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(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...  
PUBLIC HEARING - COMMITTEE RECORDS**

**2005-06**

(session year)

**Senate**

(Assembly, Senate or Joint)

**Committee on Labor and Election Process  
Reform...**

**COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

**INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

SB 648



# Kwik Trip, Inc.

1626 Oak Street • P.O. Box 2107 • La Crosse, WI 54602-2107

Phone: (608) 781-8988 • Commercial Accounts Fax: (608) 781-4144 • www.kwiktrip.com

*"To serve our customers and community more effectively than anyone else by treating our customers, co-workers and suppliers as we, personally, would like to be treated."*

VIA HAND DELIVERY

February 15, 2006

Senator Tom Reynolds  
Senator Mary Lazich  
Senator Ted Kanavas  
Senator Dave Hansen  
Senator Tim Carpenter

Dear Senate Labor and Elections Process Reform Committee Members:

I understand the Senate Labor and Elections Process Reform Committee will hold a hearing on LRB-4639/1, which repeals the State's Unfair Sales Act. I strongly urge you to oppose LRB 4639/1.

Kwik Trip, Inc. is a family-owned business based out of La Crosse, Wisconsin. Our company operates over 350 convenience stores in Wisconsin, Minnesota and Iowa and employs over 7,000 individuals. Kwik Trip, Inc. strongly supports current law as it relates to the Unfair Sales Act.

Mega-retailers like Wal-Mart are currently advocating for the repeal of the Unfair Sales Act, which they contend will save the consumer a penny and a half per gallon. This short term "savings" will likely not satisfy the consumer, and on the contrary, will result in damaging long term effects.

Wisconsin's Unfair Sales Act is essential to protecting gasoline stations around the state from predatory pricing, and maintaining competition in our industry. Because Wal-Mart is the only retailer able to absorb significant short-term losses when it sells below cost, it would drive competitors out of business. When small stations are forced out of business by a mega-retailer that uses gas as a loss leader, jobs are lost and more manipulation of pricing will ultimately occur. Initially, these low prices are welcomed by consumers; however, over time the lack of competition allows the mega-retailer to dramatically increase its prices. The consumer is the ultimate loser.

It is unfair for the state to target Wisconsin retailers when they are struggling to make a sustainable profit margin on their sales, while ignoring the other price factors that determine the price of gasoline. This is especially unfair because these Wisconsin businesses have the least impact on that price compared to the other factors, such as the supply and demand of oil, transportation costs, energy companies and most particularly, the state's gas tax.

Senate Judiciary, Corrections and  
Privacy Committee Members  
February 15, 2006  
Page 2

Kwik Trip and other retailers survive on a very small margin on its sales of gasoline. In other words, retailers' margins are not contributing to the current problem with high gas prices, and therefore eliminating the Unfair Sales Act will not solve or even alleviate the problem. Because of competitive forces, the Unfair Sales Act does not artificially increase the price of gas - rather it creates a brake on any mega-retailer who may wish to monopolize the market through predatory pricing.

We can learn from the mistakes of our sister state, Minnesota. In 1995, Minnesota repealed the state's Unfair Sales Act. After only a few years, the Legislature and Governor realized the negative impacts of repealing this law. A UW-Whitewater study shows small stations become more vulnerable to predatory pricing. As a result, Minnesota re-instated the Unfair Sales Act in 2001. Since then, gasoline prices have decreased.

We respectfully request that you consider the long-term negative consequences retailers and consumers will suffer if this law is repealed, and **oppose LRB-4639/1**.

Very truly yours,



Donald P. Zietlow, President  
KWIK TRIP, INC.



SB 648



"The Association for the Automotive Professional"

**WISCONSIN AUTOMOTIVE AFTERMARKET ASSOCIATION**

5330 Wall St., Suite 100 • Madison, Wisconsin 53718-7929  
608-240-2065 • 800-856-9282 • FAX 608-240-2069

February 16, 2006

TO: Senate Labor and Elections Process Reform Committee

Senator Tom Reynolds      Senator Dave Hansen  
Senator Mary Lazich      Senator Tim Carpenter  
Senator Ted Kanavas

FROM: Gary W. Manke CAE

RE: LRB4639/1

The Wisconsin Automotive Aftermarket Association (WAAA) which was formally known as the Wisconsin Retail Gasoline Dealers Association started in 1934 representing the independent "mom and Pop" gasoline stations. Thousands of small businesses across the state understand the forces of free enterprise and the importance of free competition. When local businesses shut down due to mega-retailers and big oil monopolies, consumers lose choice, price and service. Without the Unfair Sales Act, real competition would be lost. WAAA supports the Wisconsin Unfair Sales Act.

This law is designed to protect consumers by preserving competition. Unbiased, academic studies have proven that states with fair sales laws have more retail competition, which means better price competition for consumers. That's true in Wisconsin, our state is not dominated by a few major players which means more retailers competing to give consumers the lowest prices.

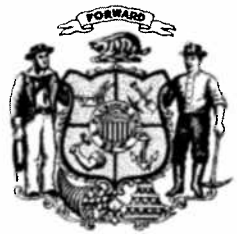
The Wisconsin Unfair Sales Act does not guarantee a profit. In fact it's a myth that the law requires the price to be marked up at all times. An important aspect to the law is the "meeting competition provision" which allows ANY retailer to ALWAYS meet the price of a direct competitor. For example: this dynamic provision allows retailers near the state borders - Wisconsin has the highest motor fuel tax of all neighboring states and one of the highest in the country - to always meet the price of a competitor across the state line. This provision means there is truly no set minimum mark-up and no guaranteed profit.

Wisconsin Automotive Aftermarket Association urges you to vote NO on LRB4639/1.

*Serving Wisconsin's retail gasoline dealers, service repair businesses, and independent tire dealers...*



# WISCONSIN STATE LEGISLATURE



February 16, 2006

Senator Tom Reynolds  
State Capitol  
Senate Committee, Labor  
And Election Process Reform  
Madison, Wisconsin 53702

Subject: LRB 4639/1

Dear Senator Reynolds and Committee Members:

Since I am unfortunately unable to voice my concerns at the hearing today because of the inclement weather, I will state it this letter.

Quality State Oil Co., Inc. is based at 2201 Calumet Drive, Sheboygan, WI 53083. We are a ExxonMobil and Citgo distributor operating in Northeastern Wisconsin. We operate seventeen (17) of our own Q Mart stores, and we supply approximately fifty (50) individually owned convenience stores with petroleum products. We also operate bulk petroleum plants whereby we deliver petroleum products to industrial, commercial, and agricultural customers.

The majority of these stores that we supply are one store operations (Mom and Pops) who have invested all their savings into the business and work at their stores long hours each and everyday. Our Q Mart stores alone employ over one hundred and seventy (170) people, and our dealers employ an average of ten (10) people each. We along with our dealers are very supportive of our respective communities with volunteering, charities, and paying taxes. Our company alone raised our \$40,000.00 for our local Muscular Dystrophy Association last year as one example of our local charitable efforts.

