Approved: <u>February 3, 2004</u>
Date

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 **<u>HB 2330 - Prohibited acts and remedies for certain acts involving sale of motor fuel below costs.</u>**

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 **<u>HB 2330</u>**. 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 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 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.