Assembly

MINUTES

ASSEMBLY COMMERCE COMMITTEE - NEVADA STATE LEGISLATURE

58TH SESSION - MARCH 24, 1975

The meeting was called to order by Chairman Robinson at 2:15 P.M.

MEMBERS PRESENT: Mr. Benkovich
Mr. Demers
Mr. Getto
Mr. Harmon
Mr. Hickey
Mr. Moody
Mr. Schofield
Mr. Wittenberg
Mr. Chairman

MEMBERS ABSENT: None

SPEAKING GUESTS: Patti C. Beldon, General Contractor
George Vargas, representing 9 major oil companies
Herb Nye, Nevada Service Station Association
Gary Nelson, Nevada Service Station Association
Assemblyman Karen Hayes

The purpose of this meeting was to discuss the following measures:

AB 6
AB 44
AB 234
AB 265
AB 279
Action taken on AB 308
Action taken on AB 6
Action taken on AB 234

Discussion commenced with AB 6 which:

> Provides penalties for possessing, buying, selling, receiving, or offering for sale any motor vehicle or any part thereof whose identifying number or mark has been altered, removed, or concealed.

Mr. Wittenberg at first thought the bill should be amended to include "major component part" but decided there could be a legal question of what would be considered a major compenent part and felt it best to not specify.

Mr. Benkovich was concerned about the felony provision in the bill and thought it should be changed to a misdemeanor.

Mr. Demers commented that contrary to his original understanding, this bill was not requested by the Metropolitan Police of Las Vegas. Rather, it was requested by an individual on the police force. He also felt there would be difficulties in changing the felony provision to a misdemeanor because a felony involved a theft of anything over a certain worth and he didn't feel they could pass this bill as an exception to this definition of felony.

Mr. Demers then moved that AB 6 be "Indefinitely Postponed". This was seconded by Mr. Benkovich and unanimously carried the committee.

Discussion then went to AB 308 which:

> Regulates mobile home parks and provides for mobile home warranty.

There were amendments from Mr. Dreyer that were presented to the committee as well as amendments from Mr. Hoy. Copies of both sets of amendments are attached hereto. Mr. Hoy's amendments were not accepted by the committee while Mr. Demers moved that Mr. Dreyer's amendments (No. 4560) be adopted. This was seconded by Mr. Harmon with all committee members in favor with the exception of Mr. Wittenberg and Mr. Getto who were not in favor of the adoption of these amendments. Much discussion ensued. Mr. Benkovich was concerned about the mobile home park owner as a businessman and felt he should be able to get rid of someone who is a nuisance without going through the provisions in this bill. He felt this bill would shackle the park owner and wanted the bill to read a contract could be terminated without written notice within 3 to 6 months by either party. Mr. Demers said he would then be concerned about the owners of older mobile homes being put out of parks so that a certain rating of the park could be maintained. Mr. Demers favored passage of this bill. Dr. Robinson was concerned about the written notice of rules which would not be effective for six months. He felt this was a long time. Mr. Benkovich added that all the mobile home park owners in his district were against this bill. Mr. Wittenberg wondered if these problems could be handled by Consumer Affairs. Mr. Hickey said that is the reason this legislation has come to a head because of these problems remedied in AB 308 which have been occurring and the Consumer Affairs Division did nothing.

Mr. Demers moved that AB 308 be "do passed as amended". This was seconded by Mr. Harmon and resulted in the following committee vote:

YES	NO	NOT VOTING
Harmon	Getto	Benkovich
Schofield	Moody	
Hickey	Wittenberg	
Demers	Robinson	

AB 308 failed to pass out of committee.

Discussion then went to AB 279 which:

> Provides certain controls over Employment Security Fund and transfers revenue source to Unemployment Conpensation Fund.

Mr. Hickey presents proposed amendments to this bill as well as a letter written by Floyd Lamb during the last session with regard to the Employment Security Fund. Copies of both these items are attached hereto.

After some discussion, Dr. Robinson said action would be deferred on this bill until after he and Mr. Hickey could get together with Earl Oliver to see if he concurs with these proposed amendments.

Hearing was then commenced on AB 44 which:

Provides for payment to person making repairs to property covered by insurance.

Patti C. Belden then spoke as a proponent of this bill. She and her husband own and operate J. Belden Construction Company of Las Vegas. She read her testimony of which a copy is attached hereto. In essence, their company specializes in insurance repair work and have been plagued with many problems, the most pressing of which include:

1. The extreme length of time between the contractors completion of work and the insurance company's issuance of the draft.
2. The totally ambiguous manner in which drafts are issued and forwarded.
3. The extreme difficulty in obtaining a mortgage company endorsement.

She said AB 44 is a beginning to alleviate these problems but she did have some proposed amendments were were:

1. Sec. 3 #1, complaints should be filed with either the commissioner of insurance or the commissioner of savings and loan.
2. Sec. 3 #3, the limit of $300.00 punitive damages a contractor may collect in court should be removed from the bill.
3. All mortgage companies conducting business in the State of Nevada should be required to be licensed with the Commissioner of savings and loan.
4. All mortgage companies should be required to have a "Reliable Managing Employee" (RME) within the state lines and that person should be authorized to inspect the repairs and endorse, for the company, drafts up to and including $1,500.00.

She said the important thing is the amount of the drafts and how long they have been outstanding. The whole problem is one of total disorganization and this really is the idea of the whole bill.

She said because of the time and added expense they must go to in order to obtain these drafts forces them to raise their bids on jobs. Therefore, insurance costs go up and consequently their premiums go up. She added that the lien laws are not utilized too often by contractors because they cost too much and do not always mean they will get their money.

Dr. Robinson questioned the two week time limit in Section 2, Line 11. Mrs. Belden said this was not in the bill when it was presented to the bill drafter and she did not believe it should be in the bill.

Mr. George Vargas then spoke in opposition to AB 44 representing the American Insurance Association. He said in looking at the provisions of this bill he was at a loss to understand what was being attempted. He said it appears to be a problem with mortgage companies. He

recommended some changes in the bill. In Section 2, Line 4, he suggested this should read "...within 30 days after receipt of notice by the insured...". With regard to comments made about failure to make out drafts in accordance with requests, he couldn't understand why that would not be a rather easy situation to remedy unless the request is from the assured or a named assured. Then, of course, the contract is with the named assured. That may be an assured and a mortgage company as their interest may appear but they are the contracting parties and unless they request the draft be made out to somebody else, the insurance policy being a contract is between the insurance company and the assured. Likewise, the situation of repairs should be signed by the insured because that is the person who is a party to the contract and who must be satisfied. Going on with the draftsmanship of the bill itself, with regard to provisions that a complaint may be made to the Insurance Commissioner, he commented that the new insurance code provides adequate recourse for any insurance company and provides penalties for any insurance company who does not comply with the code's provisions or with the provisions of its contract of insurance. He then referred specifically to Section 3, Subsection 3. He said this provision for taking action can already be done without this bill. As for the punitive damages provided for in this bill, he was concerned that attorney fees was included because provisions for attorney fees are already provided for under NRS 18010. He thought there was a real danger in the provision of $300 punitive damanges. Generally, a breach of contract does not carry with it punitive damages. There is a general statute that provides that punitive damages may be recovered in certain instances and these instances are malice in fact, or oppression or things of this nature. He did not think it a good idea to start providing for punitive damages in various types of breach of contract. He strongly recommended that if this bill was to be passed that this provision for punitive damages not to exceed $300.00 be stricken. He concluded by saying again that this appeared to be a problem with mortgage companies and if this were the case, the measure should direct itself to mortgage companies rather than insurance companies where there already is sufficient and adequate remedies both in the commissioners office and the courts to enforce the compliance of their contracts insofar as the insurance companies themselves are concerned.

Discussion was then taken up on AB 265 which:

> Requires good-faith performance of franchises between service station operators and petroleum distributors and provides sanctions for any breach.

Mr. Herb Nye spoke in favor of this bill. He first read a statement made by Charles Benstedt, Executive Director of National Congress of Petroleum Retailers, before the committee on Commerce of the U.S. Senate on March 19, 1975, a copy of which is attached. He then read a statement from the American Petroleum Institute Marketing Affairs Committee Meeting in Houston, Texas on January 22, 1975. A copy of this statement is also attached.

Mr. Nye commented that Mr. Benstedt's statement to the U.S. Senate committee were directed to the East Coast but that there was a definite trend being established. He said these situations represented some of the ways the companies are getting to the dealers. They are putting economic pressures on the dealers that are very severe. He felt this bill would do a lot to alleviate the problems afore mentioned; however, he did suggest some amendments:

1. In Section 2, Subsection 2, he suggested inserting on line 8: ...means a written <u>or oral</u> agreement...

2. On Line 34, Section 4(b), he suggested 30 days be changed to <u>90 days</u>.

3. On Line 44, Section 4, Subsection 3, that crime be changed to <u>felony</u>.

He also stated that a dealer should be compensated for the goodwill he has established at his service station.

With regard to short term leases, he felt leases should be for a five year duration with perhaps the first year being a probationary period.

He also felt the company should buy back merchandise or inventory which they have force the dealer to purchase.

He mentioned if a dealer is forced for some reason, he is left with nothing when in other businesses, when you sell a business, you sell your inventory but you also sell a piece of the business. He said in a case where the dealer dies, the widow is left with nothing.

Mr. Demers asked Mr. Nye if he preferred a franchise or no franchise at all. Mr. Nye said he preferred a franchise and added that the only time it is bad is when it is a one sided arrangement. He said they do want controls from the oil companies because they do not want bad dealers. What they don't want is for the oil companies to come in a shut ten dealer stations down and replace them with one company owned station to take care of all that business that previously went to the dealers.

Mr. Gary Nelson then spoke in favor of the bill. He owns a Union 76 station in Las Vegas and has worked for Union 76 for 14 years. He spoke about how an oil company establishes a relationship with a dealer. He said the crux of the problem is the dual role of the landlord/supplier. The company wants the dealer to buy his TBA (tires, batteries and accessories) and uses the lease contract as leverage to force the dealer to purchase these items from the company. He would like to see more put into the bill to protect the dealer from unscrupulous practices by the oil companies by forcing a dealer to buy this merchandise. He spoke of the Arizona law passed last year

commenting that it provides that a written contract be supplied the dealer 72 hours signing this contract because of the volume of literature he must go through and for which he may want to get the opinion of an attorney. Presently, he is given about 30 minutes to digest such extensive material. He would like this considered as an addition to AB 265. He added that under the Arizona law, it is specified that certain things must be included in a contract.

Mr. Demers commented that there seemed to be a major loophole in this bill in that all sorts of restrictions are being placed on franchises however, there is nothing in the bill prohibiting oil companies from setting up their own gas stations. Mr. Nye commented that they would get a tremendous amount of flak from the oil companies so they just wanted to protect the franchise the best they could.

Mr. Nelson went on to say that he thought a written contract should be required and that it cannot be terminated without adequate notice and should give cause and give him time to correct it.

Karen Hayes spoke briefly saying this bill was to be patterned after the Arizona Law when she took it to the bill drafter so she would be in agreement with any amendments along the lines of the Arizona bill.

Mr. George Vargas then spoke in opposition to this bill. His remarks were directed to the proposed bill as is, not to any amendments. He commented that he had just phoned Mobil Oil and was advised they have no company operated stations in Las Vegas. He advised the committee of the number of stations in Nevada represented by the nine major oil companies and how many of them were company operated:

	#	Co. Operated
Standard	106	5
Exxon	40	0
Texaco	109	0
Shell	58	3
Gulf	15	0
Union	91	0 (81 dealers, 10 jobbers)
Arco	77	0
Mobil	46	0
Phillips	41	9
	583	17

A number of stations that carry the brands are jobber operations. He said as he understands it, a jobber may buy products, gasoline and such, from the company and the jobber puts it in his bulk plant and he in turn has stations he may operate or which he may lease out to others. The Phillips situation with reference to oral leases is a jobber situation, it is apparently not a Phillips situation.

Mr. Vargas said this bill was certainly an evidence of special legislation. The companies of Nevada figure that today to build a modern station and get it started costs $250,000. Dealers are taking over a $250,000 facility with very little investment on their part.

0327

Mr. Vargas stated that legislation must act in the furtherance of the public health, welfare, safety or morals. If legislation is not grounded on that basis, it is unconstitutional legislation. The rights of the individual give way to the public rights in general. He went into detail about these grounds for legislation and the fact that there have been cases ruling similar pieces of legislation unconstitutional. A copy of much of his testimony is attached hereto including a court decision in In re Martin regarding gasoline tank deliveries and a court decision of Exxon vs. Conner and a testimony of Dr. Theodore Levitt regarding Divorcement/Divestiture Legislation. He said the bill has some very vague provisions in it, specifically, for example, on page 2, line 5, "good cause" is not spelled out or defined and leaves a very wide and vague area. Also, on page 2, line 19, "Unreasonably" reduce and on page 2, line 23, "unreasonable" restrictions, are both very vague terms.

He said normally, a Legislature would not enact a solution for which there is no problem. He said in listening to the testimony, he understands that a jobber, not an oil company individually, called his dealer saying he could not go to a meeting. Testimony has not disclosed that any oil company has done this. If they did say dealers could not engage in free association among other station operators, they would be up before the Federal Trade Commission and the Federal Anti-Trust Act. So if there are no problems with the oil companies, then there should not be blank or vacant legislation on it.

With regard to Section 3, Subsection 2, it says a "distributor" may not fail to act in good faith in performing or complying with any term or provision of, or collateral to, a franchise. Mr. Vargas commented that this could be construed to mean the other party to the contract besides the distributor could be permitted not to act in good faith, etc.

He then spoke about Section 6, line 4 on page 3 which provides for all notices required of the service station operator or distributor under section 4 or 5 of this act to be given in writing. However, he said, in looking at sections 4 and 5, he cannot find anything concerning for which the operator is required to give notice.

Mr. Vargas said the whole guts of this bill is exceedingly one-sided special legislation.

With regard to line 43 on page 2, providing that written notice must be given where the alleged ground is the conviction of the service station operator of a crime.....Mr. Vargas commented if the operator commits a crime for which he is put in jail, this must still, under this bill, require written notice even though he is no longer on the job before he could be terminated.

With regard to Section 4(a) noncompliance with the franchise and the allowing of 10 days to correct such noncompliance, Mr. Vargas commented that there could be violations that could not be corrected.

0328

Mr. Vargas felt there was ample remedy for the service station dealers in the courts and in Washington.

He spoke of Section 7 saying there was no need for such a provision because the courts are open for this very thing today. He said they would add no independence to the dealer at all. With regard to Section 7, Subsection 3, he made the same comment here regarding attorney fees that he did in his testimony on AB 44 that this would be another bill specially providing for attorney fees when there is already a statute that defines these fees.

He then added that his secretary had just talked to the counsel for Phillips Oil Company who advised her that Phillips has no oral agreements (this does not include jobbers).

In order to clarify the jobber situation, Mr. Vargas said with reference to the retail service stations, they may be company owned and operated, and there may be a situation where there is a lease taken by the company and then leased back to an operator (this is called a 3-way). Or, the company may own the property and lease it to the operator (this is called a 2-way). The jobber situation is entirely different. A jobber sets up his own operations. Normally, he has his own bulk plant. He has his own transportation equipment and he buys products from the company and what he does with those products after he buys them is his own business. He is permitted to set up his own stations or to lease out to other people and to use the brand name of the product he buys.

He concluded by saying that if the Legislature is going to get into regulation of every kind of business, there will be a lot of trouble.

Mr. Demers stated that before any action is taken on the bill, the committee should explore the relationship of a jobber, company and distributor.

Dr. Robinson said he would assign a couple committee members to work with Mr. Vargas and a representative of the station dealers to look at the bill and possibly come up with needed amendments.

This concluded the hearing of the afore mentioned bills.

Mr. Wittenberg volunteered to work with Mr. Dreyer regarding AB 308 to work out something acceptable to come back to the committee with and he said he would entertain a motion to reconsider AB 308. He added that the committee was not expressing dislike for the bill itself but rather for the bill in its present form. Dr. Robinson concurred and added that he knows that the problems in this area are serious and hopes something can be passed even if just for Clark County. He said he would like to see more to protect the park owner. Mr. Getto, Mr. Harmon, Mr. Benkovich will work with Mr. Dreyer and Mrs. Hayes.

Mr. Wittenberg moved a "do pass" on AB 234. This was seconded by Mr. Demers and carried the committee unanimously.

With no further business, the meeting was adjourned at 5:30 P.M.

ASSEMBLY

SUPERSEDES PREVIOUS AGENDA POSTED FOR 3/24/75

AGENDA FOR COMMITTEE ON COMMERCE

Date MARCH 24, 1975 **Time** 3:00 P.M. **Room** 316

Bills or Resolutions to be considered	Subject	Counsel requested*
AB 44	Provides for payment to person making repairs to property covered by insurance.	
AB 234 DO PASS	Technical amendment conforming section 53, chapter 530, Statutes of Nevada 1973, to section 9, chapter 747, Statutes of Nevada 1973.	
AB 265	Requires good-faith performance of franchises between service station operators and petroleum distributors and provides sanctions by any breach.	
AB 6 I.P.	Provides penalties for possessing, buying, selling, receiving, or offering for sale any motor vehicle or any part thereof whose identifying number or mark has been altered, removed, or concealed.	
AB 279	Provides certain controls over Employment Security Fund and transfers revenue source to Unemployment Conpensation Fund.	

*Please do not ask for counsel unless necessary.