If this bill draft, LRB 4639/1 is approved and eventually enacted into law, it will effectively neutralize our Unfair Sales Act and ultimately cause many of our 50 dealers to either go out of business or curtail the operation significantly along with us. Bear in mind that 2700 of the gas and convenience stores in Wisconsin are locally owned independent businesses of which 60% are one store operations.

A new study from Dr. Jimmy Peltier, Professor of Marketing, and Dr. Mark Skidmore, Department Chair, Professor of Public, Labor and Urban Economics, Fiscal and Economic Research Center – both from the University of Wisconsin-Whitewater- definitely shows why the Unfair Sales Act is a good law for Wisconsin families.

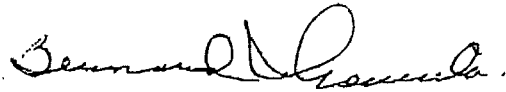
The study: "minimum Markup Laws and Sales-Below-Cost Laws: Effects on Market Structure and Employment (SBC/MM)," concretely demonstrates how the law enhances competition, which keeps prices lower as well as preserves local jobs and revenue sources.

The study conclusively found that:

- The SBC/MM laws result in a greater number of retail establishments. After five years of enactment, states with the laws had about **3.2% more gasoline retailer establishments** than states without the laws. This increase in establishments is supported by more than 20 years of data.
- More retail establishments lead to **greater employment**.
- A more competitive market leads to **lower retail prices**.
- A more competitive market leads to lower markups and lower retail prices. Wisconsin consumers **save more than \$28 million** each year because the law is in place.

Bottomline the law works for the benefit of all. I urge all of you members to vote to retain our Unfair Sales Act in it's present form since it will continue to allow competition to thrive and ultimately benefit the customers with both savings and convenience, the communities with both volunteerism and charities, and the State with increased employment and tax revenue. Thank you for your consideration.

Yours truly,



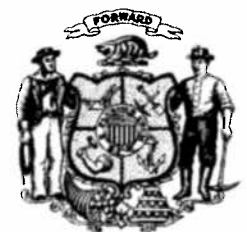
Bernard R. Nowicki  
Vice President

cc Gregory B. Bultman  
Debbie DeBlacy





# WISCONSIN STATE LEGISLATURE





**Wisconsin Federation of Cooperatives**

131 West Wilson Street, Suite 400 • Madison, WI 53703-3269  
Phone 608.258.4400 • Fax 608.258.4407 • www.wfcmac.coop

SB 648

Date: 2/16/2006  
To: Members, Senate Committee on Labor and Election Process Reform  
From: Bill Oemichen, President & CEO  
John Manske, Director of Government Relations  
RE: Opposition to LRB 4639/1

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The Wisconsin Federation of Cooperatives (WFC) represents all types of cooperatives, including farm supply cooperatives. Our fifty local and regional farm supply cooperatives supply petroleum, agronomy, feed and other goods and supplies to farmers and other residents across Wisconsin. As cooperatives, they are member-owned and member-controlled businesses and their convenience stores often provide food, fuel and other staples in small communities that do not have other grocery stores or retail fuel outlets. WFC is a member of the Main Street Businesses for Fair Competition, and our Farm Supply Committee has long maintained a position of support for the Unfair Sales Act. **We oppose LRB 4639/1 as it will damage the protection that the long-standing law has provided for retailers and their customers in Wisconsin.** We believe that deleting the markup provisions from the law will almost certainly result in **less competition that will not benefit the consumer, but will harm them.**

Samples of WFC member comments are as follows:

**Bruce Mlsna, General Manager at River Country Cooperative**, headquartered at Chippewa Falls, stated the following:

- “We have approximately 19,000 stockholders in our company made up of primarily Chippewa, Dunn and Eau Claire County residents. Our businesses, which were once predominately agricultural, are now primarily consumer businesses such as convenience stores and truck stops. Small businesses such as us make up the backbone of our area economy. We provide jobs and perform services in many small communities that large corporations would not. This law does not guarantee any of us a profit. What it does attempt to do is let us recover a small portion of our costs of bringing products to the consumer. It is vital to our farmers and consumers in small communities that companies such as ourselves remain in business because who will service their needs? Keeping the law means more competition in our area, more jobs and more competition means lower long-term prices and more choices for consumers.”

**Sam Skemp, General Manager at Frontier FS**, headquartered at **Jefferson**, observed:

- “The law allows small businesses to generate enough margins to continue to operate or stay in business. If we allow big businesses to push out the small businesses then there would be no competition left and they can charge the consumer what they want. We all know that competition helps the consumer get the best price.”

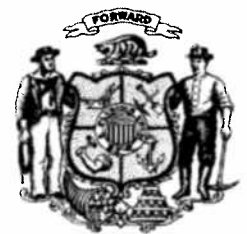
**Don Gilles, General Manager at Tomorrow Valley Coop**, headquartered at **Manawa**, stressed:

- “We operate three convenience stores in the small communities of Amherst, Scandinavia and Wild Rose. If this bill passes we will be forced to consider closing these stores because of the added pressure on our store margins. Besides closing these operations, the small rural business communities will be damaged again.”

In closing, WFC asks that you not advance LRB 4639/1 out of committee. Thank you for your consideration of these observations of our members and our recommendation in opposition to the bill.



WISCONSIN STATE LEGISLATURE



**Mobil**

**Pine River Mini Marts, Inc.**

**CR Stop ❖ Dew Stop In**  
Debbie & Bill Adelman ❖ Denise & Steve Thomas  
Owners



February 16, 2006

Senator Tom Reynolds  
Senator Committee Labor & Election Process Reform  
State Capital  
Madison, WI 53714

Dear Senator Reynolds & Committee:

I am writing you today in regard to the Bill Draft LRB 4639-1, which you are proposing at the 11:30 a.m. hearing today. Pine River Mini Marts, Inc. is a company where we are owner operator's on a daily basis. We feel that this bill will hurt our company in a very big way. We are only 1 block away from one of the big box stores of the country. We will for sure be struggling to keep our company afloat if this bill goes through. I do know that this big box store has already been approved by the city of Manitowoc to put in gasoline pumps and diesel pumps. This would hurt not only my company, but the other four companies in our area as well. We, at Pine River Mini Marts, Inc. have 30 employees, who are banking on our company for a job. If we can not compete with a fuel market that will keep our company going strong, what will happen to those 30 employees, and their families. Their insurance will be canceled if we are no longer in business, and then the state will have more burdens to bear. We have employees who have been with us for the nine years we have been in business, we see their families grow, and some of our employees are looking at retiring with us. How do we tell them that this bill will hurt them, as they are looking at a possible job loss. We have put all our heart, soul, and personal funds into this company. What will happen to the banks that financed us, the SBA Loans we have, our homes, and our families. This is our life, and you are trying to take that away from us. We know that the Unfair Sales Act works for the industry. It has worked for our company as well as the others in our area for years before we started Pine River Mini Marts, Inc. It is good for all of us to let it be. I do hope that you will take a different look at this draft and realize that it is not in the best interest for the industry, companies, our employees, or their families.

