (see study in packet). This law states only that you cannot sell gasoline below your actual "hard" costs. It is very unlikely that any retailer that has a product that equates to 65% of their gross receipts could stay in business by selling the product at cost...let alone under cost.

Federal Anti-Trust Laws for "predatory pricing" currently on the books have not been effective in halting motor fuel sales made below the acquisition cost. When using these predatory pricing laws, the court must prove "intent to harm" which is virtually impossible short of having an informant who can show proof that a company is literally trying to put another company out of business.

The Federal Trade Commission (FTC) has weighed in on this issue several times. In a letter (see attached) to New York Governor George Pataki, the FTC stated "during the past two decades, a growing body of empirical economic research has assessed the impact of state 'sales below cost' laws on retail gasoline prices. Most studies find these laws raise gasoline prices or leave them unchanged. Some suggest that the laws raise retail gasoline prices by one or two cents per gallon. One study currently in draft form finds that these laws increase gasoline prices initially and lower them in subsequent years, but it is not clear whether these findings meet economists' customary standards for statistical significance. Many of the studies suffer from methodological problems that make it unclear whether they are measuring the impact of sales below cost laws or something else. The most carefully-controlled study, conducted by a senior economist in the FTC's Bureau of Economics, found that the laws had no effect on retail prices."

Fiscal Note

We have been told that there is a fiscal note with this bill. The Department of Agriculture Division of Weights and Measures (W/M) is currently checking fuel pumps for quality and quantity testing, a plan PMCA initiated in 1996. W/M inspects retail fuel outlets to determine that fuel pumps are releasing the proper amount of gallons purchased, and the division tests the quality of the fuel for proper octane levels. Retail marketers are paying for this through the Petroleum Inspection Fee Fund (PIF). The fund generates approximately \$860,000 annually. Of this amount, \$250,000 goes directly to the general fund, leaving what is left to run the program.

W/M has stated they need approximately 2 employees and \$106,000 to run the fair marketing enforcement program. We have been told that there is approximately \$60,000 left over that goes unused per year based on agreements with outside contractors to conduct the quality and quantity sampling. Without knowing how many below cost complaints the division will receive, we cannot justify at this early juncture two additional employees to run this program. PMCA would rather use the available resources and come back at a later date to determine if an increase in the

PIF would be needed.

Will This Bill Solve The Problem

Mr. Chairman and committee members, this legislation is not geared toward keeping a marginal marketer in business. It does not guarantee a profit for ineffective retailers. It will, however, stop the most horrendous cases of below cost selling and gives the small marketer the opportunity to compete.

Big box or hypermarket retailers are here to stay. What this bill proposes is to make sure there is a counterbalance, providing competitive pricing and a ready supply of fuel to Kansas Consumers.

PMCA urges your support of HB 2330 as amended.

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HOUSE BILL No. 2330

[material within brackets would be deleted]

By Representatives Holland and Patterson

2-12

AN ACT concerning sale of motor fuel; relating to certain prohibited acts; civil penalties; duties of division of weights and measures and attorney general; private remedy.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) Except as otherwise provided, no marketer or retailer of motor fuel shall sell or offer for sale, by posted price or indicating meter, motor fuel at a price below cost.

(b) The provisions of this section shall not apply to: (1) Any sales or offers to sell made during a grand opening, sales or offers to sell made to introduce a new or remodeled business or sales or offers to sell made during special promotions, not to exceed three days per calendar quarter; or

(2) any sales or offers to sell made in good faith to meet an equally low retail price, net of any discounts received at the time of sale, of a competitor selling motor fuel of like grade as required by federal or state law, within the same or adjacent municipality.