58TH NEVADA LEGISLATURE

COMMERCE COMMITTEE
LEGISLATION ACTION

DATE March 24, 1975

SUBJECT AB 6 - Provides penalties for possessing, buying, selling, receiving, or offering for sale any motor vehicle or any part thereof whose identifying number or mark has been ~~altered, removed, or concealed.~~

MOTION:

Do Pass ____ Amend ____ Indefinitely Postpone X Reconsider ____

Moved By Mr. Demers Seconded By Mr. Benkovich

AMENDMENT: ____

Moved By ____ Seconded By ____

AMENDMENT: ____

Moved BY ____ Seconded By ____

VOTE:	MOTION Yes	MOTION No	AMEND Yes	AMEND No	AMEND Yes	AMEND No
Robinson	x					
Harmon	x					
Demers	x					
Hickey	x					
Moody	x					
Schofield	x					
Wittenberg	x					
Benkovich	x					
Getto	x					

ORIGINAL MOTION: Passed X Defeated ____ Withdrawn ____

AMENDED & PASSED ____ AMENDED & DEFEATED ____

AMENDED & PASSED ____ AMENDED & DEFEATED ____

Attached to Minutes March 24, 1975

58TH NEVADA LEGISLATURE

COMMERCE COMMITTEE
LEGISLATION ACTION

DATE March 24, 1975

SUBJECT AB 308 - Regulates mobile home parks and provides for mobile home warranty.

MOTION: Do pass as amended X

Do Pass ____ Amend ____ Indefinitely Postpone ____ Reconsider ____

Moved By Mr. Demers Seconded By Mr. Harmon

AMENDMENT: ____

Moved By ____ Seconded By ____

AMENDMENT: ____

Moved BY ____ Seconded By ____

VOTE:	MOTION Yes	MOTION No	AMEND Yes	AMEND No	AMEND Yes	AMEND No
Robinson		x				
Harmon	x					
Demers	x					
Hickey	x					
Moody		x				
Schofield	x					
Wittenberg		x				
Benkovich	Not Voting					
Getto		x				

ORIGINAL MOTION: Passed ____ Defeated X Withdrawn ____

AMENDED & PASSED ____ AMENDED & DEFEATED ____

AMENDED & PASSED ____ AMENDED & DEFEATED ____

Attached to Minutes March 24, 1975

58TH NEVADA LEGISLATURE

COMMERCE COMMITTEE

LEGISLATION ACTION

0331

DATE March 24, 1975

SUBJECT AB 234 - Technical amendment conforming section 53, chapter 530, Atatutes of Nevada 1973, to second 9, chapter 747, Statutes of Nevada 1973.

MOTION:

Do Pass X Amend ____ Indefinitely Postpone ____ Reconsider ____

Moved By Mr. Wittenberg Seconded By Mr. Demers

AMENDMENT:

Moved By ____ Seconded By ____

AMENDMENT:

Moved BY ____ Seconded By ____

VOTE:	MOTION Yes	MOTION No	AMEND Yes	AMEND No	AMEND Yes	AMEND No
Robinson	X					
Harmon	X					
Demers	X					
Hickey	X					
Moody	X					
Schofield	X					
Wittenberg	X					
Benkovich	X					
Getto	X					

ORIGINAL MOTION: Passed X Defeated ____ Withdrawn ____

AMENDED & PASSED ____ AMENDED & DEFEATED ____

AMENDED & PASSED ____ AMENDED & DEFEATED ____

Attached to Minutes March 24, 1975

GUEST REGISTER

COMMERCE COMMITTEE

0382

DATE: 3/24

ADDRESS & NAME	REPRESENTING	PLEASE CHECK IF YOU WISH TO SPEAK
John Alland		
[illegible] Schofield		
Cindy Jakes		
Patricia J. Bradbury		
Gary Pacheco		
Robert L Stoker	State Contractors Bd	? AB44
[illegible] C. Belden	General Contractor	✓ AB44
[illegible]	————	AB 44
James Olivier	ESD	?
Tom Chamberlain	ESD	no
[illegible] Neumann	Self	
Clyde Burkhardt	Self + Service Sta's	no
Roger Hillman	UNLV	
[illegible]	Shell -	no
[illegible] C. Brown		
[illegible] L. Brown	Exxon	

GUEST REGISTER

COMMERCE COMMITTEE

0333

DATE: 3/24

ADDRESS & NAME	REPRESENTING	PLEASE CHECK IF YOU WISH TO SPEAK
PETE WOOLLEY 1290 MILL ST RENO	NORTHERN NEVADA PETROLEUM RETAILERS	IF NEEDED
HERBERT NYE 702-736-6644 1196 TROPICANA LAS VEGAS 89109	NEVADA SERVICE STATION ASSN	YES
BOYD CARLSON 3055 So. PARADISE RD LAS VEGAS, NEV	SHELL SERV. STA. DEALER	IF NEEDED
MIKE RUGGIERO 2405 E. SAHARA AVE L.V. NEV	ARCO SERVICE STATION DEALER	No
JOHN R MCKAY 35 DIAMOND CIR. L.V.	Nev. Ser Sta Assoc.	If needed
LEE ISAAC, I-80 WEST VERDI, NEV	NORTHERN NEVADA PETROLEUM RETAILERS	IF NEEDED
Gary Nelson 2300 LAS VEGAS BLVD S. L.V.	Nev Ser Sta Assoc	yes
Robert F Guinn	Nev. Franchised Auto Dealers	No
DARYL E. CAPURRO	NEV. FRANCHISED AUTO DEALERS ASSOC.	No

Section 1. Chapter 482 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. It is unlawful for any person knowingly to have in his possession any vehicle or any major component part thereof bearing a serial or vehicle identification number or manufacturer's number from which the number has been removed, defaced, destroyed, obliterated, altered or concealed unless the department has given written authorization for the condition or such person reports the condition to the department within 10 days after it has come to his knowledge.

2. A person shall not buy, receive, dispose of, sell or offer for sale any vehicle or any major component part thereof bearing a serial or vehicle identification number or manufacturer's number knowing that such number has been removed, defaced, destroyed, obliterated, altered or concealed unless the condition has been authorized in writing by the department.

Section 2. NRS 482.540 is hereby amended to read as follows:

482.540 1. Any officer of the Nevada Highway Patrol or field dealer inspector of the Vehicle Compliance and Enforcement Section of the Registration Division of the department, sheriff, deputy sheriff or police officer, without a warrant, may seize and take possession of any vehicle which is being operated with false or ficticious registration, or registration which has been cancelled, revoked or fraudulently obtained or which the patrol officer, field dealer inspector, sheriff, deputy sheriff or police officer has reason to believe has been stolen, or which bears any motor number, manufacturer's number or identification mark that has been defaced, altered or obliterated.

2. Any officer of the Nevada Highway Patrol so seizing or taking possession of such vehicle under the conditions described in subsection 1, shall immediately notify the Nevada highway patrol of such action and shall hold the vehicle until notified by the Nevada Highway Patrol as to what further action should be taken regarding the disposition of the vehicle.

3. Any field dealer inspector or other officer seizing or taking possession of a vehicle under the conditions described in subsection 1, shall immediately notify his agency and the department of such action.

ection 3. NRS 482.553 is hereby amended to read as follows:

482.553 1. [No person shall] It shall be unlawful for any person to intentionally deface, destroy or alter the motor number, serial or vehicle identification number, or other distinguishing number or identification mark of a vehicle required or employed for registration purposes without written authorization from the department, nor shall any person place or stamp any serial, motor or other number or mark upon a vehicle except one assigned thereto by the department.

2. This section does not prohibit the restoration by an owner of the original vehicle identification number when the restoration is authorized by the department, nor prevent any manufacturer from placing in the ordinary course of business numbers or marks upon new [motor] vehicles or new parts thereof.

3. The department shall assign serial numbers to all homemade vehicles, and the serial numbers must be placed:

(a) If an open trailer, on the left-hand side of the tongue of the trailer.

(b) If an enclosed vehicle, on the pillar post for the left-hand door hinge, or if such placement is not appropriate, then on the left-hand side of the firewall, under the hood.

4. Any person who violates any provisions of subsection 1 is guilty of a gross misdemeanor. Any person who violates any provisions of subsection 1 with the intent to commit fraud is guilty of a felony.

ASSEMBLY ACTION		SENATE ACTION		AMENDMENT BLANK
Adopted	☐	Adopted	☐	Amendments to Assembly / Senate
Lost	☐	Lost	☐	Bill / Joint Resolution No. 308 (BDR 10-1047)
Date:		Date:		
Initial:		Initial:		
Concurred in	☐	Concurred in	☐	Proposed by Mr. Dreyer DREYER
Not concurred in	☐	Not concurred in	☐	
Date:		Date:		AB 308
Initial:		Initial:		

Amendment Nº 4560

Amend sec. 3, page 1, by deleting lines 18 through 21 and inserting:

"Sec. 3. 1. An oral or written agreement between a landlord and tenant for a mobile home lot in a mobile home park in this state shall not be terminated by the landlord except upon notice in writing to the tenant:

(a) Thirty days in advance if the mobile home does not exceed 16 feet in width.

AS Form 1a (AMENDMENT BLANK) 3044A

Drafted 3-22-75 By fvd

To Engrossment (4 CTR)

Amendment No. 4560 to Assembly Bill No. 308 (BDR 10-1047) Page 2

(b) Forty-five days if the mobile home exceeds 16 feet in width.".

Amend sec. 9, page 3, by deleting lines 12 and 13 and inserting:

"Sec. 9. The provisions of sections 2 to 8, inclusive, of this act apply to every agreement existing on the effective date of this act or executed after such effective date.".

Amend sec. 10, page 3, by deleting lines 14 through 23 and inserting:

"Sec. 10. This act shall become effective upon passage and approval.".

Amend the bill as a whole by deleting sections 11 through 15.

Amend the title of the bill to read:

"AN ACT relating to mobile home parks; regulating the relation of landlord and tenant."

To Engrossment
2487
(4) CFB

HOY 0339

AB 308

BREEN, YOUNG, WHITEHEAD & HOY
CHARTERED
ATTORNEYS AND COUNSELLORS AT LAW
232 COURT STREET
RENO, NEVADA 89501
AREA CODE 702 786-7600

F. R. BREEN
C. CLIFTON YOUNG
JERRY CARR WHITEHEAD
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OR 882-6790

March 18, 1975

#308

Dr. Robert Robinson, Chairman
Assembly Committee on Commerce
Nevada State Legislature
Carson City, Nevada

Dear Dr. Robinson:

Pursuant to your request of March 10, 1975, I am setting forth the amendments which I believe should be made to A.B. 308 as it presently stands.

Section 3 providing for 60 days' notice in writing for termination, I understand is already to be amended to reduce the time to either 30 or 45 days. In addition, line 21 should read as follows: "Except upon 30 days' notice in writing to the tenant or as provided in Section 4 herein."

No

Subsection 2, lines 1 through 6 of Section 3, should be stricken entirely.

Section 4 should be rewritten to read as follows: "Section 4. The tenancy under any rental agreement described in Section 3 of this act may be terminated for one or more of the following:

1. Non-payment of rent, utility charges or reasonable service charges.

2. Failure of the tenant to comply with:

a. Any law, ordinance or governmental regulation pertaining to mobile homes or

b. valid rules or regulations established pursuant to Section 5 of this act.

3. Conduct of the tenant in the mobile home park which constitutes an annoyance to other tenants or interferes with park management.

4. Condemnation or a change in land use of the mobile home park.

Then a new section should be added which will read: "The exercise of the right to terminate a rental agreement shall be as provided in N.R.S. 40.250 and N.R.S. 40.253, 255:

This amendment, I believe, clarifies the procedure for terminating a rental agreement and also gives to the tenant the safeguard provided in N.R.S. 40.250 wherein it is provided in Subsection 1(c) that the tenant shall have the right to pay the rent in the alternative to terminating the rental agreement and in paragraphs (d) and (e) gives the tenant the right to comply with the breach of any of the terms of the rental agreement.

Paragraph 7 should be amended to read as follows: (1) the landlord may require approval of the respective buyer and tenant prior to the sale of the tenants' mobile home and may require removal of the home from the park upon 30 days' notice should the mobile home be sold to a tenant not approved by the landlord.

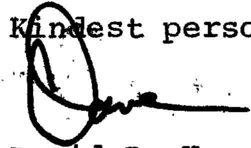
In addition, as I stated, I believe that everything after Section 9 referring to warranties on mobile homes should be stricken from the bill for two reasons:

1. As I indicated at the time of the hearing, the Federal Trade Commission has enacted comprehensive regulations pertaining to mobile home warranties and

2. The inclusion of two subjects in the bill probably violates the Nevada Constitution.

If I can be of any further assistance to you, please contact me.

Kindest personal regards,



David R. Hoy

DRH:bc

PROPOSED AMENDMENTS TO A.B. 279

BILL ~~297~~ 279

PROPOSED AMENDMENT TO CHAPTER 612, UNEMPLOYMENT COMPENSATION LAWS
EMPLOYMENT SECURITY FUND

Provides certain controls over employment security fund and transfers excess revenue source to unemployment compensation fund. Fiscal Note ______

Section 1. NRS 612.585 is hereby amended to read as follows:

612.585 1. There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the executive director exclusively for the purposes of this chapter.

2. This fund shall consist of:

(a) All contributions, or reimbursements in lieu of contributions collected under this chapter.

(b) Interest earned upon any moneys in the fund.

(c) Any property or securities acquired through the use of moneys belonging to the fund.

(d) All earnings of such property or securities.

(e) All money credited to the account of the State of Nevada in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended (42 U.S.C. § 1103).

(f) [All other moneys received for the fund from any other source.] Interest and forfeitures collected under NRS 612.620 to 612.675, inclusive, and 612.740 in accordance with the provisions of NRS 612.615.

This permits the receiving of money from Employ Sec fund

(g) All other moneys received for the fund from any other source.

3. All moneys in the fund shall be mingled and undivided.

4. All fines and penalties collected pursuant to the criminal provisions of this chapter shall be paid to the state permanent school fund.

Section 2. NRS 612.615 is hereby amended to read as follows:

612.615 1. There is hereby created in the state treasury a special fund to be known as the employment security fund.

2. [All interest and forfeits collected under NRS 612.620 to 612.675, inclusive, and 612.740 shall be paid into this fund.

3] All moneys which are deposited or paid into this fund are hereby appropriated and made available to the executive director. Such moneys shall not be expended or made available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which would, in the absence of such moneys, be available to finance expenditures for the administration of the employment security laws of the State of Nevada.

There is no condition

Problem address in later paragraph

On June 30 of each year the executive director shall determine the balance of moneys on hand in the employment security fund. If the balance of cash and time deposit certificates in the employment security fund is in excess of $250,000.00 all interest and forfeits collected under NRS 612.620 to 612.675 inclusive, and 612.740 shall be paid into and deposited in the unemployment compensation fund during the following fiscal year. If the balance of cash and time deposit certificates in the Employment Security Fund is equal to or less than $250,000.00 all interest and forfeits collected under NRS 612.620 to 612.675 inclusive, and 612.740 shall be paid into and deposited in the employment security fund during the following fiscal year. The executive director shall report the status of the employment security fund to the legislative council bureau and the budget director every 6 months or upon request.

/4./ 3. Nothing in this section shall prevent such moneys from being used as a revolving fund to cover expenditures, necessary and proper under the law, for which federal funds have been duly requested but not yet received, subject to the repayment to the fund of such expenditures when received.

/5./ 4. The moneys in this fund shall be used by the executive director for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants received for or in the unemployment compensation administration fund.

/6./ 5. All moneys in this fund shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special funds in the state treasury.

/7./ 6. Any balances in this fund shall not lapse at any time, but shall be continuously available to the executive director for expenditure consistent with this chapter.

/8./ 7. Moneys in this fund shall not be commingled with other state funds, but shall be maintained in a separate account on the books of the depositary.

Sec. 3. NRS 612.620 is hereby amended to read as follows:

612.620 1. When any contribution as provided in this chapter [shall remain] remains unpaid on the date on which it becomes due and payable, as prescribed by the executive director, it shall bear interest at the rate of one-half of 1 percent for each month or portion of a month thereafter until such payment, plus accrued interest, is received by the executive director.

2. Interest accrued under this section shall not be waived under any circumstances.

3. Interest collected pursuant to this section shall be paid into the employment security fund[.] or the unemployment compensation fund in accordance with the provisions of NRS 612.615.

Sec. 4. NRS 612.740 is hereby amended to read as follows:

612.740 1. Any employing unit or any officer or agent of any employing unit or any other person who shall fail to submit such reports as are prescribed and required by the executive director within the time prescribed by the executive director shall pay a forfeit of $5 for each such report.

2. Any employing unit or any officer or agent of any employing unit or any other person who shall fail to submit any report of wages within 10 days following the expiration of the time prescribed by the executive director for filing such report shall, in addition to the $5 forfeit specified in subsection 1, pay interest upon the wages subject to contributions involved in such report of one-tenth of 1 percent for each month or portion of each month thereafter until such report has been filed; but when it appears to the satisfaction of the executive director that the failure to file reports within the time prescribed was due to circumstances over which the employing unit, its officers or agent has no control, then the executive director may, in his discretion, waive the collection of all or any portion of such forfeit or interest.

3. Forfeits and interest as provided in this section shall be paid into the employment security fund[.] or the unemployment compensation fund in accordance with the provisions of NRS 612.615.