We are all asking you to leave the UNFAIR SALES ACT as it is stated on the books, this law does work.

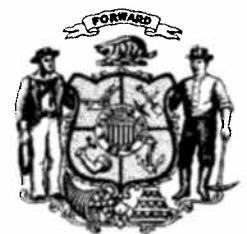
Sincerely,

A handwritten signature in cursive script that reads 'Denise Thomas'.

Denise Thomas  
Co-owner and President of Pine River Mini Marts, Inc.



# WISCONSIN STATE LEGISLATURE





SB 648

no date

**Corporate Office:**  
I-90/94 (Exit 108A)  
P.O. Box 489  
Portage, Wisconsin 53901-0489  
Phone: (608) 742-9094  
Fax: (608) 742-1856

My name is Jim Goetz, Jr. and I live at 4130 Veith Avenue, Madison, WI. I am Vice President of Goetz Companies, Inc. a family owned and operated business. Perhaps better known to you as the Petro Travel Plaza located on I90/94 & Highway 78 South at Portage. We opened in September of 1986 and we employ 130 teamplayers.

Is the Unfair Sales Act good public policy? The answer is prohibiting unfair sales is good public policy – has been in the past – is today and will be tomorrow.

The intent of the law is to deter predatory pricing and preserve competition. This was important to Wisconsin in 1939 when the law was passed. Wisconsin citizens and the legislature recognized that oil companies were among the largest companies in the world and that predatory pricing was a real possibility. Since 1939 large oil companies have become even larger through mega merges like – Shell and Texaco, Ashland and Marathon, British Petroleum and Amoco plus Exxon and Mobil. It should be very clear that these large oil companies are among the largest and most vertically integrated and most profitable companies in the world. It should also be clear that the Unfair Sales Act is more important than ever.

Yes, I've heard those that say why should you be "guaranteed a profit". The answer is I shouldn't and I'm not being guaranteed a profit. I could try and explain the economics but we don't have the time. However, I can point to the market place as a way to prove my point.

In Wisconsin, despite what many of you say, which is, we have a guaranteed profit law, over 80% of gas retail locations are locally owned and operated. Think about that, the largest companies in the world – oil companies do not operate retail gas stations in Wisconsin. The Mobil/Exxon's and BP's don't own or operate retail gas stations in Wisconsin. Is it because they're opposed to "guaranteed profits?" Is that why the big box stores have relatively few gas stations located in Wisconsin – because they're opposed to guaranteed profits?

Ladies and gentlemen, the market place in Wisconsin clearly indicates that the Unfair Sales Act is doing exactly what it was intended to do, encourage competition and discourage predatory pricing. That is good public policy.

*A Franchisee of Quality Establishments*

**PETRO**

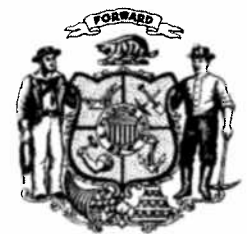
**Iron Skillet**

**SUBWAY**

**Dairy Queen**



# WISCONSIN STATE LEGISLATURE







SB648

No date

816 22nd Street • Two Rivers, WI 54241 • Ph. (920) 553-1235 • Fax (920) 553-1214

Dear Senator Tom Reynolds and Committee,

It has come to my attention that at 11:30 am today February 16<sup>th</sup> that you will be proposing bill number LRB 4639-1 to abolish the minimum mark up law.

The minimum mark up law is very important to local Mom and Pop store operations, it allows for smaller business to compete with the "big guys". My husband Lance and I are your typical Mom and Pop store owner. We were born in the city of Two Rivers and have never left. We own the cities "nicest" C-'store. I invite you to stop in and look at our store and the local people we employ. Everyone here lives, works, and plays in this community. Most of us were born and raised here. My husband and I were proud to invest in this area. I am however sad to say that out of the seven gas stations in Two Rivers only two are owned by local people. The other 5 are owned by Kwik Trip and Bulk Petroleum. These people do not care about the people or history of this small fishing town. We have been able to compete with these big businesses because the good people of Two Rivers personally know myself, my husband, our four children, and all of our other family members who continue to live here. However by abolishing the minimum mark up law you will give to tool necessary for the bigger guys to get rid of us!!! They have the ways and means to sell fuel and other products at a loss, gather up our customers through underselling, and we are then forced to close our doors because in that world we can not compete. I ask to you to rethink bill draft LRB 4639-1. Help keep the small store owners in their stores. I know the "big guys" would love to put my family out of business, please don't help them do it by passing that bill. I might as well lock my doors if that happens.