(c) As used in this section, "cost" means product cost and actual freight or transportation costs plus applicable taxes and fees pursuant to federal, state and local law or if such costs are unavailable then "cost" means the invoice price or the lowest terminal price on the day at the terminal from which the most recent supply of motor fuel delivered to the retail location was acquired as published by a nationally recognized petroleum price reporting service and actual freight or transportation costs plus applicable taxes and fees pursuant to federal, state and local law.

average of the three lowest terminal prices posted by a supplier

offered from a common carrier for hire designated for the terminal from which the most recent supply of motor fuel delivered to the retail location,

(d) If the division of weights and measures of the department of agriculture receives a complaint and has reason to believe that a marketer or retailer has violated the provisions of this act, the division shall promptly contact the marketer or retailer and demand that such marketer or retailer raise their price of motor fuel to comply with the provisions of this act. Within 10 business days, the division shall investigate and determine whether the allegations contained in the complaint are still true. If so the marketer or retailer who is the subject of the complaint shall provide the division with all records and documentation requested in order

Mr. Chairman, Members of the Committee, Good Morning! My name is Lori Milke. Thank you for the opportunity to be here this morning. The bill we are discussing, HB 2330, is very important to me personally.

My husband and I own three convenience stores. They are located in Victoria, Ellis and LaCrosse. The population of these small towns range from 1200 to 1800 people. We are rural, western Kansas!

We pay approximately \$ 11,750.00 in unemployment and property taxes to the State of Kansas every year. We have over 20 employces that depend on us for some or all of their income.

We take great pride in and want to be known as THE HOMETOWN CONVENIENCE STORES, SUPPORTING HOMETOWN ACTIVITIES! More often than not, some organization is at the door seeking donations. Whether it is cash or product, or letting groups use our parking lot for bake sales or their car wash! We support everything from the school reading program, student of the month, church fund raisers, school soup suppers, youth roller hockey, softball and bowling teams, the local fairs and festivals, after prom parties, football T-shirts, post graduation celebrations. As you can see the list is endless and we are major contributors back to the communities. Yet, after all that...when the senior class has extra money in their account they need to spend before they graduate...they go across the way to my big corporation competition and buy all the gift certificates they have in their store. WHY? Because the kids can get more fuel for their money...WHY? Because my competition is selling fuel for less than I paid for it to put it in my tanks!!

Its disheartening to see the car dealerships, restaurants, appliance stores, convenience stores, 3rd generation grocery stores close their doors after years of business. As we witness this happening...is anyone concerned about who will support these communities if the independent businesses no longer exist?

About 4:30 pm the phone rings in one of our stores. Coming over the phone we hear things like, "have you lowered your gas price yet?" "Whats the price of your no-lead today?" If I can't stay very close with Hays' gas price, my customers are filling up before they come home from work. That means they aren't stopping at my store for their energy drink, lotto ticket, and king size Butterfinger because they picked that up too when they filled their car in Hays. It is detrimental to our business. People offer advice, "lower your fuel price, make it up on the inside sales." My inside sales in these little stores are difficult enough to maintain, they are certainly not enough to soak up any loss we might have on fuel sales. People tell me, "get lean, cut corners, gotta get competitive, Lori!". I can assure you my corners are cut. Somehow my employees don't want to work for free, the insurance company wants compensated for their coverage, all my different suppliers, they want paid. As you know and understand, the expenses go on and on. I don't have a choice, I have to make a profit on all products I sell, including my fuel!!

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When you turn on the news, here is the media telling you where it is you can purchase the cheapest fuel. They give the business name and address and sometimes they even have had a camera crew there and have a visual for you!! So now the big corporations that drop their prices lowest also get free advertisement to do so!! It also gives the public the silly idea that we are trying to get deep in their pockets. I have people ask me, "Why are you so high?" "How do you sleep at night?" "We know who is making the big bucks!" If they only understood what they were showing on the TV for a lowest fuel price, is less than my actual cost.

I remember when the fuel invoice from my supplier would come and it would be \$6500.00 - \$7900.00, due and payable in 10 days. Now my last invoices were over \$12,000.00 and I've had those \$14,000.00 and over. These invoices are still due and payable in 10 days. Have I doubled my fuel sales or customers? No! With the ever-rising cost of fuel and trying to stay competitive with the hyper-marts, it is becoming increasingly more difficult for us to stay in the game.