RE: AB 279

FLOYD R. LAMB
SENATOR
PRESIDENT PRO TEMPORE
CLARK NO. 3

NEVADA NATIONAL BANK BLDG.
4TH AND BRIDGER AVENUE
LAS VEGAS, NEVADA
TELEPHONE 382-4061

COMMITTEES
CHAIRMAN 0346
FINANCE
MEMBER
COMMERCE AND LABOR

Nevada Legislature

FIFTY-SEVENTH SESSION

April 24, 1973

Mr. Robert Archie, Executive Director
Department of Employment Security
500 East Third Street
Carson City, Nevada 89701

Dear Mr. Archie:

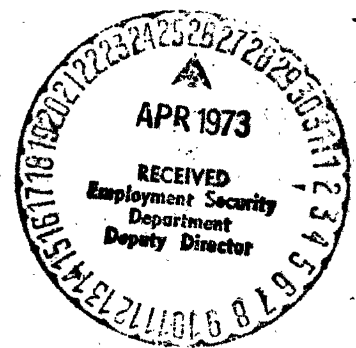
This will confirm the expression of the Senate Finance Committee's opinion during consideration of A.B. 687 that monies in excess of $200,000 in the revolving fund should be transferred to the trust fund.

It was also the consensus of the committee that in order for the legislature to exercise proper budgetary control that hereafter there should be included in the executive budget anticipated expenditures from the fund.

Sincerely,

Floyd R. Lamb, Chairman
Senate Finance Committee

FRL:ehc



1 - SC
1 - ASO
1 - AI
1 - FM

0347

AB 279

January 29, 1975
Budget Division

Employment Security Fund

NRS 612.615 created the Employment Security Fund in the State Treasury. All interest and forfeits from past due employer contributions are paid into this fund.

All money in this fund is deposited, administered and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury.

This fund may be used as a revolving fund to cover expenditures for which federal funds have been requested but not yet received, subject to repayment to the fund when received. Money in this fund may also be used by the Executive Director of Employment Security for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants received for or in the Unemployment Compensation Administration Fund.

Penalty interest, forfeits income, income from investment and the need for Employment Security Department administration expenditures not covered by federal funding varies from year to year and cannot be forecast more than six months to a year in advance. Therefore, estimated future needs cannot be predicted beyond this period of time.

		1973-74	1974-75	1975-76	1976-77
	Balance Forward	$254,604	$313,547	$84,247	
	Penalty Contributions, Interest, Forfeit	50,221	51,000		
	Interest on Investments	16,040	9,700		
	Total Funds Available	$320,865	$374,247		
07	Operating				
07	7040 Film Development	$ 5	$ 5		
07	7090 Equipment Repair	334	300		
07	7290 Federal Audit	6,929			
07	7980 Miscellaneous	50	7,000		
	Sub-Account Total	$ 7,318	$ 7,305		
08	Equipment				
08	8400 Computer		$ 70,000		
08	8510 Parking Lot		65,000		
08	8540 Structure Improvement		155,000		
	Sub-Account Total		$290,000		
Total Agency Expenditures		$ 7,318	$297,305		

AB 44

0348

ASSEMBLY COMMERCE COMMITTEE

ASSEMBLY BILL 44

TESTIMONY OF

PATTI C. BELDEN

MONDAY, MARCH 24, 1975

Mr. Chairman, members of the Assembly Commerce Committee, I am Patti C. Belden, my husband and I are owners and operators of J. Belden Construction Company of Las Vegas and I am appearing before your committee today in support of AB 44.

Contractors that specialize in insurance repair work, for many years, have been plagued with a growing problem that now threatens our very existance. To illustrate the desparate need that exists for this kind of legislation I would like to list for you some of the more pressing problems that contractors in this field are faced with.

1. The extreme length of time between the contractors completion of work and the insurance company's issuance of the draft.

On the average this, the first step of the contractor being paid, will take between six and eight weeks.

2. The totally ambiguous manner in which drafts are issued and forwarded.

Insurance companies issue drafts in any one of four ways a.) to the insured alone, b.) to the insured and the contractor, c.) to the insured and the mortgage company, d.) or to the insured, the mortgage company and the contractor. I might add here that there is no uniformity of any kind even within one company. It is literally impossible to predict how a draft will be issued.

The draft will then be mailed and again there is a total lack of proceedure. It can go to the insurance agent, the

insured, the mortgage company or the contractor, most often it will go to either the insured or the mortgage company and the contractor is almost never notified.

3. The extreme difficulty in obtaining a mortgage company endorsement.

In order to obtain such an endorsement, more often than not, the draft must be sent out of state because even if there is a local representative he does not have the authority from his company to endorse drafts of any size. The mortgage company will then require an inspection, a release signed by the insured, and a bill and lein release from the contractor before it will endorse and release the draft. It should also be noted here that many other things can cause the draft to be delayed, such as the insured also being out of state (which also removes small claims court as a source of relief for the contractor), the mortgage company depositing the draft into a trust account and issuing a check of their own to cover the loss, or a mortgage company that forwards drafts to their investors for endorsement instead of endorsing it themselves. All of this is handled by mail except the inspection and usually takes between three and six months from the time the contractor completed his work and depends on the speed of the insurance company and the inspector, the cooperation of the insured and the overall efficiency of the mortgage company's office staff, not to mention the reliability of the mail service.

During this three to six month period the contractor must pay his sub-contractors, material bills and overhead. The

contractor also has had no recourse but to look to the insured or homeowner for his money and the insured or homeowner doesn't feel he owes the bill because he has insurance for just that reason. I am sure you realize by now the contractor is caught up in a web of red tape, paper work, long distance phone calls and unnecessary delays that obviously and easily could be his demise unless he has a substantial capital reserve, is sure not to extend himself too far and if the drafts are received within a reasonable length of time, which is usually not the case. In order to substantiate this testimony I have attached to your copy seventeen brief case histories of jobs performed by J. Belden Construction Company for your consideration.

AB 44 is a begining but taken of and by itself it will not accomplish the effect needed. For this reason I would like to propose the following changes and amendments to it:

1. Sec. 3 #1, complaints should be filed with either the commissioner of insurance or the commissioner of savings and loan.

2. Sec. 3 #3, the limit of $300.00 punitive damages a contractor may collect in court should be removed from the bill.

3. All mortgage companies conducting business in the State of Nevada should be required to be lisenced with the commissioner of savings and loan.

4. All mortgage companies should be required to have a "Reliable Managing Employee" (RME) within the state lines and that person should be authorized to inspect the repairs and endorse, for the company, drafts up to and including $1,500.00.

There are very few general contractors who specialize in insurance repair work and I am sure you can now understand the reasons for this fact. That is why we are asking you to allow us to protect ourselves and to give us some recourse other than the homeowner, we may be a small minority but we should still be protected under the law. I would venture to guess that unless the present situation is altered there will eventually be fewer and fewer contractors interested in doing this kind of work whichis, in a manner of speaking, a service to the community.

Gentlemen, I can not emphasize strongly enough how important it is that this legislation be made strong and passed into law. We are asking you to not only give us recourse but basicly, allow us to survive. In this day and age of sky-rocketing inflation and constantly increasing pressure being brought to bear on the small businessman, please ask yourselves if you could survive in business under the conditions I have just described. We contractors have existed too long with no protection and I am sure you can see this law would protect the consumer and the property owner as well as the contractor.

In closing may I thank you for allowing me this opprotunity to appear before you today to bring to your attention these most important matters. Thank you.

Cliffton Greene
3609 Canoga
Las Vegas, Nevada

Key Adjustment Co.
Markus Meairs Ins. Co.
Meairs Mortgage Co.

8/23/74 Date of Loss
9/10/74 Estimate written $ 579.27
9/12/74 Work completed
10/1/74 Job billed
11/7/74 Draft issued
11/26/74 Called Markus Meairs - they didn't have the home address of insured - have sent draft to Las Vegas three times for signature.
12/13/74 Recieved letter from Markus Meairs requesting lein release and inspection.
12/15/74 Mailed lein release
1/17/75 Called Markus Meairs - they couldn't find file.
1/24/75 Called Markus Meairs - they to call me back.
1/28/75 Called Mr. T. Hammond, President of company - to have someone call me.
1/28/75 Insurance supervisor called - draft sent to Mr. Greene for signature expect it back any day, will call tomarrow
1/31/75 Insurance supervisor called - recieved draft, now needs inspection.
2/4/75 Inspection made.
2/12/75 Contractor recieved draft.

Mr. Joseph Kyles
2012 Cary
No. Las Vegas, Nevada

Key Adjustment Co.
Old Reliable Ins. - L.A.
Applewhite Mt. - Phoenix

7/16/73 Estimate written ($161.48)

7/30/73 Work completed

8/15/73 Adjuster closed claim

9/21/73 Draft issued

9/27/73 Draft endorsed by insured and lein release forwarded to mtg.co.

10/26/73 Adjuster sent inquiry to mtg. co. - they requested signed affidavit from insured.

1/1174 Contractor obtained signed affidavit from insured and forwarded to mtg. co.

1/21/74 Contractor received draft.

Mr. Thomas Witt
708 Van Ert
No. Las Vegas, Nevada

Key Adjustment Co.
National Amer. - L.A.
Redwood Mtg. - San Fran.
Manhattan Sav. Bank - N.Y.

3/13/74 Estimate written ($ 3,861.31)

4/05/74 Work completed

5/01/74 Adjuster closed claim

5/15/74 Draft issued forwarded to Redwood Mtg. Co.

5/30/74 F.H.A. inspection made

6/07/74 Draft forwarded to Manhattan Savings Bank for endorsement

6/12/74 Draft returned to Redwood Mtg.

6/21/74 Redwood Mtg. has not received draft - presumed lost.

6/26/74 Contractor requested ins. co. to reissue draft

7/09/74 Draft reissued and forwarded to Redwood Mtg.

7/11/74 Original draft found

7/15/74 Contractor received draft.

Chester Davis
4508 Alta Drive
Las Vegas, Nevada

Key Adjustment
Mason Mc Duffy - Berkley

7/30/74 Estimate written ($140.12)

7/30/74 Work completed

8/28/74 Adjuster closed file

10/01/74 Mortgage co. holding draft for papers from insured.

10/17/74 Draft mailed to insured.

10/22/74 Contractor received draft.

Mr. Matt Esser
16010 Mayfair Circle
Las Vegas, Nevada

Key Adjustment co.
Westwood Ins. co. - L.V.
Weyerhauser Mtg. Co.- L.A.

3/14/74 Estimate written ($616.90)

4/10/74 Work completed

5/14/74 Adjuster closed claim

5/20/74 Draft issued

5/28/74 Draft mailed to insured for signature

6/07/74 Contractor picked up draft from insured and hand carried it to Westwood Ins. Co.

6/28/74 Inspection done by mortgage co.

7/28/74 Contractor received draft.

Jean Fisher
847 No. 19th
Las Vegas, Nevada

Key Adjustment
First Western - L.V.
Community Funding

7/03/74 Estimate written ($350.53)

7/10/74 Work completed

8/22/74 Adjuster closed file

9/04/74 Draft forwarded to mtg. co.

9/17/74 Draft forwarded to insured

10/01/74 Contractor received draft.

Mr. Andy Schmidt
305 Eldorado
Las Vegas, Nevada

Key Adjustment Co.
National American Ins.-L.A.
So. Calif. Mtg. - L.A.

6/27/73 Estimate written $308.00

7/10/73 Work completed

8/25/73 Claim closed by adjuster

10/24/73 Adjuster checked with ins. co. on whereabouts of draft.

10/31/73 Draft issued by ins. co.

11/02/73 Draft forwarded to mortgage co.

11/12/73 Mortgage co. endorsed draft

11/16/73 Contractor received draft.

O. C. Lee
1415 Rexford
Las Vegas, Nevada

Key Adjustment
National American - L.A.
Nevada Savings - L.V.

9/19/74 Estimate written ($3,858.61)

10/17/74 Work completed

11/20/74 Adjuster closed file

12/19/74 Contractor received draft.

Mr. Raul Ceron
604 N. Jones
Las Vegas, Nevada

Key Adjustment Co.
Bowest Mtg. Co.-L.A.
National American Ins. - L.A.

5/24/74 Estimate written ($467.50)

6/05/74 Work completed

6/08/74 Draft issued

10/19/74 Contractor filed intent to lein

10/20/74 Adjuster sent inquiry to insurance co.

11/07/74 Mortgage co. sent contractor affidavit to be signed.

11/19/74 Mortgage co. released draft.

11/29/74 Contractor received draft.

Mr. Mathew Saporita
1804 E. Evans
No. Las Vegas, Nevada

Key Adjustment Co.
Mason Mc Duffy - Berkley

4/15/74 Estimate written ($ 2400.00)

4/26/74 Work completed

6/06/74 Adjuster closed claim

6/20/74 Draft forwarded to mortgage co.

7/27/74 Contractor received draft.

Mr. James W. Ritzert
605 Greenhurst
Las Vegas, Nevada

Key Adjustment
Trans Amer. Ins. - L.A.
Majestic Savings - Denver

5/06/74 Estimate written ($ 294.48)

5/13/74 Work completed

5/08/74 Adjuster closed claim

6/21/74 Insured lost draft

7/07/74 Draft reissued

7/16/74 Insured promised to pay deductable ($51.29) at end of month

8/19/74 Contractor received draft.

R. J. Thorn
4924 Santo
Las Vegas, Nevada

Key Adjustment
National Amer. Ins. - L.A.
Western Mortgage - L.A.
Gov't. Nat'l. Mtg.

8/02/74 Estimate written ($543.10)

8/26/74 Work completed

10/08/74 Adjuster closed claim

10/28/74 Draft issued

11/08/74 Draft forwarded to mtg. co.

11/15/74 Contractor received draft.

Mr. W. Lemon
6225 Rassler
Las Vegas, nevada

Key Adjustment
National Amer. Ins. - L.A.
Home Fed. Sav. & Loan - S.D.

5/08/74 Estimate written ($ 166.75)

5/15/75 Work completed

5/20/74 Adjuster closed claim

6/04/74 Draft issued.

8/06/74 Draft forwarded to mtg. co.

8/13/74 Draft returned unsigned - they have no record of mtg.

8/14/74 Draft returned to insured with request for payment

9/16/74 Draft returned to insurance co. with request for reissue.

10/13/74 Contractor received payment in full

Mrs. Mabel Delgado
2549 Gowan Rd.
Las Vegas, Nevada

Key Adjustment Co.
National American - L.A.
First Western Sav. - L.V.

2/07/74 Estimate written ($2,197.65)

3/10/74 Work Completed

4/12/74 Adjuster closed claim

4/30/74 Draft issued

5/15/74 Mortgage co. received draft

6/07/74 Inspection made

6/11/74 Contractor received draft.

Mr. Ken Waters
2200 Constantine
Las Vegas, Nevada

State Farm Ins.

9/19/74 Estimate written ($ 450.00)

10/09/74 Work completed

12/06/74 Draft issued

12/24/74 Contractor received draft.

Mr. Art Thomas
1601 So. 16th
Las Vegas, Nevada

State Farm Ins.
Employers Ins. of Wausau

10/28/74 Estimate written ($ 86.25)

10/31/74 Work completed

12/13/74 Statement forwarded to ins. co.

12/30/74 Contractor received draft.

MR. John Szabo
2960 Santa Margarita
Las Vegas, Nevada

Key Adjustment
Trans Amer. Ins. - L.A.

7/30/74 Estimate written ($ 389.07)

8/28/74 Work completed

10/08/74 Adjuster closed claim

11/11/74 Contractor received draft.

AB 265

STATEMENT MADE BY CHARLES BENSTEDT, EXECUTIVE DIRECTOR OF NATIONAL CONGRESS OF PETROLEUM RETAILERS BEFORE THE COMMITTEE ON COMMERCE OF THE U.S. SENATE ON MARCH 19, 1975

...... Gulf has withdrawn from many regions. They have also announced a plan to reduce the number of their outlets from 30,000 to 15,000 with 20% of those remaining to be company operated.

Bill Brooks, past president of Greater Washington/Maryland Service Stations, has lost his lease as a result of this marketing strategy by Gulf. Bill and two of his other dealers in his marketing area have been disenfranchised by Gulf and will be replaced by one outlet to be operated directly by the Gulf Oil Company.

In the New York metropolitan area, Gulf has notified dealers of their intention to close 100 dealer-operated stations and reopen 47 as company operations.

British Petroleum is withdrawing from dealer operations throughout the East and converting key stations of "gas and go" under company operation. A lawsuit filed on behalf of 10 BP dealers in Maryland has resulted in a temporary injunction against BP. If the lawsuit fails, these dealers could be disenfranchised and BP will take over the retail business dealers have worked very hard to build. The dealers who remain under court protection are fighting an uphill battle to save their businesses. BP has held their dealer tank wagon prices high while retailing the product at prices the dealer cannot meet. The company has refused to make all three grades of BP gas available to the remaining dealers providing them with only two grades while the company operations market all three. In addition, BP no longer honors BP credit cards. This withdrawal of credit cards has had a serious impact on BP dealers. The above described marketing changes result in reduction of sales, etc. The company also withdrew the BP trademark from a large group of dealers in the East and replaced it with William Penn trademarks. These dealers have lost the value of a nationally known trademark and have had no advertising support for the William Penn name. However, the gasoline they sell is the same gasoline which is sold by company operations under the BP logo.

Sitco has announced plans to reduce the number of stations they supply by more than 50% with the majority of those remaining stations to become company operations. A lawsuit involving at least one dealer in Maryland was filed in an effort to stop Sitco's downstream movement.

Phillips has withdrawn from many Western states and converted former dealer stations to secondary brands which are company operated (this is happening in Nevada). This activity is described in testimony from Utah dealers on March 17, 1973. Our affiliate in Missouri has promised to furnish their committee with additional information.

Conoco is withdrawing from many markets in the Midwest and converting a large percentage of their remaining stations to gas only. (This is happening in Las Vegas. There are no more Conoco stations in

0362

Las Vegas. They now have a serve yourself outlet taking care of what the Conoco dealer used to take care of).