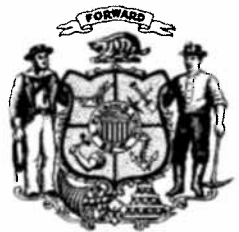
Sincerely,

*Patsy Welsh*  
Patsy Welsh

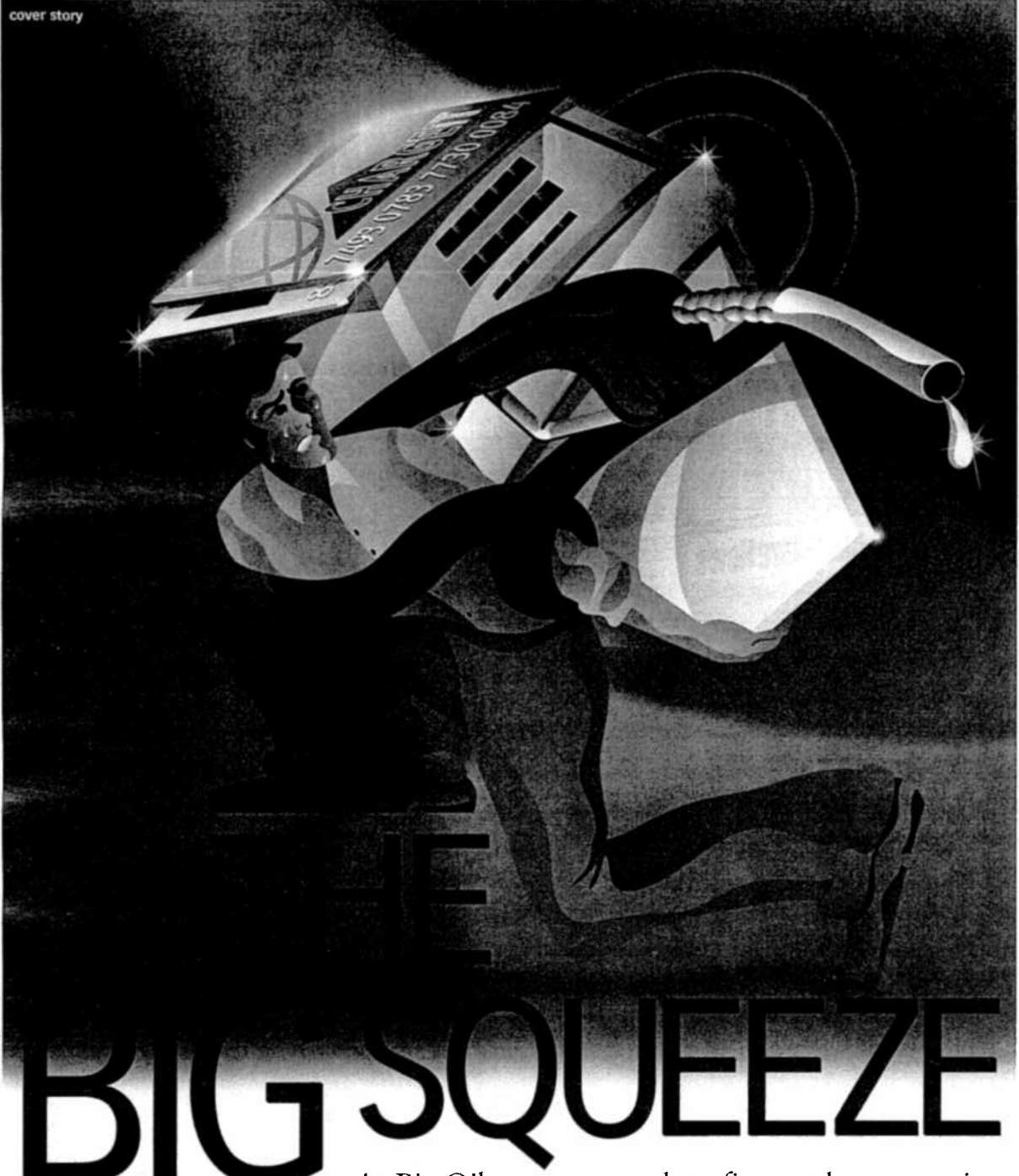
Owner, Patsy's HWY 43 Mobil Mart, LLC



WISCONSIN STATE LEGISLATURE



SB648



# BIG SQUEEZE

As Big Oil reports record profits, marketers continue

BY BARE

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BY BARBARA GRONDIN FRANCELLA

**W**hile Big Oil executives were explaining to Congress this past fall how they were spending their record third-quarter profits, the average gas retailer on the street was watching his ever-slimmer margins get eaten up by credit-card fees as well as seeing consumption drop or, at least, his customers scowl at the pump and leave without buying anything in the store.

As the profit figures rolled in — \$9.92 billion for ExxonMobil, \$9.03 billion for Shell, \$6.53 billion for BP, \$3.8 billion for Conoco Phillips and \$3.6 billion for ChevronTexaco — many independent gasoline retailers had to wonder: “What’s in it for me?”

Jeff Morris, president and CEO of Alon USA, a refiner/marketer based in Dallas that operates more than 160 7-Eleven stores, illustrated the point. If gasoline costs \$2.50 per gallon, consumers would pay \$105 for each barrel of oil refined, Morris extrapolated. Retailers making 10 to 15 cents per gallon would take \$5 or \$6 per barrel of that sum. It costs \$3 to \$5 per barrel for refiners to run their pipelines and terminals. The government receives about \$16 per barrel. “Thus, at \$2.50 per gallon, we are left with almost \$80 per barrel for the refiners and oil producers to share,” he said. “Unbelievable! At these numbers, Exxon makes \$15 billion per quarter, not \$10 billion. Thus, I think we have a fair amount of adjusting to do.”

The oil companies, on the other hand, defend their earnings. “For the third quarter, Big Oil earned on average 8 cents on the dollar,” said Rayola Dougher, manager, energy market issues, American Petroleum Institute, Washington, D.C. “The rest of the U.S. manufacturing industry made 7.3 cents. People see the billions of dollars,

and the 8 cents on the dollar is misunderstood. They are spending hundreds of billions bringing product to market. And today’s earnings are being poured back into tomorrow’s energy needs.



“REPUBLICANS ARE FACING A LOT OF HEAT ON A LOT OF ISSUES — IMMIGRATION, IRAQ, ENERGY. THEY MAY BE TEMPTED TO DRIVE SOMETHING IN THE ENERGY FIELD.” Dan Gilligan, PMAA

The energy we consume today is brought to us by investment made many years ago.”

“There is certainly some ill will [between the majors and independent marketers],” admitted Dan Gilligan, president of the Petroleum Marketers Association of America, based in Arlington, Va. “But we meet and air our grievances and see how we can address some of those frustrations.”

As pump prices went higher than ever and retailers’ margins fell while expenses increased, retailers were making little — and in many cases losing — money

on each gallon sold, noted Jeff Lenard, a spokesperson for the National Association of Convenience Stores. Yet much of the public’s anger was directed at the guy selling gas on the corner, and some state attorneys general went searching for price-gougers.

“When you have certain segments of the oil industry taking out full-page ads saying, ‘We won’t tolerate gouging’ and pointing fingers, it is critical that c-store operators can say, ‘We want to be an open book. We have nothing to hide and we want full transparency throughout the entire industry.’ When others try to avoid such transparency, the first question is, ‘Why?’

“We tried to communicate to the public as much as we could

#### Convenience Store News Online

For the latest news on gasoline price issues, legislation and Big Oil, visit the Petroleum Marketing section of our Web site at [www.csnews.com](http://www.csnews.com)



ers continue

to struggle with the tight margins and high credit-card fees

"NO OTHER PRODUCT IS ADVERTISED FOR PRICE WITH SUCH INTENSITY [AS GASOLINE] — THE PRICE SIGNS ARE HUGE AND 2 CENTS MAKES A DIFFERENCE."

Bill Shipley III, Shipley Group

C-store operators have been frustrated by the "verbal shell games" by some sectors of the oil industry and by others who blame them for high gas prices, Lenard said. "Whether that message was inferred or entirely unintentional [by Big Oil], it was laughable to think retailers were the cause of the high pump prices if you understood market dynamics."

According to API's Dougher,

"During the aftermath of the hurricane, our spokespeople spoke to hundreds of reporters and we tried to explain the big supply cut off and how that affected prices the way it did. I think it is very important we work together to help consumers understand the factors affecting gas pricing. It's a very difficult and complex subject to distill in a few sound bites or one ad."

While Big Oil has acknowledged the price-gouging message "was a mistake, it still happened," said Bill Shipley III, president of Shipley Group, the York, Pa.-based operator of 26 Tom's stores and president of the Society of Gasoline Marketers of America, based in Reston, Va.

Even though retailers are not benefiting from higher gasoline prices, "the refiners are still our suppliers — we can't separate ourselves completely from them," he added.

