

STATEMENT OF
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IOWA GROCERY INDUSTRY ASSOCIATION
TO
MOTOR VEHICLE FUEL STUDY COMMITTEE
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The Iowa Grocery Industry Association (“IGIA”) represents the grocery industry in Iowa. It has 1100 members representing the entire chain of distribution of groceries and products sold in grocery stores in Iowa. IGIA members include supermarket chains, independent supermarkets, mass merchandisers, independent grocery stores, convenience stores, wholesalers, distributors, suppliers, brokers, bottlers and manufacturers.

The Iowa grocery industry is highly competitive at all levels of distribution and in all products. IGIA members strongly support a market oriented free enterprise system.

IGIA members compete against each other in every way imaginable. Marketing is aggressive.

The result is that quality groceries and products are delivered to Iowans in the greatest variety and at the lowest prices possible.

The grocery industry takes great pride in delivering this cornucopia of quality products to their customers at competitive prices while operating profitable businesses.

Without the free market none of this bounty would be possible. We would still be getting our pickles from barrels, beer in buckets, seasonal vegetables and fruits from the greengrocer, meat from the butcher shop, bread from the bakery and the rest of our needs from the general store.

The grocery industry sees the free marketplace work on a daily basis. The marketplace is unconcerned about whether or not an individual competitor succeeds. Only that the industry as a whole does its job. That means efficiency, economy, evolution, innovation, adopting new technologies and effective marketing.

Customers decide winners and losers in the marketplace. There are no guarantees. The judgments of the marketplace can be harsh. Nevertheless, our market driven free enterprise system is superior to any other economic system ever tried. The engine that drives the free market economy is competition. Federal and state trade regulation laws are designed to protect the forces of competition, not to protect individual competitors. Protecting individual competitors from the marketplace is called protectionism. That's not what we should be about.

This past session House Study Bill 282 ("HSB 282") was offered as a proposed Ways and Means committee bill. It would have prohibited sales of gasoline by retailers below cost and mandated a minimum retail mark up of eight percent. It would have prohibited sales of gasoline by a wholesaler below cost and mandated a minimum wholesale mark up of three percent. HSB 282 provided that if a person were to sell gasoline at a price less than required by HSB 282 four times during a fiscal year that was evidence of the establishment by the seller of a monopoly

under Chapter 553, the Iowa Competition Law. That's an ironic twist, if a person tries to compete on price, that person would be branded a "monopolist" subject to treble damages.

There are members of IGIA who sell gasoline. Some use gasoline like any other product in marketing their stores. Retailers utilize all sorts of merchandising to attract customers. They work hard to establish their store's image as a good place to shop, with good selection and good prices, and to develop their customer base. They market particular features, styles, functions, products, brands or departments to distinguish themselves. And, yes, they advertise price to attract customers. They discount, use specials, loss leaders, and coupons. Their goal is to maximize volume and to make a profit on the overall operation of their store.

A low volume store or a store selling a single product, particularly a product that has become a commodity, is at a disadvantage and it's unlikely that it can compete on price alone. That store has to distinguish itself on some other basis to be able to successfully compete.

The subcommittee on HSB 282 held a hearing during this past session. The room was full. Stories were told about how small towns were losing their service stations because their customers were going to a store some distance away to buy gas because it was cheaper.

I've represented IGIA for over thirty years. I don't know how many times rural legislators have approached me and wanted to know how they could keep the grocer in their town. I told them the community had to shop at the local store, not just pick up a quart of milk or loaf of bread when they run short. It never worked. If the community wasn't supporting the

store in the first place, if the residents were going down the road to shop, that community would lose its grocer. That's caused a lot of pain.

It sounds cruel, but that's the way a market driven economy works. Customers decide who wins and who loses.

Yes, legislatively you can stifle competition. You can fix prices and protect some merchants, but the ultimate price of protectionism is higher prices to the public and the loss of the benefits of competition.

It's easy to be nostalgic for the way things used to be. But they aren't. I miss the Iowa I grew up in. I remember going to a county seat on a Saturday evening when every store on the square was open, all the lights were on, every parking place was taken and the sidewalks were full of people. I wish things were still that way, but they're not. The economy has changed, society has changed and rural Iowa has changed. The state's goal should be to revitalize rural Iowa, not to raise the cost of living there by protectionism.

This isn't an easy issue for a trade association like IGIA that's lost quite a few members to competition. The members we've lost have our heartfelt sympathy. Nevertheless, as I said at the outset, our members believe strongly in the free enterprise system. It works. Sometimes we wish it wouldn't, because as I said, its judgments can be harsh. But it's the best system there is.

I'd like to distribute an opinion piece that appeared in the *Wall Street Journal* after this past session. It has an unfortunate title but it discusses legislation similar to HSB 282 offered in other states and argues against such legislation. I think you'll find it informative.