We have just began our 8th year as Convenience Store owners. For the past two years, as the profit margins continue to decline, my husband has taken a job out of town. For weeks at a time he is gone, leaving me to raise our three children and take care of three stores! Trying to stay competitive with the big corporations that use fuel as their loss-leader leaves very little for us to live on.

As I expressed to Representative Johnson, I feel these big corporations standing on my shoulders, they are heavy. They are slowly pushing us under the water, if we don't get a life line soon, all our breath will be gone. All the breath of the small town communities.

I'm concerned as I think of the elderly. We see what has happened to them as the local stores close. Those that can't get themselves out of town are simply doing without their much needed necessities.

If we continue to let the big-box retailers put all the hometown business owners out of business, are we foolish enough to believe these big corporations are going to keep their prices down at the loss-leader level? Everyday Low Prices...NO WAY! I believe if all their competition is gone, then it will be their turn to make the big profit on the fuel and other items they've had reduced for too long. So look out Kansas Consumers! The only place left to shop is the hyper-marts and it is my opinion, the prices will be arising!!

For the most part, I love what I do. I am proud of our stores. I enjoy my customers immensely. The only thing I would trade is laying awake at night wondering how to pay for something so difficult to make a profit on. Wondering how long we will be able to stay open and serve the customers and communities we've become so fond of.

Thank you for your time, and thank you for considering THE MOTOR FUEL FAIR MARTETING ACT, HB 2330.

TAYLOR OIL, INC.

PO BOX 581, WELLSVILLE, KS 66092 785-883-2072 FAX 785-883-4194

January 23, 2004

Mr. Chairman and Committee Members:

Taylor Oil, Inc. is a family owned and operated petroleum distributor based in Wellsville, KS. We operate 4 convenience stores in Ottawa, Lyndon, Emporia and Spring Hill and 1 full service gas station in Gardner. We employ approximately 50 people. I have testified earlier concerning HB 2330 and I would like to update you on the status of our company.

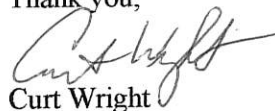
Since my last testimony, we have given up one of our two convenience stores in Ottawa because of the problem we are discussing today. We passed up the opportunity to buy a location we had leased in Ottawa. The landlord sold the store to a much larger out-of-state company after we decided not to buy the store. The location was actually our best store in terms of sales, over 160,000 gallons per month and over 60,000 dollars a month inside the store. Our total sales were over 3,500,000 dollars per year.

Our decision not to buy this location in Ottawa was based solely on the margin issue we have experienced in Ottawa since the hypermarket competitor came to town in April of 2001. Of the last 410 days of operation, my large hypermarket competitor, Mirastar, has been below my BP branded cost (including taxes, freight and credit card fees) on 202 of those days. I am unaware of any business that can survive selling its #1 product below cost nearly 50% of the time. I can buy product from 9 different suppliers, including companies such as BP, ConocoPhillips, Flint Hills Resources (formerly Koch Refining), Sinclair and Cenex. My competitor has been below the cheapest price I had available to me on 148 of the last 410 days, that's over 35% of the time.

By the end of February 2004, half of the convenience stores in Ottawa will have changed operators this past year. This instability in the market has changed my operation dramatically. Unlike some companies, the decisions we make as a company are based on our ability to pay our bills. We upgrade equipment, purchase new innovations, donate to local charities and decide on pay raises for our employees based on our ability to make ends meet. We also must project out the costs of implementing regulatory requirements, such as the 1998 tank regulations, with no way to recoup those costs. There are companies in our industry and in every industry that do not take into account their ability to pay their bills when making these decisions, leaving banks, and other suppliers holding the bag when there isn't enough cash to go around.