Still, most consumers don't understand the higher gas prices are not benefiting the independent retailer, Shipley said. "Last fall, there was emotional wear and tear on our store people — listening to the frustration and anger of customers. I don't know how to measure that, but you can only take so much of it,

and there is a cost attached to it. It creates stress and makes our job more difficult."

"Retailers just want people to understand the market," said Lenard. "When the credit-card company lobbyists are running around Capitol Hill trying to stop FTC studies on the impact of credit-card fees on gas prices, we wonder, 'Why, what are you hiding?' And when other entities, more upstream, are playing around with numbers, you wonder, 'Why?' It's very important to say 'Here is what is going on with our part of the puzzle.'

"Those looking to enact legislation — particularly some state attorneys general — are increasingly understanding the difference between the guy on the corner and the refiner/marketer. The easiest thing to do is

*(Continued on page 32)*



things that make you go "OH!"  
Increased sales. Increased profits.

ALL  
CANDY  
EXPO  
It's Candy Time!  
McCormick Place  
Chicago, IL USA  
June 6-8, 2006  
REGISTER NOW  
www.allcandyexpo.com  
703.790.5750

#### NATIONAL UNLEADED PRICE AVERAGES

	Regular	Mid	Premium	Diesel
Current Average	\$2.327	\$2.471	\$2.561	\$2.574
Yesterday Average	\$2.322	\$2.465	\$2.554	\$2.573
Month Ago Average	\$2.175	\$2.307	\$2.391	\$2.551
Year Ago Average	\$1.784	\$1.894	\$1.963	\$2.016

Prices are in US dollars per gallon  
Source: AAA, January 11, 2006

#### HIGHEST RECORDED PRICE

Regular Unleaded	\$3.057	09/05/2005
Diesel	\$3.239	10/24/2005

Source: AAA, January 11, 2006

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"IF PROFITS CONTINUE OR INCREASE OVER THE LONGER TERM, THE GOVERNMENT AND PUBLIC COULD DECIDE THEY WANT THEIR SHARE."

Jeff Morris, Alon USA

(Continued from page 28)

to point the finger at the guy selling the gas."

Unfortunately, Gilligan said, many consumers — and citizens who vote — "don't care about the real situation. The country needs to focus on conservation and increased production."

#### Consumers React

Many people believe the magic number is 3 — as in dollars.

At the end of 2004, gas prices averaged more than \$1.80, and as spring 2005 bloomed, so grew retails, averaging more than \$2 a gallon. Still, most drivers continued filling up their SUVs and going on their not-quite-as merry way, with those on the leanest budgets often cutting back on other expenditures.

Then, Hurricane Katrina hit and the average price of gaso-

line topped \$3 and drivers had to pull out \$50 bills to fill their tanks.

"The numbers certainly reveal that consumers will reach a point where they will curtail their consumption of gasoline," said PMAA's Gilligan. "In October, [gallons pumped] fell by as much as 6 percent in some areas. The price really forced people to begin to conserve, carpool and combine trips. In November, consumers were still being more judicious in consumption of gasoline."

Then again, maybe \$3 isn't the magic number. "I don't think you can look at what happened in September and say \$3 gasoline made people change their behavior," said Lenard. "If you look at it on a regional level, you can see variations on the weather alone. Like in September and October, people looking at foliage, a rainy Friday will cut down on tourist traffic.

"Also, right after Labor Day, demand historically decreases — August is peak month for gas consumption — and then it declines until the spring. Those high prices came at a time when historically, consumption decreases.

"There certainly was a reduction in demand, but how much was caused by seasonality, the fact people may have had less money, and whole sections of the country that had no gasoline available or people were not driving because of Katrina. We have to factor in there were 8,000 stations in Katrina-affected areas that were impacted."

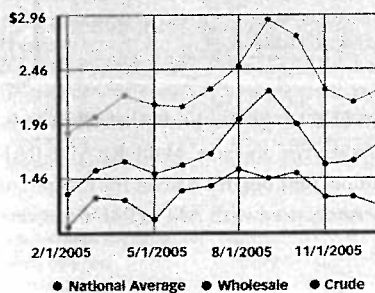
Broad picture, U.S. energy demand remained flat in 2005, despite an economic growth rate of 3 percent, according to the Energy Information Administration. Total U.S. petroleum demand in 2005 was projected to average 0.5 percent less than the 2004 level, because of hurri-

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cane-related disruptions and higher prices. Petroleum demand in 2006 is estimated to average 2.3 percent more than in 2005.

If nothing else, consumers can expect greater gasoline price volatility in 2006, industry experts warn. In late December, after weeks of declining prices, retailers saw prices creep back up to an average of \$2.21 per gallon, according to AAA.

The nationwide average had dropped to a season low of \$2.122 on Dec. 4, before reversing course. At press time, AAA forecast the typical downturn in prices at the beginning of 2006, until late February or March, when the West Coast begins transitioning to summer-grade fuels.

"The price of gasoline has always been too high as far as the consumer is concerned," said



Consumer can expect greater gasoline price volatility in 2006, according to industry experts.

Alon's Morris. "It has always been a front-burner issue. Used to be at least twice per year, the price of gas was the national lead news story. Now, it is a national lead news story 10 times per year. This focus will only increase as the price of gas and Big Oil profits go up. I expect the consumer to continue to complain, but continue to buy our product."

Morris points to Americans' behavior last July, after Detroit suffered miserable truck and SUV sales in fourth quarter 2004 and first quarter 2005. After introducing "employee pricing" discounts — while gasoline was near \$2.50 a gallon — thousands of consumers quickly chose to save thousands of dollars on big cars with lower mileage rather than buy smaller cars with better mileage.

"Now we have all those SUVs in the fleet," he said. "It normally takes five years to turn the U.S. fleet. Thus, one could expect consumption will continue to increase! Amazing!"

Even in Pennsylvania, where consumers were not as directly affected by Hurricane Katrina, "there was some real conservation," said Shipley. "It's hard to prove, though, because there is so much movement back and forth between one retailer and another. I heard more people talk about saving in October and No-

vember, and that talk isn't as intense now, as prices fell.

"But I think all the conditions are still there for prices to go back to \$3 a gallon. We are still at capacity for refining and gasoline is still a growth market. As long as we are living on the edge like this, one little disruption will have a big impact."

Making about a 5 percent margin on gasoline, retailers are working in the most efficient, but most competitive business today.

"If you can't operate at those margins, you can't retail," Shipley said. "The competition among retailers for consumers has caused this. You can go to any major corner and have two or three choices. No other product is advertised for price with such intensity — the price signs are huge and 2 cents makes a difference. Retailers, to some extent, have what they created."

Regardless of how high gasoline prices go before they affect demand, Lenard believes Americans will do almost anything they can before they change their driving habits.

"We saw in 2005 that before consumers bought less gas, they were putting more on their credit cards and trading down octanes," Lenard noted. "Anything they could do before they actually bought less gasoline."

