

BILL NUMBER: SB 304 AMENDED
BILL TEXT

AMENDED IN SENATE MAY 19, 2003
AMENDED IN SENATE APRIL 7, 2003
AMENDED IN SENATE MARCH 28, 2003
AMENDED IN SENATE MARCH 25, 2003

INTRODUCED BY Senator Morrow
(Principal coauthor: Assembly Member Kehoe)

FEBRUARY 19, 2003

An act to add Article 2 (commencing with Section 21210) to Chapter 8 of Division 8 of, and to add an article heading immediately preceding Section 21200 of, the Business and Professions Code, relating to petroleum.

LEGISLATIVE COUNSEL'S DIGEST

SB 304, as amended, Morrow. Petroleum: refiners: service stations.

Under existing law, a refiner, distributor, or transporter of motor vehicle fuels is prohibited from discriminating in price between different purchasers if the effect of the discrimination is harmful to competition, as defined.

This bill would prohibit a refiner, on and after January 1, 2005, from converting a service station operated by an independent service station dealer to a company-operated service station. The bill would authorize a refiner to operate a service station for a period not to exceed 90 days if an independent service station dealer voluntarily decides to terminate or not renew a franchise or if the franchise is otherwise terminated or not renewed in accordance with state or federal laws.

This bill would also prohibit a refiner from engaging in various pricing and delivery practices.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares that the marketing of motor fuel in the state has become highly concentrated among a limited number of refiners of crude oil, some of which are integrated with retail operations. That concentration and the use of certain marketing practices by refiners have resulted in artificially high wholesale and retail prices. Additionally, under the guise of meeting California's mandate for cleaner burning motor fuel, refiners have utilized practices that encourage reduced production, low inventories, and the formation of import barriers, resulting in higher consumer prices and inflated profits for the refiners. This conduct is harmful to consumers and the economy in this state, and therefore should be prohibited. The measures in this act are intended to protect the interests of consumers by promoting competition in the California motor fuel market.

SEC. 2. An article heading is added to Chapter 8 of Division 8 of the Business and Professions Code, immediately preceding Section 21200, to read:

Article 1. Price Discrimination

SEC. 3. Article 2 (commencing with Section 21210) is added to Chapter 8 of Division 8 of the Business and Professions Code, to read:

Article 2. Competition

21210. Unless the context otherwise requires, the definitions in this section govern this article:

(a) "Affiliate" means a person who directly or indirectly controls, is controlled by, or is under common control with, any other person.

(b) "Control" means the direct or indirect power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(c) "Cost of doing business" means the expenses, on a per gallon sold basis, incurred by a refiner, to sell motor fuel at a company-operated retail service station. "Cost of doing business" includes, but is not limited to, the value of all goods or commodities, the costs of delivery of those goods or commodities, services, facilities, real property and improvements, labor, and overhead used, consumed, expended, or reasonably allocated by a refiner in connection with that retail activity. "Cost of doing business" does not include the cost of extracting or purchasing raw crude oil, the cost of refining crude oil into motor fuel, or the cost of delivering motor fuel to the truck-loading terminal.

(d) "Grade of motor fuel" means motor fuel for a particular quality or class and sold under a particular trademark, trade name, or brand.

(e) "Independent service station dealer" means a person, firm, or corporation that is not an affiliate of a refiner and that buys motor fuel exclusively for resale to end users and ultimate consumers at a retail service station.

(f) "Market retail price" means the per gallon price at which a refiner sells or offers to sell to the public a grade of motor fuel at a company-owned retail station, less the cost of doing business at that service station.

(g) "Motor fuel" means a liquid petroleum product used for the propulsion of motor vehicles, but does not include fuel used in airplanes, trains, or marine vessels, or propane.

(h) "Person" means a natural person, partnership, corporation, limited liability company, trust, or unincorporated association.

(i) "Price" means the price of a gallon of motor fuel paid to a refiner by an independent service station dealer, less the value, on a per gallon basis, of all rebates, discounts, credits, incentives, and other benefits extended by the refiner to the independent service station dealer.

(j) "Refiner" means a person or affiliate thereof that is engaged in the refining of petroleum into motor fuel, whether the refining occurs in this state or elsewhere.

(k) "Retail service station" or "service station" means a facility, including land and improvements, where motor fuel is sold at retail to the motoring public.

(l) "Company-operated station" means a service station owned or controlled by a refiner and operated with company personnel, a subsidiary company, or a commissioned agent, or under contract with any person managing that outlet on a fee arrangement or on any fee-for-service arrangement with the refiner *where the refiner sets the retail price of gasoline* .

(m) "Set or attempt to set" includes, but is not limited to, actions that place an independent service station dealer at an

economic disadvantage if the dealer fails to comply with a suggested price or margin.

21211. (a) On and after January 1, 2005, no refiner may convert a service station operated by an independent service station dealer to a company-operated station.

(b) A refiner may open and temporarily operate a retail service station for a period not to exceed 90 days in circumstances in which an independent service station dealer voluntarily decides to terminate or not renew the motor fuel franchise, or in which the franchise is terminated or not renewed by the refiner in accordance with applicable state and federal laws.

21212. No refiner may do any of the following:

(a) Offer to sell motor fuel to an independent service station dealer at a price that exceeds the then-current market retail price of motor fuel of the same grade being sold at any company-operated station that is supplied from the same truck loading terminal.

(b) Set, or attempt to set, control, or economically influence, either directly or indirectly, the retail ~~process~~ price or margins of profit of motor fuel at any retail service station other than a company-operated service station.

(c) Deliver motor fuel from different truck-loading terminals to company-operated service stations and independent service stations, or restrict the truck-loading terminals from which independent service station dealers may purchase motor fuel, if the effect of that action is to circumvent subdivision (a), unless that delivery or restriction serves a legitimate business purpose.

SEC. 4. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or application of the provision to other persons or circumstances shall not be affected.