

Submitted by: ASSEMBLY MEMBERS GUTIERREZ
AND GRAY-JACKSON

Reviewed by: Assembly Counsel's Office

For reading: February 3, 2009

Failed 2/3/09

**ANCHORAGE, ALASKA
AR NO. 2009-26**

**A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY IN SUPPORT OF
ACTION BY THE TWENTY-SIXTH LEGISLATURE OF THE STATE OF ALASKA TO
MAKE THE SALES OF CERTAIN ENERGY RESOURCES BY A REFINER AT PRICES
THAT ARE EXORBITANT OR EXCESSIVE AN UNLAWFUL ACT OR PRACTICE AS
INTRODUCED IN HOUSE BILL NO. 68 AND SENATE BILL NO. 54.**

WHEREAS, legislation to make the sales of certain energy resources by a refiner at prices that are exorbitant or excessive an unlawful act or practice, under the Alaska Unfair Trade Practices and Consumer Protection Act, has been pre-filed for the 26th Legislature – First Session as House Bill No. 68 and Senate Bill No. 54, as attached; and

WHEREAS, the high costs of gasoline, diesel, airplane fuel, heating oil, and other refined petroleum products have created an economic crisis across Alaska with drastic consequences for communities, municipalities, businesses, and individuals throughout the state; and

WHEREAS, this current crisis has shown that high fuel prices alone are enough to cause an economic crisis in rural and urban Alaska; and

WHEREAS, recently fuel prices in Anchorage have been far more expensive and risen at a rate faster than those on the West Coast of the United States which has greatly exceeded historical norms; and

WHEREAS, Anchorage fuel prices have risen even when crude oil prices and West Coast fuel prices have fallen and remain much higher than those on the West Coast; and

WHEREAS, separate investigations by the Alaska House Judiciary Committee and the Alaska Legislative Research Division have shown that these price disparities have arisen because of abnormally high prices charged by Alaska's two major oil refineries; and

WHEREAS, the mark up charged by Alaskan refineries in the last year have far exceeded historical norms and prices charged by West Coast refineries; and

WHEREAS, under current law, excessive pricing is illegal only if the refineries can be proved to have colluded to set prices or if the price can be proven to be "unconscionable;" and

1 WHEREAS, these two refineries produce the majority of the motor fuel used in
2 Anchorage, and the majority of the heating oil and diesel used in rural Alaska outside of
3 the panhandle; and

4
5 WHEREAS, prohibiting refineries from charging excessive or exorbitant prices; and
6 setting an objective standard where prices are deemed to be excessive, if the refiner
7 cannot show they are reasonable in relation to their expenses, would help lower fuel prices
8 and alleviate the burden on individuals, families, businesses, and municipalities across
9 Alaska;

10
11 NOW THEREFORE BE IT RESOLVED:

12
13 **Section 1.** The Anchorage Assembly strongly advises the Twenty-Sixth Alaska
14 Legislature to promptly pass legislation, like the current versions of House Bill No.
15 68 and Senate Bill No. 54, prohibiting refineries from charging excessive or
16 exorbitant prices for gasoline, airplane fuel, or heating oil.

17
18 **Section 2.** The Anchorage Assembly strongly advises the Twenty-Sixth Alaska
19 Legislature that, to be effective, this legislation must establish an objective threshold
20 over which prices are presumed to be excessive or exorbitant if refiners cannot
21 show they are justified by expenses.

22
23
24 PASSED AND APPROVED by the Anchorage Assembly this _____ day of
25 _____, 2009.

26
27
28 _____
29 Chair

30 ATTEST:

31
32 _____
33 Municipal Clerk

HOUSE BILL NO. 68

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES PETERSEN, GARA, TUCK, GRUENBERG, AND KAWASAKI

Introduced: 1/20/09

Referred: Labor and Commerce, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act making sales of and offers to sell certain energy resources by a refiner at prices**
2 **that are exorbitant or excessive an unlawful act or practice under the Alaska Unfair**
3 **Trade Practices and Consumer Protection Act."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 45.50.471(b) is amended by adding a new paragraph to read:

6 (56) violating AS 45.50.483 (sales of certain energy resources by
7 refiners).

8 * **Sec. 2.** AS 45.50 is amended by adding a new section to read:

9 **Sec. 45.50.483. Sales of certain energy resources by Alaska refiners.** (a) A
10 refiner may not sell or offer to sell an energy resource at a price that is exorbitant or
11 excessive.

12 (b) The provisions of this section apply only to sales of

13 (1) motor fuel used in an engine for the propulsion of a motor vehicle,
14 as that term is defined in AS 28.90.990, or an aircraft;

1 (2) fuel for space heating; and

2 (3) diesel fuel.

3 (c) For purposes of this section, it is prima facie evidence that a price is
4 exorbitant or excessive if the price exceeds by more than 10 percent the average
5 wholesale price of the comparable energy resource charged by refiners in the state of
6 Washington. A refiner may rebut the presumption by providing evidence that the
7 amount charged by the refiner was attributable to additional reasonable costs incurred
8 by the refiner in connection with the refiner's sale of the energy resource.

9 (d) If the attorney general believes that a refiner has engaged in or is engaging
10 in a violation of (a) of this section, the attorney general shall initiate an investigation
11 under AS 45.50.495.

12 (e) Notwithstanding the penalties authorized by AS 45.50.551, the attorney
13 general may recover, on behalf of the state, a civil penalty of not less than the greater
14 of

15 (1) 10 times the economic benefit obtained by the refiner through the
16 refiner's conduct that violated or violates this section; or

17 (2) \$50,000,000.

18 (f) In this section, "refiner" means a company, corporation, or individual who
19 owns or controls, or controls through a substantially owned subsidiary, partnership, or
20 joint venture, a refinery used for the production of an energy resource described in (b)
21 of this section having total annual sales that exceed 1,000,000 gallons of all of those
22 energy resources.

SENATE BILL NO. 54

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY SENATORS WIELECHOWSKI, ELLIS, AND FRENCH, Thomas

Introduced: 1/21/09

Referred: Senate Special Committee on Energy, Resources, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act making sales of and offers to sell certain energy resources by a refiner at prices**
2 **that are exorbitant or excessive an unlawful act or practice under the Alaska Unfair**
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14 as that term is defined in AS 28.90.990, or an aircraft;

1 (2) fuel for space heating; and

2 (3) diesel fuel.

3 (c) For purposes of this section, it is prima facie evidence that a price is
4 exorbitant or excessive if the price exceeds by more than 10 percent the average
5 wholesale price of the comparable energy resource charged by refiners in the state of
6 Washington. A refiner may rebut the presumption by providing evidence that the
7 amount charged by the refiner was attributable to additional reasonable costs incurred
8 by the refiner in connection with the refiner's sale of the energy resource.

9 (d) If the attorney general believes that a refiner has engaged in or is engaging
10 in a violation of (a) of this section, the attorney general shall initiate an investigation
11 under AS 45.50.495.

12 (e) Notwithstanding the penalties authorized by AS 45.50.551, the attorney
13 general may recover, on behalf of the state, a civil penalty of not less than the greater
14 of

15 (1) 10 times the economic benefit obtained by the refiner through the
16 refiner's conduct that violated or violates this section; or

17 (2) \$50,000,000.

18 (f) In this section, "refiner" means a company, corporation, or individual who
19 owns or controls, or controls through a substantially owned subsidiary, partnership, or
20 joint venture, a refinery used for the production of an energy resource described in (b)
21 of this section having total annual sales that exceed 1,000,000 gallons of all of those
22 energy resources.