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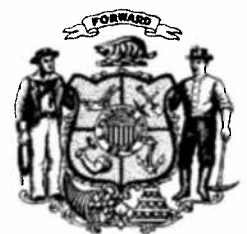
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SB 648

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**The Wisconsin Petroleum Marketers & Convenience Store Association endorses maintaining Wisconsin's Unfair Sales Act, as it is currently written.**

**The facts are clear: more competition, more jobs, lower prices!**

**New Study Confirms That Fair Marketing Laws Are Good for Consumers**

The enclosed new study shows why the Unfair Sales Act is a good law for Wisconsin families. The study concretely demonstrates how the law enhances competition, keeping prices lower and preserving local jobs.

"Our research indicates that consumers pay less at the pump because of laws like Wisconsin's Unfair Sales Act," stated Dr. Mark Skidmore, Department Chair, Professor of Public, Labor and Urban Economics, Fiscal and Economic Research Center, University of Wisconsin—Whitewater. "The lower gas prices are a result of retailers being able to compete on a level playing field. This strong, competitive retail market sector leads to more jobs, more local revenue and lower markups."

The study conclusively found that in states adopting minimum markup laws and sales-below-cost laws (SBC/MM):

- The number of retail establishments has increased by approximately 3.2 percent over five years.
- Employment opportunities in the gasoline retail sector have increased 2.4 percent.
- Retail prices and markups are lower.

"In Wisconsin, the positive impact of the Unfair Sales Act law is clear," commented Brandon Scholz, president and chief executive officer, Wisconsin Grocers Association. "More retail outlets, more employment and \$28 million in savings for Wisconsin's consumers."

"In addition to savings at the pump, consumers benefit from these locally owned independent gas and convenience stores that spend their profits within the local communities," said Bill Oemichen, president and chief executive officer, Wisconsin Federation of Cooperatives. "The bottom line is that locally owned, independent gas and convenience stores help build strong communities, and Wisconsin's Unfair Sales Act Law makes it possible for them to stay local."

For more information, contact: Bob Bartlett, President, 608.256.7555



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## Locally Owned Independent Businesses Strengthen Communities

### *Fair Marketing Laws Make It Possible*

- Fact: Fair marketing laws **preserve competition** in terms of the number of retail outlets, which in turn leads to an increase in employment of about 2.4%.
- Fact: **Money spent local, stays local.** Locally owned businesses keep profits circulating within the local economy. In fact, they *spend 44.6 percent of their revenue within a two-county radius*. Big box retailers return just 14.1 percent of their revenue to the local economy.
- Fact: Mom & Pop gas and convenience stores are thriving in Wisconsin. There are nearly 2,700 gas and convenience stores in the state – **more than 80 percent are locally owned, independent businesses.**
- Fact: **More than 90 percent of all gas and convenience stores in Wisconsin have fewer than 20 employees.** Many are family owned and operated.
- Fact: Close to **60 percent of convenience stores with gas are one-store operations.**
- Fact: Last year, nearly **24,000 people were employed** in the industry.
- Fact: According to the 1997 Census (most recent data), the industry generates nearly **\$320 million in payroll** that is circulating through Wisconsin's local communities.
- Fact: Each locally owned, independent business delivers **at least two times the economic impact** of spending by national chains in the same communities.

### The Bottom Line

*Locally owned, independent gas and convenience stores help build strong communities, and Wisconsin's Unfair Sales Act Law makes it possible for them to stay local.*



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## Who is WPMCA?

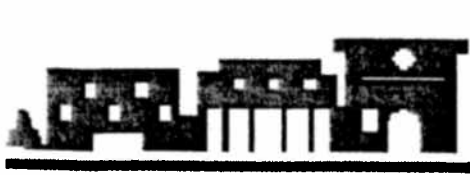
The Wisconsin Petroleum Marketers & Convenience Store Association (WPMCA) represents over 2,000 independent stations and stores. Stations and stores owned by WPMCA members account for more than one-half the entire volume of motor fuel sold in Wisconsin as well as nearly all the farm fuel and home heating oil sales.

## History of WPMCA

In April 1926, a group of independent, small business owners convened to establish an organization of Wisconsin's oil marketers. Looking to the future, they realized they could accomplish more if they worked collectively rather than individually.

In 2006 we will be celebrating our 80<sup>th</sup> birthday. Although our name has changed four times, our goals remain intact. The Wisconsin Petroleum Marketers & Convenience Store Association is dedicated to informing our members on issues relevant to our industry and educating policy makers at the state and federal levels about our industry's needs.

WPMCA's history includes countless examples of volunteer leaders working with all levels of government to advance our industry's positions and ideas and reinforce the importance of independent businesses to the social and economic fabric of our communities.



# Main Street Businesses



*for fair competition*

We, the undersigned associations, support maintaining Wisconsin's Unfair Sales Act, as is.

Wisconsin Grocers Association

Wisconsin Federation of Cooperatives

National Federation of Independent Businesses

Wisconsin Farm Bureau Federation

Wisconsin Beer Distributors Association

Tavern League of Wisconsin

Wisconsin Farmers Union

Wisconsin Auto and Truck Dealers Association

Wisconsin Automotive Aftermarket Association

Outdoor Advertising Association of Wisconsin

Midwest Equipment Dealers Association

Wisconsin Agribusiness Council

Wisconsin Petroleum Marketers and Convenience Store Association

## Wisconsin's Unfair Sales Act Protects Consumers

Wisconsin consumers win when they have a truly competitive marketplace and maximum choice for their purchasing dollars. Research conclusively states that the Unfair Sales Act ensures both.

Thousands of small businesses across the state understand the forces of free enterprise and the importance of free competition. **When local businesses shut down due to mega-retailers and big oil monopolies, consumers lose choice, price and service. Without the Unfair Sales Act, real competition would be lost.**

The Unfair Sales Act doesn't protect small business from the workings of a free market, but provides small business owners the opportunity to succeed and prosper in a market with vigorous and fair competition. **A new study definitively shows that states with fair marketing laws have more retail establishments and jobs, leading to more competition — and, yes, lower prices.**

Wisconsin consumers understand that money spent local, stays local. In fact, studies show that nearly 45 percent of revenue from locally owned businesses is usually spent within a two-county radius. In comparison, mega-retailers return just 14 percent of their revenue to the local economy.

**In addition each locally owned, independent business delivers at least two times the economic impact of spending by national chains in the same communities.**

Proponents of changes to the Unfair Sales Act argue that they are victims in states that have fair marketing laws. In reality, states that don't have fair marketing laws have less competition that generally leads to higher prices. And consumers lose.

We represent small businesses throughout Wisconsin. We know that with the Unfair Sales Act, we are providing consumers with more choices, better service and a fair, competitive price. It is important for the future of our great state to preserve the Unfair Sales Act.