The marketplace in Ottawa is overwhelming proof that there is a real problem. It is happening in other places around Kansas and in other places around the country as well. Mr. Chairman and committee members, I urge you to support HB 2330 so that good operators at least have an opportunity to compete.

Thank you,



Curt Wright
VP Operations

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STATE OF KANSAS

TOM HOLLAND

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

MEMBER: EDUCATION
HEALTH & HUMAN SERVICES
SELECT COMMITTEE ON KANSAS SECURITY

Tuesday, January 27th, 2004

Chairman Dahl and Committee Members:

Good Morning! I thank you for hearing my testimony today in support of House Bill 2330. I wish to offer my strong support of this legislation as this will truly benefit small Kansas businesses and reduce a wide-spread and truly predatory marketing tactic in our state.

I am but one of thousands of small business owners who are Kansas residents and also do business in the state of Kansas. Kansas small businesses are the largest employers of Kansas residents and by far pay the bulk of business-related taxes. Kansas small business owners live and work in their communities and are the very fabric of our great state. Make no mistake, Kansas small businesses invest in our state every day and are here to stay.

The small business person's world is becoming more and more complicated every day. Economic globalization and the ability to conduct financial transactions half-way around the world in a matter of seconds have forced Kansas small businesses to compete not only with each other but also against larger regional and national companies that are constantly seeking to expand their market share. While competition is certainly healthy for the marketplace and the Kansas consumer, we must all realize that in the gasoline retail industry some of these larger firms, particularly national and international businesses, extensively use gasoline sales as a loss leader to drive customers into their stores to buy other products. Gasoline revenues for these businesses is a much smaller percentage (possibly as low as 2%) of total revenue sales versus the local "mom and pop" convenience store retailer, where gasoline sales constitutes up to 70% or more of total revenue. This is a predatory pricing practice, pure and simple, and it is driving Kansas convenience store owners and independent operators out of business. HB 2330 is not intended to protect uncompetitive businesses but instead gives the Kansas small business owner a fighting chance to compete against interstate businesses.

Let's show Kansas small business persons that we value their entrepreneurial spirit, dedication, resiliency, and most importantly their desire to live and foster community commerce in our state. Please support Kansas small businesses today by supporting HB 2330.

Thank You,

State Representative Tom Holland

Comma Labor
1-27-04
Atch # 4

KANSAS

DEPARTMENT OF AGRICULTURE
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on HB 2330
to the House Commerce and Labor Committee
by Constantine Cotsoradis, Weights and Measures Program Director
Kansas Department of Agriculture
January 27, 2004**

Good morning, Chairman Dahl and members of the committee. I am here to on behalf of the Kansas Department of Agriculture. I appear today only to offer information; we are neither a proponent nor an opponent of this bill.

The background for HB 2330 is a law currently in effect in Minnesota. To better understand what a law like this would require of our program, we talked to Minnesota state regulators. They suggested, based on their experience, that complaints should be accepted only in written form and only if the conditions have persisted for at least 36 hours. Without these changes to limit the potential number of investigations, it is unlikely that we would have the needed time or resources to properly investigate the number of cases we would receive.

The committee may also want to consider amending K.S.A. 55-427 to authorize using petroleum inspection fee funds for this purpose. Currently, funds cannot be used for purposes other than inspecting gas pumps or fuel quality.

Also, current fees are not sufficient to fund this new program. We estimate the fee will have to increase from \$0.015 per barrel of oil to \$0.017 per barrel to fund two new full-time employees to investigate the complaints we are likely to receive. We also will need to increase the expenditure limit for this fund to cover our increased costs.

This bill, as currently written, provides for the Department of Agriculture to conduct investigations and for the attorney general's office to prosecute cases. The committee may wish to consider having the attorney general both investigate and prosecute below-cost fuel complaints. We believe the investigations really are audits, rather than the inspections we typically perform. Further, we believe there may efficiencies to be gained by having one agency responsible for investigating and prosecuting cases.