Business World / By *Kimberley A. Strassel*

Another Reason to Love Wal-Mart

The Senate passed its energy bill yesterday, and is already peddling the fiction that this untiring bit of legislation may somehow help with soaring gas prices. Yet if drivers really care about getting some immediate relief at the pump, they'd be better off putting some heat on their own state legislatures to back away from a class of anticompetitive laws that are jacking up gas prices around the country.

Known as "sales-below-cost" laws, these restrictions take different forms but all have the same purpose: to protect smaller gas stations from larger competitors who are willing to sell fuel at cut-rate prices. Some of these laws forbid retailers from selling gas below cost, while others actually force companies to mark up their prices. Many were passed back in the 1930s, relics of a bygone era when governments fretted that gas behemoths would use predatory pricing to gain a monopoly and drive out competitors. That threat, we now know, was never very likely, and in the meantime the laws have accomplished the exact opposite—blocking new entrants to the market and preventing pro-competitive price-cutting.

The only big bad gas giants these days are the Wal-Marts and Costcos of the world, who see gasoline sales as a natural extension to their one-stop shopping philosophy. These giant retailers, while still less than 10% of the gasoline market, are rumping up gas sales in a huge way, and often can sell their fuel at up to 15 cents a gallon cheaper than many competitors. That's because they can often buy their product in bulk at a better price, or can make up for cheaper

Hobman W. Jenkins is on vacation.

gasoline sales with profits from other products inside their stores.

But their growth has also inspired a backlash from mom-and-pop retailers and convenience stores, all of which have turned to below-cost laws as their preferred political tool for kneecapping this new competition. Some 13 states currently have below-cost laws, from Massachusetts to Alabama to Utah, and in recent years, with gas prices and drivers' tempers rising, sensible legislators had contemplated repealing the antiquies. In response, the independent gas retailer lobby has geared up and made the retention and vigorous enforcement of the laws their No. 1 priority. They've even taken their campaign national, demanding that new states adopt versions of the law.

To get an idea of what these laws actually do to drivers, consider Wisconsin's Unfair Sales Act, one of the more egregious below-cost laws. The act requires gas wholesalers to mark up their product at least 3% and retailers which means from the get-go drivers are already paying close more than 9% more than necessary. The state's Coalition for Lower Gas Prices estimates the law adds between 1.3 cents and 1.8 cents to every gallon of gas and costs consumers in Milwaukee County alone some \$5.5 million annually. Anyone who breaks the law is subject to treble damages and a \$5,000 fine per violation.

Wisconsin lawmakers have been talking about repealing the law for years now, and just this spring a Republican state senator finally proposed legislation to get that done. Yet the independent retailers have been garnering public sympathy by

presenting the issue as David vs. Goliath, with big-box giants on a quest to unfairly push out local competitors. A favorite argument of these smaller businesses is that the law is still necessary in order to ward off nefarious antitrust behavior.

They'd save you money at the pump—if local retailers would let them.

"We're upset about gas prices, too," Bob Bartlett, the president of the Petroleum Marketers Association of Wisconsin/Wisconsin Association of Convenience Stores, was recently quoted as saying. "But we strongly support the current Unfair Sales Act for many reasons—mostly it ensures competition."

This argument gets to the heart of the flawed logic that motivated the original passage of below-cost laws. Antitrust law, as any good economist will tell you, exists to protect consumers. As such, below-cost pricing isn't on its own an antitrust threat. It is only considered a problem if there is a reasonable likelihood that the company engaged in lower pricing is likely to become a monopoly, which would then allow that firm to later raise prices to supracompetitive levels that would harm consumers.

Over the years, economic research, legal studies and court cases have all found that below-cost pricing hardly ever leads to a monopoly, and that it is especially unlikely in the competitive market for motor fuels. Even the Supreme Court has weighed in, observing that "there is a consensus among commentators that predatory pricing schemes are rarely tried, and even more rarely successful."

Nobody is for a second suggesting that Wal-Mart selling gas for five cents cheaper than the little station down the road is about to lead to a state-wide monopoly.

What antitrust is not about is protecting competitors from more efficient, or more aggressive companies. Yet that is clearly what laws like Wisconsin's are being used for, and nobody denies it. That's one reason why the Federal Trade Commission has felt compelled to wade into this debate, encouraging those states with below-cost laws on the books to get rid of them. The FTC has noted in a letter to a Wisconsin lawmaker, for instance, that federal antitrust laws already prohibit anticompetitive below-cost pricing, and that there is as a result no need for a Wisconsin Act [that] aims to protect individual competitors, not competition . . . The FTC's forcible interference on several occasions has helped to discourage states such as Virginia from adopting below-cost laws in the first place.

The best tool the FTC has recently had on its side is growing public awareness that these laws are making trips to the gas station even more painful than necessary. Politicians—many of whom have been unwilling to buck the small business community on this issue—have had a harder time justifying their support of the laws to gas-thirsty voters. As gas prices go up, this blatant protectionism will be all the more inexcusable.

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