Texaco just announced their plans to convert 35 dealer operated stations in the Atlanta, Georgia, area to company operations.

Our affiliatesin Central Ohio report Standard Oil in Ohio has not made a new dealer in that area since June 1974. All station changes are being filled with commission managers or company personnel. They also report that the Marathon Oil Company is changing to company operation. There has not been a new Marathon dealer in Franklin County since June 1974.

Mobil threatened to convert all stations in Connecticut to company operations but settled out of court when a lawsuit was filed.

In New York, Giddeon Arco also reportedly moving toward company operation.

Leonard Oil Company in Michigan embarked on a plan to convert all of their stations to company operations. Our affiliates in Michigan and the dealers involved have gone to court for relief. Leonard is not a well known domestic name outside of Michigan but it is a major international French company ranking in size with the Sun Oil Company. In 1971 there were a total of 180 Leonard stations in the Detroit area - all dealer operated. At present, there are approximately 90 stations, 2/3 of them operated directly by Leonard. At least six of the dealers being supplied by the company are operating without a lease remaining in possession of the stations because of legal action. Leonard is maintaining a high wholesale price to the dealer and selling the same product at retail for a price, if me by the dealer, would allow him a profit of less than 1¢ per gallon after rent. This pricing practice, of course, will drive the remaining dealers from the market leaving Leonard with complete control.

The independent gasoline dealers face extinction as a significant force in petroleum marketing if legislation is not passed to allow him an opportunity to remain in the market. We say this neither with hysteria or exageration. It is simply a statement of fact. He will be replaced by company outlets operated by a salaried manager or a commissioned agent or management company. The significance of our extinction will be that the integrated oil companies will control completely and pervasively the price and other conditions of gasoline sales to the consumer. Competition in the retail field of gasoline for all practical purposes will be at its end. Whenever a handful of producers are able to integrate forward into the retail sector, competition is hurt and the consumer must ultimately pay the higher price. Major integrated companies have defined their movement into retailing as a means to bring about lower prices to the consumer. A look at the industry's history should convince even the most skeptical that once their goal is achieved, once they have control of the market, they will see the same lock step pricing at retail that has been the part of the rest of the industry's behavior. The problem is not confined to disenfranchisement of brands of dealers. Entry by major companies into secondary branding at the retail

0363

level (this is what we are getting into in Nevada more and more) threatens the continued existence of private brands as well. The Congress took note of this problem in a conference report in the Emergency Petroleum Allocation Act of 1973. In the words of the report, the committee wants to express its concern with the downstrean vertical integration of the major oil companies into the distribution and retail level of the market.

Major oil companies have begun to market secondary brands through wholly owned distribution subsidiaries. The primary brands are, to an increasing extent, being marketed through so called salaried or managed retail outlets. Branded independent marketers already under short term leases and supply agreements are finding that their agreements are not being renewed. Leases of one year duration are being converted to 30 days. Representatives of branded dealers believe that this represents an attempt by the majors to force private independent distributors out of the retail market and to convert station operators to salaried cmployees.

We commend the committee for recognizing the parallel movement of the major companies into retailing during its consideration of emergency energy legislation. Although the total forward integration of the companies into retailing transcends the current energy problems, we find that the companies are using the energy situation in their efforts to gain substantial if not total control of the retail market. One company reported the remarks: "We don't need the dealer anymore. The retail market is stablizing and we can make money out there ourselves."

To a degree, the FDA regulations and the uncertain future of the Emergency Petroleum Allocation Act of 1973 have further complicated the dealers' position. Some companies have significantly shortened the terms of the lease agreements with dealers blaming certain provisions of the regulations and the possibility of the expiration of the Emergency Petroleum Allocation Act within the next few months.

Shell's act of reducing lease arrangements from three years to one year is the highest action of reducing and the reduction of their lease periods to 30 days for the duration of the Emergency Petroleum Act.

The changes in marketing practices we have described in this statement are occurring at a rapid pace. The companies that we have mentioned are only the vanguard of what will be a much larger movement if legislation is not enacted to provide for a moratorium from further forward integration by the major oil companies into retailing. The Congress must act quickly to pass this proposed legislation. Any delay will see more dealers cannibalized by the supply companies.

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AMERICAN PETROLEUM INSTITUTE
MARKETING AFFAIRS COMMITTEE MEETING
HOUSTON, TEXAS
JANUARY 22, 1975

THE DISCUSSION HERE TODAY IS DIRECTED TO THE CONSIDERATION OF LEGISLATION WHICH ORIGINALLY CARRIED THE TITLE OF "DEALERS DAY IN COURT." THAT TITLE LATER BECAME "PROTECTION FOR FRANCHISED DEALERS." THE LEGISLATION IS NOW BEING CALLED "FAIR MARKETING OF MOTOR FUEL." PERSONALLY, I PREFER THE CURRENT TITLE, SINCE ALL THAT DEALERS HAVE EVER ASKED IS A SET OF RULES WHICH ARE FAIR FOR EVERYONE -- THE DISTRIBUTOR, THE RETAILER, AND THE CUSTOMER. I BELIEVE THAT WE CAN DEMONSTRATE THAT THE LEGISLATION WE PROPOSE WILL MEET ALL OF THESE CRITERIA.

AT THE PRESENT TIME THERE ARE NO BILLS BEFORE THE CONGRESS ON THE SUBJECT. THAT IS PROBABLY THE IDEAL CLIMATE FOR THIS DISCUSSION.

THERE ARE SEVERAL WAYS TO ATTACK WHAT WE BELIEVE HAVE BEEN CONTINUING PROBLEMS IN GASOLINE MARKETING. ONE IS BY FEDERAL LEGISLATION. ANOTHER IS STATE LEGISLATION. STILL ANOTHER METHOD WOULD BE TO ASK THE FEDERAL TRADE COMMISSION

/TO PROMULGATE

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TO PROMULGATE TRADE REGULATION RULES BASED UPON THE PHILLIPS' DECISION OR UPON A SET OF REGULATIONS AGREED TO BY THE INDUSTRY.

OUR ATTEMPTS TO PASS LEGISLATION ON THE FEDERAL LEVEL HAVE BEEN FRUSTRATED; HOWEVER ON THE STATE LEVEL WE HAVE BEEN SOMEWHAT SUCCESSFUL. THIS IS ENCOURAGING BECAUSE IT INDICATES THAT LEGISLATORS DO UNDERSTAND THE NEED FOR LEGISLATION TO BRING ABOUT SOME BALANCE IN THE RELATIONSHIP BETWEEN SUPPLIERS AND DEALERS. UNFORTUNATELY, WE FIND TOTAL RESISTANCE TO EVEN THE VERY MILDEST OF THESE LAWS BY MANY SUPPLIERS. THIS IS AN INDICATION THAT SOME SUPPLIERS ARE GOING TO RESIST THE SLIGHTEST CHANGE IN MARKETING PRACTICES. IF IN FACT THAT IS SO, THEN IT RAISES THE QUESTION OF THE VALUE OF THESE DISCUSSIONS. ONLY IF THE SUPPLIERS WILL FIRST RECOGNIZE THAT THERE ARE INDEED CONDITIONS WITHIN THE INDUSTRY WHICH MUST BE CHANGED, CAN WE PROCEED WITH ANY HOPE OF MEANINGFUL DELIBERATIONS.

IF THE RECOMMENDATIONS OF THE SEVEN COMPANIES TO THE HOUSE INTERSTATE AND FOREIGN COMMERCE COMMITTEE CAN BE CONSIDERED AN ACCURATE AND FIRM ASSESSMENT OF THE INDUSTRY'S VIEWS, THEN WE ARE ALREADY AT AN IMPASSE.

TO MEET OBJECTIONS OF SUPPLIERS, DEALER REPRESENTATIVES AGREED TO MANY CHANGES IN THE ORIGINALLY PROPOSED LEGISLATION, ONLY TO BE MET WITH A COUNTER PROPOSAL WHICH CAN BEST BE DESCRIBED AS "PROTECTION FOR MAJOR OIL COMPANIES."

/WORSE YET,

WORSE YET, IT IS OUR UNDERSTANDING THAT SOME COMPANIES ARE TOTALLY OPPOSED TO ANY LEGISLATION.

WHY DO WE INSIST ON LEGISLATION OR TRADE REGULATION RULES? SIMPLY BECAUSE ANY OTHER COURSE IS MEANINGLESS. A STATEMENT OF COMPANY POLICY IS WORTHLESS IF IT IS ONLY THE MANAGEMENT OF THAT COMPANY WHO CAN ULTIMATELY DETERMINE IF IT HAS BEEN COMPLIED WITH BY THEIR EMPLOYEES.

FURTHER, THE IMPACT OF ANY CHANGES IN DEALER/COMPANY RELATIONS MUST FALL EQUALLY ON ALL SUPPLIERS AND DEALERS. THIS, UNFORTUNATELY, CANNOT BE ACHIEVED VOLUNTARILY FOR AT LEAST TWO REASONS.

FIRST, HISTORY HAS SHOWN THAT MANY SUPPLIERS DO NOT KEEP THEIR PROMISES TO CHANGE THEIR METHOD OF OPERATION OR TO CORRECT ABUSES TO WHICH EVEN THEY ADMIT. SECONDLY, THE ANTITRUST LAWS WOULD PROBABLY PROHIBIT ANY INDUSTRY AGREEMENT ON LEASES UNLESS ESTABLISHED UNDER THE FEDERAL TRADE COMMISSION.

FOR THESE, AND OTHER REASONS, WE BELIEVE THAT CHANGES MUST COME IN SOME MANDATORY FORM... AND NOW IT IS TIME TO DISCUSS THE WHY AND THE HOW OF THE CHANGES WE SEEK.

FIRST, I BELIEVE WE SHOULD LOOK BRIEFLY AT THE HISTORY OF GASOLINE MARKETING. IT IS NECESSARY TO UNDERSTAND

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THAT IT IS THE ABUSE OF ECONOMIC POWER; THE QUESTIONABLE MARKETING PRACTICES; AND THE ATTITUDES AND ACTIONS OF SOME INDIVIDUALS AND COMPANIES WHICH BROUGHT FORTH THE REQUEST FOR "FAIR MARKETING STANDARDS."

THE OLIGOPOLY, WHICH IS THE OIL INDUSTRY, HAS ENGAGED IN PARALLEL ACTIONS FOR YEARS; BOTH AS TO AQUISITION AND CONTROL OF RETAIL OUTLETS, AND LEASING ARRANGEMENTS WITH DEALERS. THIS PARALLEL ACTION HAS RESULTED IN LEASES OF ADHESION WHICH ARE NON-NEGOTIABLE AND HAVE LEFT THE DEALER WITH A "HOBSONS CHOICE." IN SHORT, HE IS FACED WITH BASICALLY THE SAME LEASE, THE SAME RESTRICTIVE MARKETING PRACTICES (REGARDLESS OF COMPANY) AND IF HE IS DISSATISFIED HE HAS BUT ONE CHOICE -- LEAVE THE BUSINESS. THIS ALSO LEAVES THE CUSTOMER WITH ABOUT THE SAME CHOICE, SINCE THE PARALLEL ACTION OF THE COMPANIES WHICH OVER THE YEARS HAVE EXTENDED TO PRICING AND TBA COERCION -- THROUGH THE LEASE -- DIRECTLY AND ADVERSELY AFFECT THE CUSTOMER.

EARLY EFFORTS ON THE PART OF SERVICE STATION DEALERS' TRADE ASSOCIATIONS TO MEET AND DISCUSS THESE PROBLEMS WITH THE INDUSTRY WERE MET WITH CONTEMPT. IN EVERY CASE, THE STANDARD RESPONSE WAS "OUR LEASE IS WITH OUR DEALER... WE WILL ONLY DISCUSS IT WITH HIM." IN ADDITION, WE FOUND THAT IN MANY INSTANCES COMPANIES WOULD NOT ALLOW DEALERS TO HAVE THEIR ATTORNEYS PRESENT FOR DISCUSSION OF LEASES OR MARKETING PRACTICES. IN ALMOST EVERY CASE, THE COMPANY INSISTED THAT

/THE DEALER

THE DEALER BE ALONE WHILE AT LEAST TWO COMPANY REPRESENTATIVES TOLD HIM PRIVATELY THAT HE WOULD SET A SPECIFIC PRICE, HE WOULD PURCHASE A CERTAIN AMOUNT OF TBA, HE WOULD OPERATE PRESCRIBED HOURS OR HE WOULD LOSE HIS LEASE.

I KNOW THAT EVERYONE IN THIS ROOM WILL DENY THAT THIS WAS EVER THEIR COMPANY POLICY -- BUT I ALSO KNOW THAT NOT ONE OF YOU CAN DENY THAT THIS KIND OF ACTIVITY WAS COMMONPLACE. YOU KNOW AND WE KNOW THAT OUR FILES ARE FULL OF THESE COMPLAINTS. WE ALSO KNOW THAT COURT ACTION IN RECENT YEARS HAS DRAMATICALLY DESCRIBED THESE ABUSES.

BUT IS IS NOT ONLY THE COERCION WHICH WAS APPLIED IN SECRET THAT WE MUST ELIMINATE. WE MUST ELIMINATE THE INSTRUMENT THAT PROVIDES ALMOST UNLIMITED CONTROL OVER THE DEALER BY HIS SUPPLIER, IN SPITE OF THE ANTITRUST LAWS NOW ON THE BOOKS. I REFER TO THE SHORT TERM LEASE, WHICH COUPLED WITH THE DEALERS' FEAR OF NON-RENEWAL, IS THE ONLY INSTRUMENT OF CONTROL NEEDED BY THE SUPPLIERS TO IMPRESS THE WILL OF THE COMPANY ON THE DEALER.

THE COURTS HAVE ALREADY SAID THAT THE SHORT-TERM LEASE IS INHERENTLY COERCIVE; THEY HAVE ALREADY SAID IT IS A MAILED FIST WITHIN A VELVET GLOVE; THEY HAVE ALREADY SAID THAT THE DEALER CANNOT EXERCISE INDEPENDENT JUDGEMENT WHEN HIS TENURE IN THE STATION DEPENDS UPON THE WHIM OF THE

/COMPANY EMPLOYEE

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COMPANY EMPLOYEE WHO CONTROLS THAT LEASE; THEY HAVE ALREADY SAID THAT THE DEALER HAS A VESTED INTEREST IN THE STATION. THE FEDERAL TRADE COMMISSION DESCRIBED THE PROBLEM IN ITS 1967 REPORT AND DEALT WITH THE PROBLEM IN A RECENT CONSENT ORDER. YES, WE BELIEVE THAT THE COURTS AND F.T.C. HAVE RECOGNIZED THE INEQUITIES AND THE CONTROLS WHICH ARE SO WOVEN INTO THE MARKETING PRACTICES OF SUPPLIERS. NOW WE BELIEVE IT IS THE RESPONSIBILITY OF THE LEGISLATORS TO TRANSLATE THESE COURT OPINIONS INTO STATUTE LAW.

JUDGE KASSOFF SAID IN HIS OPINION IN RUBENFELD V. MOBIL, "THE COURTS ARE BEING FORCED TO DO THE GOOD WORK WHICH THE LEGISLATORS SHOULD HAVE DONE BEFORE THIS."

THE RELATIONSHIP BETWEEN THE DEALER AND HIS SUPPLIER TRANSCENDS THAT OF LANDLORD/TENANT. THE VERY FACT THAT THE LANDLORD IS ALSO THE SUPPLIER PLACES THE DEALER IN A POSITION OF NOT ONLY SATISFYING HIS NORMAL OBLIGATIONS AS A TENANT, BUT IMPOSES ON HIM THE ADDED OBLIGATION OF SATISFYING THE SUPPLIER'S MARKETING OBJECTIVES. THERE ARE AT LEAST TWO SCHOOLS OF THOUGHT AS TO HOW THIS CAN BE CORRECTED. ONE WOULD MAKE IT UNLAWFUL FOR THE SUPPLIER TO ALSO BE THE LANDLORD, I.E., COMPLETE DIVORCEMENT OF THE COMPANY FROM THE OWNERSHIP OR CONTROL OF RETAIL PROPERTIES. BUT THE LANDLORD/SUPPLIER RELATIONSHIP IS ONLY BAD IF ONE PARTY IS TOTALLY DOMINANT, WHICH IS NOW THE CASE. IF THERE IS A BALANCE IN THE RELATIONSHIP, THE

LANDLORD/SUPPLIER ARRANGEMENT CAN WORK. IN ORDER TO ACHIEVE A BALANCE, A SET OF LAWS OR REGULATIONS WHICH WOULD GOVERN LEASES AND/OR MARKETING AGREEMENTS BETWEEN DEALERS AND THEIR SUPPLIERS IS NEEDED. THE LAW WOULD INDIRECTLY PLACE CERTAIN NECESSARY RESTRAINTS ON THE ACTIVITIES OF THE SUPPLIER. NAMELY, ANY ATTEMPT BY THE SUPPLIER TO DICTATE RETAIL PRICES, ANY ATTEMPT BY THE SUPPLIER TO REQUIRE THE DEALER TO STOCK AND SELL COMPANY BRAND OR SPONSORED TBA, AND ANY ATTEMPT BY THE COMPANY TO IMPOSE UNREASONABLE OPERATING CONDITIONS ON THE DEALER. THE FACT THAT THESE ACTIVITIES ARE ACTIONABLE UNDER THE ANTITRUST LAWS IS UNIMPORTANT. THE DEALER IN MOST INSTANCES CANNOT AFFORD ANTITRUST LITIGATION, THE JUSTICE DEPARTMENT IS A RELUCTANT DRAGON AND F.T.C. HAS ALREADY STATED THAT IT DOES NOT HAVE THE BUDGET TO HANDLE THE INDIVIDUAL CASES -- BUT CAN ONLY ACT AGAINST AREA-WIDE ABUSES WHICH WILL BRING SUBSTANTIVE CHANGE TO THE INDUSTRY.