Thank you for this opportunity to appear before you. I will answer any questions at the appropriate time.

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<http://www.accesskansas.org/kda>

Comm & Labor
1-27-04
Atch # 5

LEGISLATIVE TESTIMONY

HB 2330

January 27, 2004

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Written Testimony before the House Commerce and Labor Committee
By Marlee Carpenter, Vice President of Government Affairs

Chairman Dahl and members of the Committee:

The Kansas Chamber of Commerce and its affiliate the Kansas Retail Council (KRC), representing over 700 retailers in the state of Kansas is entering written testimony today to oppose HB 2330. The Kansas Chamber and the Kansas Retail Council are dedicated to the promotion of economic growth and job creation within the state and to the protection and support of the private competitive enterprise system.

HB 2330 would create yet another mandate on how Kansans must do business. We believe that the free market is the proper venue for determining the price of gasoline. Government intervention in setting a minimum price for gasoline is intrusive and anti-competitive. Governor George Pataki (R-NY) and former Governor Don Sundquist (R-TN) both vetoed similar legislation in their respective states sighting that it would result in higher gasoline prices at the pump for consumers.

Anti-competitive below-cost pricing is already illegal under the federal antitrust laws. The FTC and the Department of Justice's Antitrust Division continue to investigate allegations of predatory conduct. We believe that federal law is adequate and do not need another state level of bureaucracy to govern the cost of gasoline.

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The Kansas Chamber and the Kansas Retail Council believe that passage of this legislation would lead to higher gasoline prices, encourage inefficient practices and do not protect small independent dealers. We oppose HB 2330 and urge the committee to not act on the bill.

About the Kansas Chamber of Commerce and Industry

The Kansas Chamber of Commerce and Industry is the leading broad-based business organization in Kansas. KCCI is dedicated to the promotion of economic growth and job creation and to the protection and support of the private competitive enterprise system.

KCCI is comprised of nearly 7,500 businesses, which includes 200 local and regional chambers of commerce and trade organizations that represent more than 161,000 business men and women. The organization represents both large and small employers in Kansas. The Kansas Chamber receives no government funding.

GET THE FACTS ON BELOW COST GASOLINE LEGISLATION

A recent study by former Federal Trade Commissioner Terry Calvani says that below cost sales laws for gasoline do not protect consumers. Calvani's analysis indicated that below cost sales laws restrict competition. Also, there's no evidence such laws protect independent owners. From a public policy perspective, the result is a loss for the consumer and no gain for the independent dealer.

- Governor George Pataki (R-NY) and former Governor Don Sundquist (R- TN) both vetoed similar legislation in their respective states sighting that it would result in higher gasoline prices at the pump for consumers.
- Below cost gasoline laws are protectionist legislation, unenforceable and result in higher gasoline prices for consumers.
- The free market is the proper venue for determining the price of gasoline. Government intervention in setting a minimum price for gasoline is intrusive and anti-competitive.
- Below cost gasoline laws are special interest legislation that directly benefits a privileged few, at a substantial cost to the general public.
- Anticompetitive below-cost pricing is already illegal under the federal antitrust laws. The FTC and the Department of Justice's Antitrust Division continue to investigate allegations of predatory conduct.
- Empirical studies of the effects of laws governing the sales and pricing of gasoline have shown that these laws lead to higher gasoline prices, encourage inefficient practices and do not protect small independent dealers.
- The Federal Trade Commission vigorously opposed below cost laws on both the federal and state levels on the grounds they were unnecessary and such laws would increase the retail price of gasoline and encourage inefficiencies.
- Given that the gasoline market is highly competitive with low barriers to entry, it is impossible for any single gasoline retailer to achieve monopoly power in this market.

OPPOSE BELOW COST GASOLINE LEGISLATION

AND

PROTECT CONSUMERS, NOT PROFITS!