# Top 10 Reasons Why the Unfair Sales Act *Must* Be Preserved

## **1 Mom and Pop businesses are alive**

**and well in Wisconsin:** Thanks to the Unfair Sales Act. Just ask the 25,000 small business owners we represent. They'll tell you that there are plenty of small businesses that depend on this law. In Wisconsin's retail gas and convenience store industry alone, nearly 80 percent of outlets are smaller, family-run operations. In fact, more than 90 percent of all gas and convenience stores have fewer than 20 employees.

## **2 Money spent local, stays local.**

Each locally owned, independent gas and convenience store delivers at least two times the economic impact of spending by national chains in the same communities. The law allows these businesses to stay local.

## **3 The law does not guarantee a**

**profit:** It requires gas retailers to sell at a reasonable level in an attempt to recover a portion of the costs to bring products to the consumer. The law allows retailers, at any time, to drop their price to meet a competitor's price.

## **4 The law is vital to our farm**

**economy:** Probably more than any other profession, farmers understand the importance of having a local competitive market. When it comes to providing gasoline and fuel oil, mega-retailers simply do not provide the in-field services that are critical for agribusiness. Co-ops and independent dealers understand their special needs and are positioned to best meet them.

## **5 It's called the Unfair Sales Act for**

**good reason:** This law keeps all businesses from predatory pricing practices and maintains a level playing field for a competitive marketplace.

## **6 The Unfair Sales Act prevents**

**predatory pricing:** This is especially true in the retail gasoline industry. Just look at the

court case in Florida, a few years ago, where a judge ruled that Murphy Oil and Wal-Mart were "destroying" small competitors by selling below cost. Or look to the state of New York, which recently enacted a new unfair sales law.

## **7 Federal antitrust laws aren't**

**accessible to most small businesses:**

Opponents of the law say it is not necessary because retailers are already protected from predatory pricing by federal antitrust laws. Many years ago, Wisconsin and other states put below-cost selling laws on the books because they knew small business owners could not afford to enter costly litigation against some of the world's largest corporations. Simply put, federal antitrust laws are inaccessible to small businesses.

## **8 Wisconsin needs more, not less,**

**competition:** Keeping the law means more competitors in the market, which means more competition, creating more retail establishments, jobs, choice — and lower prices.

## **9 The current law saves Wisconsin consumers \$28 million each year:**

One only needs to look to our neighbor, Minnesota, to see what happens without the protection. When Minnesota repealed its fair marketing law in 1995 they watched mega-retailers enter the markets and undercut prices — driving smaller competitors out of business. With competition dwindling, consumers in Minnesota paid nearly two cents a gallon more for gasoline. When the law was reinstated in 2001, the price difference disappeared. These laws work.

## **10 Why mess with success:**

In a recent State Supreme Court case, the Wisconsin Attorney General's office presented expert testimony concluding that "Gasoline-specific SBC (selling below cost) laws serve to protect and enhance competition." The Unfair Sales Act works for Wisconsin consumers.



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**New Study Reveals Current Fair Marketing Law Provides  
More Competitive Market – Leading to More Jobs,  
More Local Revenue, Lower Markups – and Yes, Lower Prices!**

A new study from Dr. Jimmy Peltier, Professor of Marketing, and Dr. Mark Skidmore, Department Chair, Professor of Public, Labor and Urban Economics, Fiscal and Economic Research Center – both from the University of Wisconsin-Whitewater – **definitively shows why the Unfair Sales Act is a good law for Wisconsin families.** The study: “Minimum Markup Laws and Sales-Below-Cost Laws: Effects on Market Structure and Employment (SBC/MM),” concretely demonstrates how the law enhances competition, which keeps prices lower as well as preserves local jobs and revenue sources.

**Fact: The Unfair Sales Act law leads to lower prices through increased competition and creates more jobs.**

The study conclusively found that:

- The SBC/MM laws result in a greater number of retail establishments. After five years of enactment, states with the laws had about 3.2% more gasoline retailer establishments than states without the laws. This increase in establishments is supported by more than 20 years of data.
- More retail establishments lead to greater employment.
- A more competitive market leads to lower retail prices.
- A more competitive market leads to lower markups and lower retail prices.  
**Wisconsin consumers save more than \$28 million each year because the law is in place.**

The study findings, in combination with other important facts from other studies and government reports, validates that the Unfair Sales Act has great value for Wisconsin families

**Key Findings  
of  
A Study Looking At  
Minimum Markup Laws  
and  
Sales-Below-Cost Laws:**

*Effects on Market Structure and  
Employment*

*Study Authors:*

**Dr. Jimmy Peltier  
The Irvin L. Young Professor of Entrepreneurship  
Professor of Marketing  
President of Accredited Ph.D. Research  
University of Wisconsin-Whitewater**

**Dr. Mark Skidmore  
Department Chair  
Professor of Public, Labor and Urban Economics  
Fiscal and Economic Research Center  
University of Wisconsin-Whitewater**

## Study Shows That Fair Marketing Laws Are Good for Consumers, Good for States That Adopt Them

A growing number of research projects show that Fair Marketing Laws, particularly sales-below-cost laws and minimum markup laws (SBC/MM), benefit consumers.<sup>1</sup> These studies provide compelling evidence showing that states that adopt SBC/MM laws see lower retail prices over time compared to states that do not or have repealed such laws.

**The reason is clear:** Fair marketing laws create a more competitive retail structure in terms of the number of competitors, greater employment in those outlets and lower wholesale prices brought on by this enhanced competitive structure resulting in lower retail prices and markups vis-à-vis the increased number of competitors vying for market share. Opponents need not fear that SBC laws protect inefficient gasoline resellers. In fact, for small firms to survive, they must be efficient in order to compete in the ever-changing gasoline market.

### SBC laws lead to more establishments, increased employment and lower prices:

- After five years, the number of retail establishments increased by about 3.2%.
- This created about a 2.4 % increase in employment.
- SBC/MM laws, though not directly correlated with wholesale prices, still have a significant negative direct effect on prices (about 0.5 cents).
- In total, the direct effect on prices, and the indirect effect of lower wholesale and retail prices generated from having more retail establishments, results in a nearly 1 cent per gallon decrease in retail prices after five years.
- Evidence shows that one way SBC/MM laws lower prices is through an increased number of establishments.
- SBC/MM laws increase the number of small and medium- to large-size establishments (4.1% for medium to large establishments, 5 or more employees, and 2.9% for small establishments, 1-4 employees).
- SBC laws cause a slower rate of decline in the number of outlets in recent years.

**Table 1: Comparison of Average End-user Price, 1983-2003**

	Years When SBC Law Is in Effect	Years When SBC Law is Not in Effect
<b>Retail Price (in cents)</b>	81.73	84.06

**Table 1 Summary:** Initial evaluation of the possible effects of SBC/MM laws shows a simple comparison of retail prices for all states during the years 1983-2003.

**Result:** Average monthly inflation-adjusted prices net of taxes are more than 2 cents per gallon lower in states/years where the law was in effect relative to those states/years in which there was no law.