BECAUSE THE ANTITRUST LAWS ARE INSUFFICIENT, IT IS NECESSARY TO PROVIDE THAT THE LEASE OR MARKETING AGREEMENT BE RENEWED BY THE SUPPLIER SO LONG AS THE DEALER COMPLIES IN GOOD FAITH WITH ESSENTIAL AND REASONABLE PROVISIONS OF THE LEASE AND/OR MARKETING AGREEMENT. THE BURDEN MUST BE ON THE SUPPLIER TO SET FORTH THE REASONS FOR A FAILURE TO RENEW. ANY FAILURE TO RENEW WOULD HAVE TO BE FOR GOOD CAUSE.

THE DEALER WILL THEN BE FREE TO MAKE HIS OWN DECISIONS

/ON PRICING

ON PRICING AND TBA PURCHASES. THE CUSTOMER WILL BENEFIT BECAUSE THERE WILL BE REAL COMPETITION FOR THE DEALERS BUSINESS, NOT THE FICTITIOUS COMPETITION THAT WE HAVE SEEN IN THE PAST WITH UNREALISTICALLY HIGH "DEALER TANKWAGON PRICES" (DTW) AND "TEMPORARY VOLUNTARY ALLOWANCE" (TVA) GRANTED ON A SECRET AND ARBITRARY BASIS BY THE SUPPLIER.

HOWEVER, IF COMPANIES INSIST ON MAINTAINING ARTIFICIALLY HIGH DTW'S THROUGH PARALLEL ACTIONS, THEN ADDITIONAL LEGISLATION TO ATTACK THEIR UPSTREAM OPERATIONS MAY BE NECESSARY. THE FACT THAT THE DEALER WILL BE FREE FROM COERCION -- EITHER OVERT OR COVERT -- SHOULD ENCOURAGE THE SUPPLIERS TO BECOME MORE COMPETITIVE IN THEIR TBA SALES TO DEALERS. CONSUMERS WILL BENEFIT BECAUSE DEALERS WILL ACTUALLY BE FREE TO PURCHASE AND SUPPLY TBA AT COMPETITIVE PRICES.

WITH DEALERS FREE TO MAKE THEIR OWN DECISIONS CONCERNING OPERATING PRACTICES, THEY WILL NOT BE FORCED INTO ECONOMICALLY UNSOUND OPERATIONS WHICH INCREASE THE COST TO CONSUMERS.

I HAVE NOT SPOKEN TO THE ACTUAL LANGUAGE USED IN THE VARIOUS PIECES OF LEGISLATION PROPOSED BECAUSE I BELIEVE THAT IS BEST LEFT TO THE ATTORNEYS. I DO BELIEVE, HOWEVER, THAT IT IS A MISTAKE TO ATTEMPT TO WRITE LEGISLATION WHICH DEALS SPECIFICALLY WITH EVERY POSSIBLE OCCURANCE. ANY

/LEGISLATION MUST

LEGISLATION MUST BE BROAD AND, OF NECESSITY, LEAVE SOME INTERPRETATION TO THE COURT AND THE JURY. IT MUST PROVIDE FOR A BALANCE IN THE NEGOTIATIONS CONCERNING LEASES AND MARKETING AGREEMENTS. IT MUST BE BASED ON A DOCTRINE OF REASONABLENESS AND FAIRNESS. IT SHOULD NOT PROTECT THE BAD DEALER; AND FOR THAT REASON THE COMPANY SHOULD BE ALLOWED TO TERMINATE OR FAIL TO RENEW FOR GOOD CAUSE AND UPON PROPER NOTICE.

SOME SPECIFICS THAT ANY BILL SHOULD CONTAIN ARE:

1) A NOTICE OF 90 DAYS ON ANY FAILURE TO RENEW.

2) A NOTICE TO THE DEALER TO CORRECT ANY BREACH OF THE MARKETING AGREEMENT BEFORE ANY TERMINATION OR CANCELLATION CAN BECOME EFFECTIVE.

3) A RIGHT OF TERMINATION BY THE COMPANY IN CASE OF WILLFUL ABANDONMENT, BANKRUPTCY, CONVICTION OF FELONY OR DEATH OF THE DEALER; WITH SHORTER NOTICE OR WITHOUT NOTICE IN THE CASE OF ABANDONMENT, BANKRUPTCY, OR CONVICTION OF A FELONY, EXCEPT THAT THE SUPPLIER IS STILL LIABLE FOR UNLAWFUL TERMINATION. IN THE CASE OF DEATH OF THE DEALER, SUFFICIENT TIME MUST BE ALLOWED FOR TRANSFER OF THE LEASE OR MARKETING AGREEMENT OR PAYMENT OF GOOD WILL BY THE COMPANY.

4) A RIGHT OF THE DEALER TO TRANSFER THE MARKETING

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AGREEMENT WITH THE CONSENT OF THE SUPPLIER, WHICH CONSENT COULD NOT BE UNREASONABLY WITHHELD.

5) THE LEASE OR MARKETING AGREEMENT MUST BE RENEWED AS LONG AS THE DEALER HAS COMPLIED WITH ESSENTIAL AND REASONABLE TERMS OF THE LEASE OR MARKETING AGREEMENT AND HAS ACTED IN GOOD FAITH IN CARRYING OUT THE TERMS OF THE AGREEMENT.

6) THE LEASE COULD BE CANCELLED, TERMINATED, OR NOT RENEWED FOR GOOD CAUSE, INCLUDING:

(A) A FAILURE BY THE DEALER TO MAINTAIN REASONABLE STANDARDS OF CLEANLINESS.

(B) UNUSUAL VOLUMES OF CUSTOMER COMPLAINTS AND A FAILURE BY THE DEALER TO MAKE AN EFFORT TO SETTLE THE COMPLAINTS.

(C) FAILURE TO MEET FINANCIAL OBLIGATIONS TO THE COMPANY SO LONG AS THESE FINANCIAL OBLIGATIONS CAN BE PROPERLY DOCUMENTED AND JUSTIFIED. HOWEVER, SOME METHOD MUST BE WORKED OUT TO ALLOW THE DEALER TO CONTINUE IN CASE OF UNUSUAL CIRCUMSTANCES, AS IS NORMAL IN MOST CREDIT RELATIONS.

7) ANY LEASE <u>RENEWAL</u> SHOULD BE FOR A PERIOD OF FIVE YEARS.

/8) THERE ARE

8) THERE ARE OCCASIONS WHEN THE SUPPLIER SHOULD BE ALLOWED TO FAIL TO RENEW FOR GOOD BUSINESS REASONS, UPON PAYMENT OF APPROPRIATE DAMAGES. BUT, TRANSFER OF CONTROL TO COMPANY OPERATION SHOULD NOT BE CONSIDERED A GOOD BUSINESS REASON.

9) THE LEGISLATION SHOULD NOT CONTAIN A PREEMPTION CLAUSE THAT WOULD UNDO THE GOOD WORK OF THE STATES. MARKETING PROBLEMS MAY BE MORE ACUTE IN ONE AREA THAN ANOTHER, AND EACH STATE SHOULD BE ALLOWED TO STRENGTHEN THE BASIC FEDERAL LEGISLATION IF, IN THE JUDGEMENT OF THAT STATE LEGISLATURE, IT IS NECESSARY.

IN CONCLUSION, I FEEL COMPELLED TO SAY TO THOSE WHO WOULD OPPOSE FURTHER LEGISLATION OR REGULATION PURELY ON THE BASIS THAT WE DON'T NEED ANY MORE GOVERNMENT INTERFERENCE IN BUSINESS, ARE NOT PRESENTING A VALID ARGUMENT.

IF WE ABANDON THE LAWS THAT GOVERN COMMERCE, OR FAIL TO STRENGTHEN THEM WHEN NEEDED, WE WILL LIVE BY THE LAW OF THE MOST POWERFUL -- JUST AS WE WILL LIVE BY THE LAW OF THE MOST VIOLENT IF WE FAIL TO PROTECT AND STRENGTHEN OUR CRIMINAL LAWS.

WHAT DOES THE DEALER EXPECT IN THE FUTURE? HE EXPECTS AN OPPORTUNITY TO REMAIN IN AN INDUSTRY OF WHICH HE HAS BEEN A VITAL PART. HE EXPECTS AN OPPORTUNITY TO REMAIN BASED SOLELY

ON HIS DETERMINATION AND ABILITY TO MEET THE NEEDS OF HIS CUSTOMERS, RATHER THAN A REQUIREMENT THAT HE FIRST MEET THE NEEDS OF HIS SUPPLIER. HE EXPECTS TO ESTABLISH AN EQUITY IN A BUSINESS HE HAS SPENT HIS LIFETIME BUILDING. HE EXPECTS TO BE ABLE TO BUILD SOME FORM OF RETIREMENT FOR HIS LATER YEARS. HE EXPECTS TO EARN AN INCOME BASED ON HIS EFFORTS, ABILITIES, AND DECISIONS HE HAS MADE, RATHER THAN ON DECISIONS THAT HAVE BEEN MADE FOR HIM.

IT HAS BEEN OBVIOUS FOR YEARS THAT IT WILL TAKE LEGISLATION TO SECURE THESE GOALS AND THE "INDEPENDENT" STATUS HIS SUPPLIER HAS NOMINALLY BESTOWED UPON HIM. WE MUST MOVE TOWARD THAT END IMMEDIATELY.

# # # # #

H.B. 2175

Charlie — This is it — there is one little wording change on page 4 Will get that from Sec of State next week I'll mail the

0375

State of Arizona
House of Representatives
Thirty-first Legislature
Second Regular Session

File State Legislation

HOUSE BILL 2175

(Reference is to Senate enrolled bill)

Strike everything after the enacting clause and insert:

AN ACT

RELATING TO TRADE AND COMMERCE: PROVIDING FOR REGULATION OF PETROLEUM PRODUCTS FRANCHISES, AND AMENDING TITLE 44, CHAPTER 10, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 8.

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Title 44, chapter 10, Arizona Revised Statutes,
3 is amended by adding article 8, to read:
4 ARTICLE 8. PETROLEUM PRODUCTS FRANCHISES
5 44-1551. Definitions
6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:
7 1. "AFFILIATE" MEANS A PERSON WHO CONTROLS, IS CONTROLLED OR IS
8 UNDER COMMON CONTROL WITH ANOTHER PERSON.
9 2. "CONTROL" MEANS ACTUAL OR LEGAL POWER OF INFLUENCE OVER
10 ANOTHER PERSON, WHETHER DIRECT OR INDIRECT, ARISING THROUGH DIRECT
11 OR INDIRECT OWNERSHIP OF CAPITAL STOCK, INTERLOCKING DIRECTORATES OR
12 OFFICERS, CONTRACTUAL RELATIONS, AGENCY AGREEMENTS OR LEASING ARRANGE-
13 MENTS WHERE THE RESULT IS USED TO AFFECT OR INFLUENCE SUCH PERSONS.
14 3. "DEALER" MEANS ANY PERSON ENGAGED IN THE RETAIL SALE OF
15 PETROLEUM PRODUCTS SUPPLIED UNDER A DISTRIBUTORSHIP, FRANCHISE OR
16 OTHER AGREEMENT, ENTERED INTO WITH A DISTRIBUTOR.
17 4. "DISTRIBUTOR" MEANS ANY PERSON ENGAGED IN THE SALE, CONSIGN-
18 MENT OR OTHER DISTRIBUTION OF PETROLEUM PRODUCTS TO DEALERS AT RE-
19 TAIL OUTLETS SERVING THE GENERAL MOTORING PUBLIC.
20 5. "ENGAGED IN THE SALE OF PETROLEUM PRODUCTS" MEANS, IN THE
21 CASE OF A DEALER, THAT AT LEAST FIFTY PER CENT OF THE AVERAGE
22 ANNUAL GROSS REVENUE OF THE FRANCHISE IS DERIVED FROM THE SALE OF
23 PETROLEUM PRODUCTS.
24 6. "FRANCHISE" OR "FRANCHISE AGREEMENT" MEANS A WRITTEN AGREE-
25 MENT BETWEEN A DISTRIBUTOR AND A DEALER UNDER WHICH THE DEALER IS
26 GRANTED THE RIGHT TO USE A TRADEMARK, TRADE NAME, SERVICE MARK OR
27 OTHER IDENTIFYING SYMBOL OR NAME OWNED BY THE DISTRIBUTOR, UNDER
28 WHICH THE DEALER IS GRANTED THE RIGHT TO OCCUPY PREMISES OWNED, LEASED,
29 OR CONTROLLED BY THE DISTRIBUTOR, FOR THE PURPOSE OF ENGAGING IN
30 THE RETAIL SALE OF PETROLEUM PRODUCTS OF THE DISTRIBUTOR.
31 7. "GOOD CAUSE" MEANS THE FAILURE OF A DEALER TO COMPLY WITH
32 THOSE EXPRESS PROVISIONS OF THE FRANCHISE EXCEPT ANY THAT MAY BE
33 UNCONSCIONABLE.
34 8. "GOOD FAITH" INCLUDES THE DUTY OF A PARTY TO ACT IN A FAIR
35 AND EQUITABLE MANNER IN THE PERFORMANCE AND IN DEMANDING PERFORMANCE
36 OF THE FRANCHISE.
37 9. "PETROLEUM PRODUCTS" MEANS MOTOR VEHICLE FUELS AND LUBRICANTS."

COURTESY OF
THE NATIONAL CONGRESS OF
PETROLEUM RETAILERS

10. "RETAIL SALE OF PRODUCTS" MEANS THE SALE THEREOF FOR CONSUMPTION AND NOT FOR RESALE AT A RETAIL OUTLET SERVING THE MOTORING PUBLIC.

11. "SALE, TRANSFER OR ASSIGNMENT" MEANS ANY DISPOSITION OF A FRANCHISE OR ANY INTEREST THEREIN, WITH OR WITHOUT CONSIDERATION, TO INCLUDE BUT NOT LIMITED TO BEQUEST, INHERITANCE, GIFT, EXCHANGE, LEASE OR LICENSE.

44-1552. Disclosures to be made by distributor before conclusion of agreement

A DISTRIBUTOR SHALL DISCLOSE TO ANY PROSPECTIVE DEALER THE FOLLOWING INFORMATION BEFORE ANY FRANCHISE AGREEMENT IS CONCLUDED:

1. THE GALLONAGE VOLUME HISTORY OF GASOLINE SOLD TO THE PREVIOUS DEALER OR DEALERS AT THE SAME PREMISES AND DURING A THREE-YEAR PERIOD IMMEDIATELY PAST OR SUCH SHORTER PERIOD DURING WHICH THE SAME PREMISES WERE USED FOR ENGAGING IN THE SALE OF GASOLINE WHILE THE FRANCHISE OR BUSINESS OPERATION WAS IN EFFECT.

2. TO THE EXTENT PREVIOUSLY MADE AVAILABLE TO THE DISTRIBUTOR, THE NAME AND LAST KNOWN ADDRESS OF THE PREVIOUS DEALER OR DEALERS FOR THE PRECEDING THREE YEARS OR SUCH SHORTER PERIOD DURING WHICH THE PREMISES WERE USED FOR ENGAGING IN THE SALE OF PETROLEUM PRODUCTS.

3. ANY LEGALLY BINDING COMMITMENTS FOR THE SALE, DEMOLITION OR OTHER DISPOSITION OF THE LOCATION.

4. THE TRAINING PROGRAMS, IF ANY, AND THE SPECIFIC GOODS AND SERVICES THE DISTRIBUTOR WILL PROVIDE FOR AND TO THE DEALER.

5. FULL DISCLOSURE OF ANY AND ALL OBLIGATIONS WHICH WILL BE REQUIRED OF THE DEALER.

6. FULL DISCLOSURE OF ALL RESTRICTIONS ON THE SALE, TRANSFER AND TERMINATION OF THE AGREEMENT.

7. ANY DISCLOSURE REQUIRED BY THIS SECTION MAY BE MADE IN THE BODY OF THE FRANCHISE AGREEMENT OR SEPARATELY.

44-1553. Voidable franchises

ANY FRANCHISE MAY BE CANCELLED BY THE DEALER AT HIS OPTION BY SENDING A WRITTEN DECLARATION OF THAT FACT AND THE REASONS THEREFOR TO THE DISTRIBUTOR IF:

1. THE DISTRIBUTOR'S OFFER WAS FRAUDULENT OR UNLAWFUL, PROVIDED THAT THE DEALER SEND SUCH WRITTEN DECLARATION WITHIN SIXTY DAYS AFTER DISCOVERY THEREOF.

2. THE DEALER WAS NOT AFFORDED THE OPPORTUNITY TO NEGOTIATE WITH THE DISTRIBUTOR ON ALL PROVISIONS WITHIN THE FRANCHISE, EXCEPT THAT SUCH NEGOTIATIONS SHALL NOT IMPAIR THE UNIFORM IMAGE AND QUALITY STANDARDS OF THE FRANCHISE, PROVIDED THAT THE DEALER SEND SUCH WRITTEN DECLARATION WITHIN TEN DAYS AFTER EXECUTION OF THE FRANCHISE.

3. THE DEALER WAS NOT FURNISHED A COPY OF THE FRANCHISE AGREEMENT AT LEAST SEVENTY-TWO HOURS PRIOR TO EXECUTION. THE DEALER SHALL SEND SUCH WRITTEN CANCELLATION WITHIN TEN DAYS AFTER EXECUTION OF THE FRANCHISE.

4. THE DEALER WAS NOT FURNISHED THE DISCLOSURE SET FORTH IN SECTION 44-1553 AT LEAST SEVENTY-TWO HOURS PRIOR TO THE EXECUTION OF THE FRANCHISE AGREEMENT. THE DEALER SHALL SEND SUCH WRITTEN CANCELLATION WITHIN TEN DAYS AFTER DEALER HAS ACQUIRED ALL OF THE REQUIRED INFORMATION.

1 44-1554. Prohibited practices
2 IT SHALL BE A VIOLATION OF THIS ARTICLE FOR ANY DISTRIBUTOR
3 DIRECTLY OR INDIRECTLY OR THROUGH ANY OFFICER, AGENT OR EMPLOYEE,
4 TO ENGAGE IN ANY OF THE FOLLOWING PRACTICES:
5 1. TO PROHIBIT DIRECTLY OR INDIRECTLY THE RIGHT OF FREE
6 ASSOCIATION AMONG DEALERS FOR ANY LAWFUL PURPOSE.
7 2. TO FAIL TO ACT IN GOOD FAITH IN PERFORMING OR COMPLYING
8 WITH ANY TERMS, PROVISIONS OF OR COLLATERAL TO A FRANCHISE.
9 3. TO TERMINATE OR CANCEL A FRANCHISE WITHOUT GOOD CAUSE.
10 4. TO USE UNDUE INFLUENCE TO INDUCE A DEALER TO SURRENDER ANY
11 RIGHT GIVEN TO THE DEALER BY ANY PROVISION CONTAINED IN THE FRANCHISE
12 5. TO CANCEL, TERMINATE, FAIL TO RENEW OR TO THREATEN THE CAN-
13 CELLATION, TERMINATION OR NONRENEWAL OF ANY FRANCHISE BECAUSE OF
14 DEALER'S FAILURE TO PURCHASE MERCHANDISE OR PRODUCTS SOLD BY DISTRI-
15 BUTOR WHERE THE REQUIREMENT THAT THE DEALER SELL EXCLUSIVELY THE
16 MERCHANDISE OR PRODUCTS OF THE DISTRIBUTOR WOULD BE A VIOLATION
17 OF ANY LAW, RULE OR REGULATION OF THIS STATE OR OF THE UNITED STATES.
18 6. CHANGE OR MODIFY ANY RESTRICTIONS UPON NONPETROLEUM RELATE
19 BUSINESS ACTIVITIES OF THE GASOLINE DEALER DURING THE TERM OF HIS
20 FRANCHISE.
21 7. UNREASONABLY REDUCE, LIMIT OR CURTAIL THE SUPPLY OF GASOLINE
22 OR OTHER PETROLEUM PRODUCTS TO ANY DEALER.
23 8. CANCEL OR TERMINATE A FRANCHISE SOLELY TO SECURE FOR ITS
24 OWN ACCOUNT THE DISTRIBUTOR'S MORE SUCCESSFUL OR PROFITABLE FRANCHISE
25 STATIONS.
26 44-1555. Permitted practices
27 NOTHING HEREIN SHALL PREVENT A DISTRIBUTOR FROM IMPOSING UPON
28 A DEALER FROM TIME TO TIME REASONABLE STANDARDS OF PERFORMANCE, PRO-
29 VIDED THAT SUCH STANDARDS BE ENFORCED TO THE EXTENT REASONABLE AT
30 THE TIME OF REQUIRED PERFORMANCE.
31 44-1556. Termination of franchise; notice; grounds
32 IT IS A VIOLATION OF THIS ARTICLE FOR ANY DISTRIBUTOR, DIRECTLY
33 OR INDIRECTLY, OR THROUGH AN OFFICER, AGENT OR EMPLOYEE TO TERMINATE
34 CANCEL OR FAIL TO RENEW A FRANCHISE WITHOUT HAVING FIRST GIVEN WRITTEN
35 NOTICE AS FOLLOWS:
36 1. NO CANCELLATION OR TERMINATION OF THE FRANCHISE SHALL BE
37 EFFECTIVE UNLESS DISTRIBUTOR SHALL HAVE FIRST GIVEN DEALER A WRITTEN
38 NOTICE OF DISTRIBUTOR'S INTENT TO CANCEL THE FRANCHISE SPECIFYING ALL
39 MATTERS OF CLAIMED NONCOMPLIANCE WITH THE FRANCHISE AGREEMENT, ALLOW-
40 ING DEALER AT LEAST TEN DAYS TO COMPLY WITH THE TERMS OF THE FRANCHISE
41 AGREEMENT. IN THE EVENT OF DEALER'S NONCOMPLIANCE, TERMINATION SHALL
42 BE EFFECTIVE THE DATE SET FORTH IN THE NOTICE.
43 2. WITHIN AT LEAST THIRTY DAYS IN ADVANCE OF THE EXPIRATION OF
44 A TERM OF A FRANCHISE, DISTRIBUTOR SHALL IN WRITING GIVE DEALER NOTICE
45 OF:
46 (a) DISTRIBUTOR'S INTENTION NOT TO RENEW THE FRANCHISE AND ALL
47 THE REASONS FOR SUCH FAILURE TO RENEW, OR,
48 (b) DISTRIBUTOR'S INTENTION TO RENEW AND IF SUCH RENEWAL IS
49 SUBJECT TO ANY CHANGE IN PRICE, RENT, TERMS OR CONDITIONS FROM THAT
50 OF THE FRANCHISE BEING RENEWED, THEN ALL SUCH CHANGES AND THE REASONS

THEREFOR SHALL BE FULLY DESCRIBED THEREIN.

3. WHERE THE ALLEGED GROUNDS ARE VOLUNTARY ABANDONMENT BY THE DEALER OF THE FRANCHISE RELATIONSHIP, SUCH WRITTEN NOTICE MAY BE GIVEN THREE DAYS IN ADVANCE OF SUCH TERMINATION OR CANCELLATION.

4. WHERE THE ALLEGED GROUNDS ARE THE CONVICTION OF THE DEALER OF A CRIME RELATED TO THE BUSINESS CONDUCTED PURSUANT TO THE FRANCHISE, TERMINATION, CANCELLATION OR FAILURE TO RENEW MAY BE EFFECTIVE IMMEDIATELY.

5. ALL NOTICES REQUIRED OF DEALER OR DISTRIBUTOR UNDER THIS ARTICLE SHALL BE GIVEN IN WRITING BY CERTIFIED MAIL RETURN RECEIPT REQUESTED TO THE ADDRESS INDICATED IN THE FRANCHISE AGREEMENT OR AS SUBSEQUENTLY CHANGED BY THE PARTY IN WRITING OR IF NO ADDRESS WAS DESIGNATED, TO THE PARTY'S PLACE OF BUSINESS.

6. THE FAILURE OF A DISTRIBUTOR TO SERVE NOTICE UPON THE DEALER AS REQUIRED IN THIS SECTION SHALL CONSTITUTE A GRANT OF THE OPTION BY THE DISTRIBUTOR TO THE DEALER TO RENEW THE FRANCHISE FOR A PERIOD OF ONE YEAR UNDER THE SAME PRICE, RENT, TERMS AND CONDITIONS OF THE EXPIRING FRANCHISE, SUBJECT TO THE PROVISIONS OF THIS ARTICLE. SUCH OPTION TO RENEW SHALL EXPIRE FORTY-FIVE DAYS FROM THE DATE NOTICE SHOULD HAVE BEEN SERVED, UNLESS EXERCISED BY WRITTEN NOTICE TO THE DISTRIBUTOR.

44-1557. Required provisions in agreements between distributors and dealers

EVERY AGREEMENT BETWEEN A DISTRIBUTOR AND A DEALER SHALL BE IN WRITING AND CONTAIN:

1. IN THE ABSENCE OF ANY EXPRESS AGREEMENT, THE DEALER SHALL NOT BE REQUIRED TO PARTICIPATE FINANCIALLY IN THE USE OF ANY PREMIUM, COUPON, GIVE-AWAY, OR REBATE IN THE OPERATION OF HIS RETAIL OUTLET, PROVIDED THAT THE DISTRIBUTOR MAY REQUIRE THE DEALER TO DISTRIBUTE TO CUSTOMERS PREMIUMS, COUPONS OR GIVE-AWAYS WHICH ARE FURNISHED TO THE DEALER AT THE EXPENSE OF THE DISTRIBUTOR.

2. THE TERM OF THE INITIAL AGREEMENT BETWEEN THE DISTRIBUTOR AND THE DEALER RELATING TO SPECIFIC PREMISES SHALL NOT BE LESS THAN ONE YEAR AND THE TERM OF ALL SUBSEQUENT AGREEMENTS BETWEEN THE DISTRIBUTOR AND THE DEALER SHALL NOT BE FOR FEWER THAN THREE YEARS, PROVIDED THAT WHERE THE DISTRIBUTOR IS THE LESSEE OF THE PREMISES, THIS PARAGRAPH SHALL NOT BE CONSTRUED TO REQUIRE A TERM OF GREATER DURATION THAN THE REMAINDER OF THE TERM TO WHICH THE DISTRIBUTOR IS ENTITLED UNDER ITS LEASE, TOGETHER WITH ANY RENEWAL RIGHTS WHICH THE DISTRIBUTOR MAY HAVE, AND FURTHER PROVIDED THAT NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE TO THE CONTRARY A DISTRIBUTOR MAY RESERVE THE RIGHT TO CANCEL SUCH AGREEMENT WITHOUT CAUSE UPON THIRTY DAYS' NOTICE DURING THE FIRST SIX MONTHS OF THE INITIAL TERM THEREOF WHEN NO PREVIOUS DISTRIBUTOR-DEALER RELATIONSHIP EXISTED BETWEEN THE PARTIES THERETO. AGREEMENTS ENTERED INTO BY DISTRIBUTORS WHO ARE ALSO ENGAGED IN THE REFINING OF GASOLINE MAY BE FOR SHORTER TERMS.

44-1558. Obligation of distributor to repurchase upon termination of agreement

IN THE EVENT OF ANY TERMINATION, CANCELLATION OR FAILURE TO RENEW, WHETHER BY MUTUAL AGREEMENT OR OTHERWISE, A DISTRIBUTOR SHALL MAKE OR CAUSE TO BE MADE A GOOD FAITH OFFER TO REPURCHASE FROM THE DEALER, HIS HEIRS, SUCCESSORS AND ASSIGNS, AT THE CURRENT WHOLESALE PRICES,

ANY AND ALL MERCHANTABLE PRODUCTS PURCHASED BY SUCH DEALER FROM THE DISTRIBUTOR, PROVIDED THAT THE DISTRIBUTOR SHALL HAVE THE RIGHT TO APPLY THE PROCEEDS AGAINST ANY EXISTING INDEBTEDNESS OWED TO HIM BY THE DEALER AND THAT SUCH REPURCHASE OBLIGATION IS CONDITIONED UPON THERE BEING NO OTHER CLAIMS OR LIENS AGAINST SUCH PRODUCTS BY OR ON BEHALF OF OTHER CREDITORS OF THE DEALER. SUCH REPURCHASE SHALL NOT CONSTITUTE A WAIVER OF DEALER'S OTHER RIGHTS AND REMEDIES UNDER THIS ARTICLE.

44-1559. Remedies

A. A DEALER OR DISTRIBUTOR MAY BRING AN ACTION AGAINST THE OTHER FOR VIOLATION OF ANY PROVISION OF THE FRANCHISE AND MAY RECOVER THE DAMAGES SUSTAINED.

B. AN ACTION FOR INJUNCTIVE RELIEF TO PREVENT OR RESTORE RIGHTS LOST UPON THE VIOLATION OF ANY PROVISION OF THE FRANCHISE MAY BE BROUGHT BY A DEALER OR DISTRIBUTOR.

C. THE REMEDIES PROVIDED IN THIS SECTION ARE INDEPENDENT OF AND SUPPLEMENTAL TO ANY OTHER REMEDY OR REMEDIES AVAILABLE TO THE DEALER OR DISTRIBUTOR IN LAW OR EQUITY.

D. IN ANY ACTION UNDER THIS SECTION THE PREVAILING PARTY SHALL RECOVER FROM THE LOSING PARTY ALL COSTS INCURRED, INCLUDING REASONABLE ATTORNEY'S FEES.

44-1560. Waiver

A. ANY CONDITION, STIPULATION OR PROVISION BINDING ANY PERSON TO WAIVE COMPLIANCE WITH ANY PROVISION OF THIS ARTICLE IS VOID.

B. THE RIGHT OF EITHER PARTY TO TRIAL BY JURY OR TO THE INTERPOSITION OF COUNTERCLAIMS OR CROSS-CLAIMS SHALL NOT BE WAIVED EXCEPT AFTER THE FILING OF ACTION AND WITH THE CONCURRENCE OF A COUNSEL OF RECORD.

Sec. 3. Severability

If any provision or clause of this article or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this article, which can be given effect without the invalid provision or application and to this end the provisions of this article are declared to be severable.

Sec. 4. Effective date

~~This act shall become effective January 1, 1975 and the provisions hereof shall apply to all dealer franchises entered into or renewed after such date.~~

This bill will become law ninty (90) days after the Governor's signature.

Governor Signed H.B. 2175 on May 21, 1974

Signed by Gov Ray
May 29, 1974
Effective July 1, 1974

HOUSE FILE 1402

AN ACT

TO PROVIDE FOR FAIR TRADE PRACTICES IN THE MARKETING AND DISTRIBUTION OF MOTOR FUEL AND SPECIAL FUEL AND PROVIDING A PENALTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. DEFINITIONS. When used in this Act, unless the context otherwise requires:

1. "Distributor" means a person who holds a motor fuel distributor's license or a special fuel distributor's license issued as provided in chapter three hundred twenty-four (324) of the Code.

2. "Franchiser" means a person who is engaged in the importation, refining or distribution of motor fuel or special fuel and who has entered into a distributor franchise or a dealer franchise.

3. "Distributor franchise" means a written agreement or contract, either written or oral, between a franchiser and a distributor when all of the following conditions are included:

a. A commercial relationship of definite duration or continuing indefinite duration is involved.

b. The distributor is granted the right to offer and sell motor fuel or special fuel that is imported, refined, or distributed by the franchiser.

c. The distributor, as an independent business, constitutes a component of the franchiser's distribution system.

d. The distributor's business, or a portion of it which is related to motor fuel or special fuel purchased from the franchiser is substantially reliant on the franchiser for the continued supply of motor fuel or special fuel.

e. The distributor's business or a portion of it which is related to motor fuel or special fuel purchased from the franchiser is substantially associated with the franchiser's

trademark, service mark, trade name, advertising, or other commercial symbol designating the franchiser.

4. "Dealer" means a person, other than an employee of a distributor or franchiser, who operates, maintains or conducts a place of business from which motor fuel or special fuel is sold or offered for sale at retail to the ultimate consumer, and who holds a license, issued as provided in chapter two hundred fourteen (214) of the Code, for each pump and meter operated upon the retail premises.

5. "Dealer franchise" means an agreement or contract, either written or oral, between a franchiser and a dealer or between a distributor and a dealer when all of the following conditions are included:

a. A commercial relationship of definite duration or continuing indefinite duration is involved.

b. The dealer is granted the right to offer and sell motor fuel or special fuel that is imported, refined, or distributed by the franchiser or by the distributor.

c. The dealer's business is substantially reliant on the franchiser or distributor for the continued supply of motor fuel or special fuel.

6. "Motor fuel" means "motor fuel" as defined in chapter three hundred twenty-four (324) of the Code.

7. "Special fuel" means "special fuel" as defined in chapter three hundred twenty-four (324) of the Code.

8. "Retaliatory action" means action contrary to the purpose or intent of this Act and may include a refusal to continue to sell or lease, a reduction in the quality or quantity of services or products customarily available for sale or lease, a violation of privacy, or an inducement of others to retaliate.

9. "Retail premises" means real estate either owned or leased by the dealer and used primarily for the sale at retail to the ultimate consumer of motor fuel or special fuel.

10. "Commission" means the Iowa state commerce commission.

Sec. 2. NEW SECTION. DISCONTINUING DISTRIBUTOR FRAN-

H.F. 1402
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CHISE. Notwithstanding the terms, provisions, or conditions of any distributor franchise, a franchiser shall not terminate or refuse to renew a distributor franchise except as provided in this Act. A franchiser shall not terminate or refuse to renew a distributor franchise unless the franchiser gives to the distributor thirty days' written notice of franchiser's intent to terminate or not renew. Notice shall be given by restricted certified mail, as defined in section six hundred eighteen point fifteen (618.15) of the Code. If a distributor, within thirty days after the date of delivery of the notice from the franchiser, applies to the commission for a hearing under this Act, the distributor franchise shall remain in effect pending a final order by the commission. The application filed by the distributor shall state, under oath, that the distributor's license as a motor fuel or special fuel distributor, as the case may be, has not been canceled pursuant to the provisions of chapter three hundred twenty-four (324) of the Code, that the distributor has not filed a petition in bankruptcy or been declared bankrupt within six months preceding the filing of the application, that the franchiser has not withdrawn entirely from the sale for resale of motor fuel and special fuel in this state, that there are no past due sums owing by the distributor to the franchiser, and that the distributor has not consented in writing to the termination or nonrenewal of the distributor franchise.