## **SBC/MM Laws Foster Competition and Maintain Low Gasoline Prices**

- SBC laws foster competition by preventing large, high-volume firms from posing a predatory threat to smaller and/or independent retailers.
- In the absence of SBC/MM laws, larger firms can lower prices below cost, drive out smaller firms and, by gaining increased market share, raise prices since no competition exists.

In the broadest sense, supporters of minimum markup and sales-below-cost laws (SBC/MM) in general, and gasoline-specific laws in particular, contend that such laws protect the competitive structure of the retail gasoline market in one of two ways:

1. SBC laws foster competition by preventing large, high-volume firms from posing a predatory threat to smaller and/or independent retailers. Without such laws, larger firms could drive out smaller firms by lowering prices below cost. Once the smaller competitors close their doors, the larger, high-volume firms gain an increased market share, ultimately leading to higher prices due to lack of a competitive environment.

“If the victim has limited financial resources to fight a predatory price war, as often occurs with new entrants, the predator may successfully be able to force it to exit. Future entry will be deterred by the same fate ... With just a small amount of uncertainty in an entrant’s mind about whether the incumbent will respond to entry aggressively, a dominant firm can deter future entrants by establishing a reputation for behaving aggressively.”<sup>2</sup>

“In short, there is some reason to believe that predatory actions can and do occur, and that they often work to preserve monopoly power.”<sup>3</sup>

2. In the absence of predatory pricing, proponents maintain that SBC/MM laws reduce market concentration by maintaining the number of competitors in the market or reducing market share held by the largest firms. The end result of leveling the playing field is a more price-competitive market.<sup>4</sup>

### **The Benefit/Harm of Reduced Market Concentration**

- Critics argue that decreased market concentration is a detriment to consumers, arguing that inefficient retailers are protected. If true, these same critics would need evidence that such laws actually protect the smallest firms to the detriment of consumers. Research shows just the opposite to be true.
- Proponents argue that consumers are the beneficiaries due to enhanced local competition.
- SBC/MM laws reduce the retail price and markup.
- SBC/MM laws affect retail prices indirectly by preserving a strong independent retailing sector.

One of the main criticisms that opponents cite against enactment of SBC/MM laws is that they protect small and/or inefficient sellers. Available research examining this issue shows just the opposite to be true:

- Inefficient grocery retailers fared no better or worse in states with or without SBC/MM laws.<sup>4</sup>
- SBC/MM laws had no impact on determining the viability of small resellers (in this case, retailers) in an absolute or relative sense, nor did SBC/MM laws play a significant role in minimizing bankruptcies.<sup>5</sup>
- SBC/MM laws do not enhance or diminish the viability of the smallest gasoline retailers.<sup>6</sup>
- Although SBC/MM laws help to preserve the number of retail gasoline outlets, no statistical difference was found regarding the preservation of the smallest gasoline retailers.<sup>7</sup>
- SBC/MM laws reduce the retail price and markup; the market concentration and power literature provides a basis for positing that SBC/MM laws affect retail prices indirectly by preserving a strong retailing sector.<sup>7</sup>

## **Gasoline Market Factors Also Play a Role in Pricing**

### **Price Uniformity and Price Volatility**

- Tacit collusive behavior is more likely to be found in markets where mergers have taken place and, as a consequence, has raised market concentration.<sup>8</sup>
- Prices were higher as the distance between competitors increased.<sup>8</sup>

### **Importance of the Independent Retail Sector**

- Preserving the independent retail sector decreases local retail gasoline prices through increased price competition.<sup>9</sup>
- A stronger independent retailer sector leads to lower gasoline prices.<sup>9</sup>
- A decrease in market share of larger, branded firms was greater in magnitude than that associated with a higher share for independent retailers, contributing to lower overall prices.

### **Additional Studies on Market Concentration, Market Power and Price**

There is overwhelming evidence that, in many industries, increased market concentration places power in the hands of a reduced set of competitors, which often leads to higher prices. In varying degrees, recent gasoline pricing studies all highlighted the importance of maintaining a balance of competitors.<sup>10</sup> Another study found that an increase in station density decreased price.<sup>11</sup> It is also noted that competition authorities in European countries have shown that integrated firms utilize collusive agreements to restrict price competition, particularly in locales with a limited set of competitors.<sup>12</sup>

In California, two recent studies, one for the California Program on Workable Energy Regulation, concluded that the primary reason California has gasoline prices far above the national average is the weak independent sector at both the refining and retail levels.<sup>13</sup>

## **Fair Marketing Laws Impact Industry Concentration**

- The number of outlets appears to be higher in states with gasoline-specific SBC/MM laws.<sup>14</sup>
- The presence of a motor-fuel SBC/MM law is associated with a slower rate of decline in outlets.<sup>6</sup>
- The conclusion: SBC/MM laws protect the competitive nature of the gasoline market.<sup>6</sup>
- SBC/MM laws lower prices by about 1 cent per gallon after 5 years. The primary route by which SBC/MM laws affect prices and markups is through increasing the number of establishments.<sup>1</sup>

It is contended that SBC/MM laws place firms with different financial resources on a more equal footing.<sup>4</sup> As a consequence, an equally efficient but less powerful firm can compete more effectively in markets with SBC/MM laws.

Two studies from the “anti-SBC/MM” literature show that SBC/MM laws have a direct and positive impact on maintaining a more extensive and competitive market. A 1999 study indicated that the “presence of a motor-fuel SBC law is associated with a slower rate of decline in outlets.”<sup>6</sup> Specifically, a study of the impact of SBC/MM laws on gasoline prices notes that “the number of outlets also appears to be somewhat higher” in states that have gasoline-specific SBC/MM laws and that “the presence of a motor-fuel SBC/MM law is associated with a slower rate of decline in outlets.”<sup>14</sup> The study concluded that “it is possible that these laws have helped to maintain a stronger independent retailing sector” since such laws protect the competitive nature of the gasoline market.<sup>14</sup>

In 2005, updated information was utilized to again examine the relationship between the presence or absence of SBC/MM laws and the number of retail gasoline outlets.<sup>7</sup> Again the conclusion was the total number of outlets was greater in the presence of the law.<sup>14</sup>

## **Conclusion**

The complete study, detailed under separate cover, was performed by Dr. Jimmy Peltier, the Irvin L. Young Professor of Entrepreneurship and Professor of Marketing, and Dr. Mark Skidmore, Department Chair, Professor of Public, Labor and Urban Economics, Fiscal and Economic Research Center, both of the University of Wisconsin-Whitewater. They examined the impact of gasoline SBC/MM laws on consumers to better understand why these laws do, in fact, lower the prices and markups consumers pay for gasoline.

The study conclusively identified that one main benefit of SBC laws is that they protect the competitive structure of the market, where equally efficient, though less powerful, retailers are given the opportunity to compete. This finding, coupled with the results found in general and gasoline-specific market concentration studies, suggests that enhanced competition resulting from SBC/MM laws is the likely driver of lower gasoline prices in those states that have adopted fair marketing laws.

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