Sec. 3. NEW SECTION. DISCONTINUING DEALER FRANCHISE. Notwithstanding the terms, provisions, or conditions of any dealer franchise, a distributor or franchiser shall not terminate or refuse to renew a dealer franchise except as provided in this Act. A distributor or franchiser shall not terminate or refuse to renew a dealer franchise unless the distributor or franchiser gives to the dealer thirty days' written notice of distributor's or franchiser's intent to terminate or not renew. Notice shall be given by restricted certified mail, as defined in section six hundred eighteen point fifteen (618.15) of the Code. If a dealer, within thirty days after the date of delivery of the notice from

the distributor or franchiser, applies to the commission for a hearing under this Act, the dealer franchise shall remain in effect pending a final order by the commission. The application filed by the dealer shall state, under oath, that the dealer's license, issued pursuant to chapter two hundred fourteen (214) of the Code, for pumps and meters located on the retail premises occupied by the dealer has not been canceled, that the dealer has not filed a petition in bankruptcy or been declared bankrupt within six months preceding the filing of the application, that the franchiser or distributor has not withdrawn entirely from the sale for resale of motor fuel and special fuel in this state, that there are no past due sums owing by the dealer to the franchiser or distributor, and that the dealer has not consented in writing to the termination or nonrenewal of the dealer franchise.

Sec. 4. NEW SECTION. COMMISSION TO HOLD HEARINGS. Upon receiving an application, the commission shall enter an order fixing a time and place of hearing, which shall be within thirty days from the date the commission receives the application, and shall send by restricted certified mail a copy of the order to the franchiser or distributor. The commission may also give notice of the application to any other party the commission deems an interested person. The notice shall be in the form and substance and given in the manner determined by the commission.

Any person who can show an interest in the application may become a party to the hearing, whether or not he receives notice; but a party not receiving notice shall be limited to participation at the hearing on the question of the public interest in the termination or continuation of the franchise.

Sec. 5. NEW SECTION. CONTINUANCE. The commission may continue the date of hearing for a period of thirty days, and may upon application, but not ex parte, continue the date of hearing for an additional period of thirty days.

Sec. 6. NEW SECTION. BURDEN OF PROOF. Upon hearing, if the commission finds the statements contained in the appli-

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cation are true, then the franchiser or distributor that intends to terminate or not renew the distributor franchise or dealer franchise shall have the burden of proof to establish that the franchiser or distributor, as the case may be, has good cause for terminating or not renewing the franchise.

If the commission finds the statements contained in the application are not true, the application shall be denied. Nothing contained in this Act shall be construed to require or authorize any investigation by the commission of any matter before the commission under this Act. Upon hearing the commission shall hear the evidence introduced by the parties and shall make its decision solely upon the record made. If the commission denies the termination or nonrenewal of the franchise, it may make such further order as may be necessary to require compliance with the terms of the franchise and to prevent retaliatory action.

Sec. 7. NEW SECTION. RULES OF EVIDENCE. The Iowa rules of civil procedure relating to discovery and inspection shall apply to hearings held under the provisions of this Act, and the commission may issue orders to give effect to such rules. In the event issues are raised which would involve violations of a mandatory federal petroleum allocation law, all discovery and inspection proceedings which would be available under the federal law shall be available to the parties to the hearing, and the commission may issue orders to give effect to the proceedings. Costs may be apportioned between the parties as the commission determines.

Sec. 8. NEW SECTION. CONDITIONS BARRING CHANGE IN DISTRIBUTOR FRANCHISE. Notwithstanding the terms, provisions or conditions of a distributor franchise, the following shall not constitute good cause for the termination or refusal to renew a distributor franchise:

1. The sole fact that the franchiser desires further penetration of the market.

2. The change of executive management of the distributor, unless the franchiser, having the burden of proof, proves that the change of executive management will be substantially

detrimental to the distribution of the franchiser's motor fuels or special fuels in the area served by the distributor.

3. The sale or change of ownership of the distributor's business, unless the transfer of the distributor's license pursuant to chapter three hundred twenty-four (324) of the Code is denied or the new owner is unable to obtain a license under chapter three hundred twenty-four (324) of the Code.

Sec. 9. NEW SECTION. COMMISSION'S GUIDELINES. In determining whether good cause has been established for terminating or not renewing a distributor franchise or dealer franchise, the commission shall take into consideration the existing circumstances, including, but not limited to:

1. Amount of business transacted by the distributor or dealer.

2. Investments made and obligations incurred by the distributor or dealer in performance of the franchise.

3. Permanency of the investment.

4. Whether it is injurious to the public welfare for the business of the distributor or dealer to be disrupted.

5. Ability of the distributor or dealer to timely pay his financial obligations.

6. Whether the distributor or dealer has adequate equipment and qualified personnel to reasonably provide for the distribution and marketing of the motor fuel or special fuel sold to him.

7. Except as provided in section eight (8) of this Act, failure of the distributor to substantially comply with those requirements of the distributor franchise that are determined by the commission to be reasonable and material.

8. Failure of the dealer to substantially comply with those requirements of the dealer franchise that are determined by the commission to be reasonable and material.

Sec. 10. NEW SECTION. COMPULSORY ATTENDANCE AT HEARINGS. The commission may issue subpoenas, administer oaths, compel the attendance of witnesses and production of books, papers, documents and other evidence. The commission may apply to the district court of the county in which the hearing is to

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be held for a court order to enforce actions taken under this section.

Sec. 11. NEW SECTION. APPEAL. Appeal may be taken from the final order of the commission by either the distributor, franchiser, dealer or any person served with notice pursuant to section four (4) of this Act, to the district court of the county where the distributor or dealer either resides or maintains his principal place of business, within thirty days from the time the decision is filed with the commission, by giving at least ten-days' notice to the commission to be served on its chairman or secretary in the same manner as original notices are now served, and by filing with the clerk of court a bond for costs in the sum of not less than two hundred dollars.

Sec. 12. NEW SECTION. TRANSCRIPT ON APPEAL. Upon appeal being taken, the secretary of the commission shall make and certify a transcript of all papers, records, and proceedings in connection with such application and hearing and file the same with the clerk of the court within twenty days following the taking of such appeal.

Sec. 13. NEW SECTION. TRIAL ON APPEAL. The appeal shall be submitted upon the transcript of the evidence and the record made before the commission and the district court shall either affirm or reverse the order of the commission.

Sec. 14. NEW SECTION. VIOLATIONS. Any person violating the provisions of this Act is guilty of a misdemeanor and shall be punished by a fine not to exceed one hundred dollars or imprisonment in the county jail for a period of not to exceed thirty days.

Sec. 15. INTENT. The provisions of this Act are enacted in the exercise of the police powers of this state for the purpose of protecting the health, safety and general welfare of the people of this state and because methods and practices in the marketing and distribution of motor fuel and special fuel have impaired the availability to the public of the fuel and the services supplied by distributors and dealers who have entered into a franchise agreement with their respective

suppliers.

Sec. 16. NEW SECTION. HEARING. Upon receiving an application, the commission shall order a hearing. The hearing shall be held within thirty days of receipt of the application and in accordance with the Iowa Administrative Procedure Act. The commission shall notify the franchiser or distributor of the time and place of the hearing. The commission may also give notice of the application to any other party the commission deems an interested person. The notice shall be in the form and substance and given in the manner determined by the commission.

Any person who can show an interest in the application may become a party to the hearing, whether or not he receives notice; but a party not receiving notice shall be limited to participation at the hearing on the question of the public interest in the termination or continuation of the franchise.

Sec. 17. NEW SECTION. APPEAL. Appeal may be taken from the final order of the commission by either the distributor, franchiser, dealer or any person served with notice pursuant to section four (4) of this Act, to the district court of the county where the distributor or dealer either resides or maintains his principal place of business, within thirty days from the time the decision is filed with the commission, by giving at least ten-days' notice to the commission to be served on its chairman or secretary in the same manner as original notices are now served, and by filing with the clerk of court a bond for costs in the sum of not less than five hundred dollars. Appeal shall be taken in accordance with the provisions of the Iowa Administrative Procedure Act.

Sec. 18. NEW SECTION. WAIVER. Any provision of a dealer franchise or distributor franchise which is an attempted waiver of the benefits of this Act shall be void and unenforceable.

Sec. 19. Sections sixteen (16) and seventeen (17) of this Act shall become effective July 1, 1975.

Sections four (4), seven (7), eleven (11), twelve (12) and thirteen (13) of this Act are repealed effective July 1, 1975.

ANDREW VARLEY
Speaker of the House

ARTHUR A. NEU
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 1402, Sixty-fifth General Assembly.

WILLIAM H. HARBOR
Chief Clerk of the House

Approved ________________, 1974

ROBERT D. RAY
Governor

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SENATE OF MARYLAND

No. 199
(PRE-FILED)

By: Senator McAuliffe
Requested: September 24, 1973.
Introduced and read first time: January 9, 1974.
Assigned to: Judicial Proceedings

Read second time: March 20, 1974.
Committee Report: Favorable with amendments
Senate Action: Adopted

CHAPTER _______

AN ACT concerning 41

Gasoline Products Marketing Act - 44
Marketing Agreements 45

/FOR the /purpose of /including certain oral agreements within the application of the /Maryland Gasoline Products Marketing Act, establishing certain penalties for termination or cancellation of /agreements by distributors under certain circumstances, /and prohibiting the unreasonable /refusal by distributors to renew a marketing agreement and generally /relating to marketing agreements[[.]] and providing that the Gasoline Products /Marketing Act shall constitute a statement of the public policy of this State. 50 51 52 53 54 55 56

/BY repealing and re-enacting, with amendments, 58

Article 23 - Corporations 61
Section 167C, 167E and 167F 62
Annotated Code of Maryland 63
(1973 Replacement Volume and 1973 Supplement) 64

By adding to 66
Article 23 - Corporations 67
Section 167J 68
Annotated Code of Maryland 69
(1973 Replacement Volume and 1973 Supplement) 70

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to the bill.
[[Double brackets]] enclose matter stricken out of bill.
Numerals at right identify computer units of text.
/Slashes indicate the beginning of a computer unit.

0386

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Sections 167C, 167E and 167F of Article 23 - Corporations, of the Annotated Code of Maryland (1973 Replacement Volume and 1973 Supplement) be and they are hereby repealed and re-enacted, with amendments, to read as follows:

Article 23 - Corporations

167C.

As used in this subheading, the term

(1) "Distributor" means any person engaged in the sale, consignment, or distribution of gasoline products through retail outlets which it owns or leases, and/or who maintains [a] AN ORAL OR written contractual relationship with a dealer for the sale of the products, and shall include any subsidiary or affiliated corporation in which it holds at least thirty percent voting control;

(2) "Dealer" means any person engaged in the retail sale of gasoline products under a marketing agreement entered into with a distributor, other than a person who is an employee of a distributor;

(3) "Marketing Agreement" means [a] AN ORAL OR written agreement between a distributor and a dealer under which the dealer is granted the right to use a trademark, trade name, service mark, or other identifying symbol or name owned by the distributor, and [a] AN ORAL OR written agreement between a distributor and a dealer by which the dealer is granted the right to occupy premises owned, leased or controlled by the distributor, for the purpose of engaging in the retail sale of gasoline products supplied by the distributor;

(4) "Engaged in the retail sale of gasoline products" means that at least thirty per centum of the dealer's gross revenue is derived from the retail sale of gasoline products;

(5) "Retail" means the sale of a product for purposes other than resale.

167E.

Every marketing agreement between a distributor and a dealer shall be subject to the following provisions whether or not expressly set forth therein:

(1) The dealer shall not be required to keep his retail outlet open for business for any specified number of hours per day, or days per week, unless his marketing agreement expressly sets forth the requirements;

(2) The dealer shall have the right to cancel his marketing agreement until midnight of the seventh business day after the day on which the agreement was signed, by giving the distributor in person or by certified mail written notice of cancellation, provided that any money, equipment, or merchandise loaned, sold or delivered to the dealer are returned to the distributor for full credit, or cash equivalent, together with delivery of full possession of the service station location to the distributor, within 10 days after delivery of notice; 125 126 127 128 129 130 131 132

(3) The right of either party to trial by jury or the interposition of counter-claims or cross-claims shall not by agreement be waived; 134 135

(4) The price at which the dealer sells products shall not be fixed or maintained by the distributor nor shall he seek to do so, nor shall the price of products be subject to enforcement or coercion by the distributor in any way; provided that nothing herein shall be construed to prohibit a distributor from suggesting prices and counseling with dealers concerning prices; 137 138 139 140 141

(5) No dealer shall be required to use or utilize any promotion, premium, coupon, give-away or rebate in the operation of the business. Except as otherwise provided by law, nothing herein shall be construed to prohibit a dealer from participating financially in a promotion, premium, coupon, give-away or rebate sponsored by the distributor; 143 144 145 146 147

(6) In the event of any termination or cancellation whether by mutual agreement or otherwise, a distributor shall be required to repurchase from the dealer within thirty (30) days from the date of termination at the then current wholesale prices any and all merchantable products purchased by the dealer from the distributor, provided, however, that in the event of purchase, the distributor shall have the right to apply the proceeds against any existing indebtedness owed to him by the dealer and that the repurchase obligation is enforceable to the extent that there are no other valid claims or liens against the products by or on behalf of other creditors of the dealer, AND IF THE DISTRIBUTOR TERMINATES OR CANCELS OR UNREASONABLY REFUSES TO RENEW AN AGREEMENT WITHOUT THE WRITTEN ASSENT OF THE DEALER, THE DISTRIBUTOR SHALL PAY TO THE DEALER, WITHIN 30 DAYS AFTER THE EFFECTIVE DATE OF THE TERMINATION OR CANCELLATION OR UNREASONABLE REFUSAL TO RENEW, THE FULL VALUE OF ANY BUSINESS GOODWILL ENJOYED BY THE DEALER AT THE TIME THE DEALER IS NOTIFIED OF THE CANCELLATION OR TERMINATION OR REFUSAL TO RENEW; 149 150 151 152 153 154 155 156 157 158 159 160 161

(7) No distributor shall unreasonably withhold its consent to any assignment, transfer, or sale of a 163 164

marketing agreement OR [[REASONABLY]] UNREASONABLY REFUSE TO RENEW A MARKETING AGREEMENT; 164 165

(d) With respect to non-renewal of a marketing agreement, either party must give the other party notice of his intent not to renew a marketing agreement at least 90 days prior to the expiration of the term of that marketing agreement. 167 168 169 170

167F. 172

(A) IN ADDITION TO ANY OTHER LIABILITY HEREIN PROVIDED, INCLUDING THAT SPECIFIED IN SUBSECTION 167E(7), A distributor who has a written marketing agreement with a dealer shall be liable to the dealer as provided in 167-I for the distributor's wrongful or illegal termination or cancellation of the marketing agreement during its term[[.]] OR THE DISTRIBUTOR'S UNREASONABLE REFUSAL TO RENEW THE MARKETING AGREEMENT. 174 175 176 177 178 179

SECTION 2. AND BE IT FURTHER ENACTED, That new Section 167J be and it is hereby added to Article 23 - Corporations, of the Annotated Code of Maryland (1973 Replacement Volume and 1973 Supplement) to read as follows: 181 182 183

167J. 185

THE GASOLINE PRODUCTS MARKETING ACT SHALL CONSTITUTE A STATEMENT OF THE PUBLIC POLICY OF THIS STATE. 187 188

SECTION [[2]] 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1974. 192 194

Approved:

______________________________ Governor.

______________________________ President of the Senate.

______________________________ Speaker of the House of Delegates.

Original document is of poor quality

BY: ECONOMIC MATTERS COMMITTEE

AMENDMENT TO SENATE BILL 199

In unit 158 on page 3 after the word "CANCELS" strike "OR" and insert the following: "THE AGREEMENT, EXCEPT WHERE THERE IS A MATERIAL BREACH BY THE DEALER OF THE TERMS OF THE CONTRACTUAL AGREEMENT BETWEEN THE DISTRIBUTOR AND THE DEALER OR IF THE DISTRIBUTOR".

Passed
Senate yes No NV ABSENT 6/25/74
21 0 0 1
Legislature 30 8 2 6/25/74
Signed by Gov. 6/28/74

Charlie Dinsmore

0390

1974

SPONSORS Reps. duPont, Morris; Sens. Jarvis, Zimmerman

COMMITTEE

HOUSE OF REPRESENTATIVES

127TH GENERAL ASSEMBLY

SECOND SESSION - 1974

HOUSE BILL NO. 950

AN ACT TO AMEND CHAPTER 29, PART II, TITLE 6 OF THE DELAWARE CODE RELATING TO COMMERCE AND TRADE; AND REGULATING CERTAIN TRADE PRACTICES WHICH AFFECT THE DISTRIBUTION OF MOTOR FUELS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2901, Chapter 29, Part II, Title 6 of the Delaware Code by striking said section in its entirety, and substituting in lieu thereof the following: 1 2 3

"§2901. Definitions 4

The following words, terms and phrases, when used in this Chapter, shall have the meaning ascribed to them except where the context clearly indicates a different meaning: 5 6 7

(a) 'Automotive products' shall mean any product sold or distributed by a retail dealer for use with a motor vehicle, whether or not such product is essential for the maintenance of the motor vehicle and whether or not such product is also used for non-automotive purposes; 8 9 10 11

(b) 'Deposit in advance' shall mean any deposit, regardless of its purported purpose, which is received by a distributor or manufacturer from the retail dealer as a breakage, security or other similar deposit; 12 13 14

(c) 'Distributor' shall mean any jobber or other person who purchases motor fuel and other automotive products from a manufacturer for the re-sale to a retail dealer; 15 16 17

(d) 'Marketing agreement' shall mean a written or parol agreement between a manufacturer and a retail dealer or a distributor and a retail dealer under 18 19

which (1) the dealer promises to sell or distribute the product or products of the manufacturer or distributor; (2) the retail dealer is granted the right to use a trademark, trade name, service mark or other identifying symbol or name owned by a manufacturer or distributor; or (3) the retail dealer is granted the right to occupy premises owned, leased or controlled by a manufacturer or distributor.

(e) 'Coupon' shall include stamps which are given to a customer which may later be redeemed for service or merchandise, and shall include 'green stamps', 'yellow stamps', and similar promotions;

(f) 'Manufacturer' shall mean every producer or refiner of petroleum products, or the producer or fabricator of any automotive product sold or distributed by a service station;

(g) 'Motor fuel' shall mean and include any substance or combination of substances which is intended to be or is capable of being used for the purpose of propelling or running by combustion any internal combustion engine and sold or used for that purpose;

(h) 'Retail fuel outlet' shall mean a place at which gasoline and oil are stored and supplied to service stations or to the public, and which is operated by independent contractors or by persons in the employ of such independent contractors;

(i) 'Retail dealer' shall mean and include any person operating a service station, filling station, store, garage or other place of business for the sale of motor fuel for delivery into the service tank or tanks of any vehicle propelled by an internal combustion engine."

Section 2. Amend §2903, Chapter 29, Part II, Title 6 of the Delaware Code by striking said section in its entirety, and substituting in lieu thereof the following:

"§2903. Manufacturers and Distributors

All motor fuel distributors, diesel fuel sellers, heating oil distributors selling gasoline, manufacturers, refiners, jobbers and individuals wishing to establish retail service stations shall, before selling or offering for sale motor vehicle fuels or special fuels, under whatever name, for the purposes of powering motor vehicles shall file with the Division of Consumer Affairs of the Department of Community Affairs and Economic Development a

declaration or statement that they desire to sell such products in this State. Such declaration or statement shall contain the name, brand or trademark of the products intended to be sold, together with the name and address of the supplier thereof, and a continuing covenant that all such products shall be in conformity with State standards, that no water or other adulterants shall be added to any oil or gasoline products, and that the chemical composition of products shall not be changed except after Notice to the Division of Consumer Affairs. The provisions of this section shall also apply to gasoline and other automotive fuels distributed by the Governor under emergency powers."

Section 3. Amend §2905, Chapter 29, Part II, Title 6 of the Delaware Code by striking said section in its entirety, and substituting in lieu thereof the following:

"§2905. Independence of Retail Dealers

(a) No manufacturer or distributor of petroleum products shall open a major brand, secondary brand or unbranded retail gasoline outlet or service station in the State, ~~nor shall such manufacturer or distributor operate any service station with company personnel, a subsidiary company, or a commissioned agent.~~

~~(b) No manufacturer or distributor of petroleum products shall operate any class of retail service station in the State of Delaware nor shall such manufacturer or distributor utilize any of its employees, a subsidiary company, or a commissioned agent in the operations of a service station or retail fuel outlet.~~

(c) The Division of Consumer Affairs of the Department of Community Affairs and Economic Development shall adopt rules or regulations defining the circumstances in which a manufacturer or distributor may temporarily operate a service station in times of emergency or similar special circumstances."

Section 4. Amend §2906, Chapter 29, Part II, Title 6 of the Delaware Code by striking said section in its entirety, and substituting in lieu thereof the following:

"§2906. Equal Treatment

(a) Every manufacturer, distributor or other person supplying petroleum products to retail dealers and other retail fuel outlets shall extend all

voluntary allowances uniformly to every dealer or outlet supplied.

(b) Every manufacturer, distributor or other person supplying petroleum products to retail dealers or other retail fuel outlets shall apply all equipment rentals uniformly to all dealers and outlets supplied.

(c) Every manufacturer, distributor or other person supplying petroleum products to retail dealers or other retail fuel outlets shall apportion uniformly all gasoline and special fuels supplied during periods of shortages, on an equitable basis, and shall not discriminate among dealers and outlets in such allotments."

Section 5. Amend Chapter 29, Part II, Title 6 of the Delaware Code by adding thereto a new section, designated as §2907, which new section shall read as follows:

"§2907. Equipment Purchased by Retail Dealer

Property purchased by a retail dealer and affixed or appended to a service station or retail fuel outlet shall remain the property of the person purchasing same, notwithstanding the fact that it is permanently attached. Upon termination of a marketing agreement, termination of a lease or the vacating of the premises by the retail dealer, the purchaser of the property shall have a reasonable time in which to remove same from the premises or may enter into an agreement with the owner of the premises for the purchase of the equipment at a fair and equitable price. In removing property which has become affixed to the premises, the person removing the property shall leave the premises in the same condition as they were at the time the property was attached."

Section 6. Amend Chapter 29, Part II, Title 6 of the Delaware Code by adding thereto a new section, designated as §2908, which new section shall read as follows:

"§2908. Purchase Promotion Sales

No agreement, formal or informal, shall provide for the use of any promotion, premium, coupon, give-away, or rebate in the operation of the business; provided, however, that a dealer may participate in a promotion, premium, coupon, give-away or rebate sponsored by a manufacturer or distributor and completely paid for by the manufacturer or distributor."

Section 7. Amend Chapter 29, Part II, Title 6 of the Delaware Code by

adding thereto a new section, designated as §2909, which new section shall read as follows:

"§2909. Marketing Agreements

Every marketing agreement between a manufacturer and a retail dealer or between a distributor and a retail dealer shall be subject to the following non-waivable provisions, whether or not they are expressly set forth in the agreement:

(a) No agreement shall require a retail dealer to keep his station or outlet open for business for any specified number of hours per day, or days per week.

(b) The retail dealer shall have the right to cancel a marketing agreement until midnight of the seventh business day after the day on which the agreement was signed, by giving the other party Notice in writing of the cancellation. Upon giving the other party such notice, all money, equipment and merchandise loaned, sold or delivered to the retail dealer under the agreement shall be returned to the other party for full credit, or the cash equivalent. If the other party to the agreement is the owner of the real estate upon which the retail dealer conducted his business, the dealer shall deliver full possession of the real estate back to the other party.

(c) No agreement shall contain any provision which in any way limits the right of either party to a trial by jury, the interposition of counter-claims or cross-claims.

(d) The price at which a retail dealer sells products shall not be fixed nor maintained by a manufacturer or distributor, nor shall any person seek to do so, nor shall the price of products be subject to enforcement or coercion by any person in any manner. Nothing herein shall be construed to prohibit a manufacturer or distributor from suggesting prices and counseling with dealers concerning prices. Each agreement between a manufacturer and a dealer or between a distributor and a dealer shall have, in ten-point type, the legend: 'PRICE FIXING OR MANDATORY PRICES FOR ANY PRODUCTS COVERED IN THIS AGREEMENT IS PROHIBITED. A SERVICE STATION DEALER MAY SELL ANY PRODUCTS LISTED IN THIS AGREEMENT FOR A PRICE WHICH HE ALONE MAY DECIDE.'

(e) No party to a marketing agreement with a retail dealer shall unreasonably withhold his consent to any assignment, transfer or sale of the

marketing agreement; nor may a manufacturer or distributor unreasonably refuse to renew a marketing agreement.

(f) With respect to non-renewal of a marketing agreement, either party must give the other party notice of intent not to renew the marketing agreement at least ninety days prior to the expiration of the term of that marketing agreement, and shall state the reason for such non-renewal.

(g) Notwithstanding any contract provision, no lease agreement or any other contract which bases rent upon the amount of products sold shall permit any increase in such rentals if there is a ceiling on the amount which may be charged for the product.

(h) If the marketing agreement or rental agreement requires the retail dealer to provide to the distributor or manufacturer or other party to the agreement any deposit in advance or any other deposit for the use of the service station or delivery of fuel, such deposit shall be held by the person designated to receive it in the agreement and shall be held for the term of the rental agreement unless it is sooner terminated. Within thirty days after the termination of the agreement the deposit shall be returned, together with interest on such deposit at the rate of six percent (6%) per annum."

Section 8. Amend Chapter 29, Part II, Title 6 of the Delaware Code by adding thereto a new section, designated as §2910, which new section shall read as follows:

"§2910. Termination of Contract or Franchise

(a) In the event a marketing agreement between the dealer and a distributor is terminated or cancelled, whether by mutual consent or otherwise, the distributor shall, within thirty days, tender to the dealer, for the products he sold to the dealer which the dealer has been unable to sell, the full price originally paid by the dealer for the products. In the event there is any existing indebtedness owed to the distributor by the dealer, the value of the products being re-purchased shall first be applied to the existing indebtedness, which shall be reduced not only by the value of the products re-purchased but also by the subtraction of any interest or service charges imposed on the products being re-purchased. If the distributor does not make such tender within thirty days, the dealer may sell the procuts for as reasonable a price as may be obtained, and shall have a cause of action against the distributor for the balance.

(b) In the event a marketing agreement between a dealer and manufacturer is terminated or cancelled, whether by mutual consent or otherwise, the manufacturer shall, within thirty days, tender to the dealer, for products which were sold to the dealer which the dealer has been unable to sell, the full price originally paid by the dealer for the products. In the event there is any existing indebtedness owed directly to the manufacturer by the dealer, the value of the products being re-purchased shall first be applied to the existing indebtedness, which shall be reduced not only by the value of the products re-purchased but also by the subtraction of any interest or service charges imposed on the products being re-purchased. If the manufacturer does not make such tender within thirty days, the dealer may sell the products for as reasonable a price as may be obtained, and shall have a cause of action against the manufacturer for the balance."

Section 9. Amend Chapter 29, Part II, Title 6 of the Delaware Code by adding thereto a new section, designated as §2911, which new section shall read as follows:

"§2911. Division of Consumer Affairs

The Division of Consumer Affairs of the Department of Community Affairs and Economic Development shall make such rules and regulations as it deems necessary for the proper enforcement of this Chapter, and shall utilize its facilities in carrying out the purposes of this Chapter.

~~A tax of fifty dollars ($50.00), payable to the Treasurer of the State of Delaware, shall be paid for each service station in operation. No person shall receive his license or operate a service station unless and until the tax has been paid. The funds from such tax shall be kept separate and apart by the Treasurer for payment to the Division of Consumer Affairs for the expenses of that Division in administering the provisions of this Chapter."~~

Section 10. The provisions of this Act shall be liberally construed in order to effectively carry out the purposes of this Act in the interests of the public health, welfare and safety.

Section 11. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

SYNOPSIS

This Act is intended as a retail dealers' "Bill of Rights". It provides for the regulation of certain trade practices which affect all motorists, such as adulterated gasoline, "green stamp" and other purchase promotions, price fixing, and more clearly delineates the relationships between the manufacturer or distributor of gasoline products and the retail dealer who sells these products to the public.

File No. 349

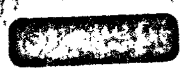
Substitute Senate Bill No. 328

Senate, April 17, 1974. The Committee on General Law reported through Senator Page of the 12th District, Chairman of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE RELATIONSHIP BETWEEN A FRANCHISOR AND A FRANCHISEE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42-133f of the general
2 statutes, as amended by section 2 of number 73-500
3 of the public acts of 1973, is repealed and the
4 following is substituted in lieu thereof:
5 (a) No franchisor shall, directly, or through
6 any officer, agent or employee, terminate, cancel
7 or fail to renew a franchise, except for good
8 cause WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO
9 THE FRANCHISEE'S REFUSAL OR FAILURE TO COMPLY
10 SUBSTANTIALLY WITH ANY MATERIAL OBLIGATION OF THE
11 FRANCHISE AGREEMENT OR FOR THE REASONS STATED IN
12 SUBSECTION (d) OF THIS SECTION. The franchisor
13 shall give the franchisee written notice of such
14 termination, cancellation or intent not to renew,
15 at least sixty days in advance to such
16 termination, cancellation or failure to renew with
17 the cause stated thereon; PROVIDED, IN THE EVENT
18 THE FRANCHISOR ELECTS NOT TO RENEW A FRANCHISE
19 PURSUANT TO SUBSECTION (d) OF THIS SECTION, THE
20 FRANCHISOR SHALL GIVE THE FRANCHISEE WRITTEN
21 NOTICE OF SUCH INTENT NOT TO RENEW AT LEAST SIX
22 MONTHS PRIOR TO THE EXPIRATION OF THE CURRENT



23 FRANCHISE AGREEMENT [and shall file a copy thereof
24 simultaneously with the commissioner of consumer
25 protection]. The provisions of this section shall
26 not apply (1) where the alleged grounds are
27 voluntary abandonment by the franchisee of the
28 franchise relationship, in which event, such
29 notice may be given fifteen days in advance of
30 such termination, cancellation or failure to
31 renew, or (2) where the alleged grounds are the
32 conviction of the franchisee in a court of
33 competent jurisdiction of an offense punishable by
34 a term of imprisonment in excess of one year and
35 directly related to the business conducted
36 pursuant to the franchise, in which event, such
37 notice may be given at any time following such
38 conviction and shall be effective upon delivery
39 and written receipt of such notice.
40 (b) Upon termination of any franchise the
41 franchisee shall be allowed fair and reasonable
42 compensation by the franchisor for the
43 franchisee's inventory, supplies, equipment and
44 furnishings purchased by the franchisee from the
45 franchisor or its approved sources and costs and
46 expenses paid to the franchisor under the terms of
47 the franchise or any ancillary or collateral
48 agreement; provided no compensation shall be
49 allowed for personalized items which have no value
50 to the franchisor.
51 (c) Notwithstanding the provisions of section
52 52-550 of the general statutes, no franchise
53 entered into or renewed on or after the effective
54 date of this act, whether oral or written, shall
55 be for a term of less than three years AND FOR
56 SUCCESSIVE TERMS OF NOT LESS THAN THREE YEARS
57 THEREAFTER UNLESS CANCELLED, TERMINATED OR NOT
58 RENEWED PURSUANT TO SUBSECTIONS (a) AND (d) OF
59 THIS SECTION.
60 (d) [Any franchisee, upon request, shall have
61 the right to have the question of good cause
62 submitted to arbitration in accordance with the
63 rules of the American Arbitration Association] A
64 FRANCHISOR MAY ELECT NOT TO RENEW A FRANCHISE
65 WHICH INVOLVES THE LEASE BY THE FRANCHISOR TO THE
66 FRANCHISEE OF REAL PROPERTY AND IMPROVEMENT, IN
67 THE EVENT THE FRANCHISOR (1) SELLS OR LEASES SUCH
68 REAL PROPERTY AND IMPROVEMENTS TO OTHER THAN A
69 SUBSIDIARY OF THE FRANCHISOR FOR ANY USE OTHER
70 THAN SUCH USE COVERED BY THE FRANCHISE AGREEMENT

OUT

71 AND SUCH SALE OR LEASE PROHIBITS SUCH USE FOR A
72 PERIOD OF EIGHTEEN MONTHS FROM THE DATE OF SUCH
73 SALE OR LEASE; OR (2) SELLS OR LEASES SUCH REAL
74 PROPERTY TO A SUBSIDIARY OF THE FRANCHISOR, EXCEPT
75 SUCH SUBSIDIARY SHALL NOT USE SUCH REAL PROPERTY
76 FOR THE OPERATION OF THE SAME BUSINESS OF THE
77 FRANCHISEE; OR (3) CONVERTS SUCH REAL PROPERTY AND
78 IMPROVEMENTS TO A USE NOT COVERED BY THE FRANCHISE
79 AGREEMENT; OR (4) HAS LEASED SUCH REAL PROPERTY
80 FROM A PERSON NOT THE FRANCHISEE AND SUCH LEASE
81 FROM SUCH PERSON IS TERMINATED OR NOT RENEWED.

(OR AFFILIATE)

82 Sec. 2. (NEW) (a) Any franchisee who
83 receives written notice as provided in section 1
84 of this act, may file a complaint alleging
85 violations of section 1 of this act with the
86 department of consumer protection within thirty
87 days of the receipt of such written notice, except
88 that a franchisee who is a retail dealer, as
89 defined in section 14-318 of the general statutes,
90 shall file such complaint with the department of
91 motor vehicles. Such department shall hold a
92 hearing on such complaint within thirty days of
93 its receipt. Within sixty days of such receipt,
94 such department shall render its decision. If
95 such department finds violations of section 1 of
96 this act, it shall order that the franchise
97 agreement be continued or renewed. Any franchisor
98 or franchisee aggrieved by the decision of such
99 department may file an appeal in accordance with
100 the provisions of section 4-183 of the general
101 statutes.

102 (b) The commissioner of consumer protection
103 or of motor vehicles may issue subpoenas to any
104 person involved with the complaint filed under
105 subsection (a) of this section or for any records,
106 papers or documents pertinent to such complaint,
107 administer an oath or affirmation to any person
108 and conduct such hearings required in subsection
109 (a) of this section.

110 Sec. 3. (NEW) (a) The commissioner of
111 consumer protection is authorized to do all things
112 necessary to apply for, qualify for and accept any
113 federal funds made available or allotted under any
114 federal act for any projects, programs or
115 activities which may be established by federal
116 law, for any of the purposes, or activities
117 related thereto, of any provisions of the general
118 statutes administered by said commissioner, and

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119 said commissioner shall administer any such funds
120 allotted to the department in accordance with
121 federal law. The commissioner may enter into
122 contracts with the federal government concerning
123 the use and repayment of such funds under any such
124 federal act, the prosecution of the work under any
125 such contract and the establishment of, and
126 disbursement from, a separate account in which
127 federal and state funds estimated to be required
128 for plan preparation or other eligible activities
129 under such federal act shall be kept. Said
130 account shall not be a part of the general fund of
131 the state or any subdivision of the state.
132 (b) The state, acting by and in the
133 discretion of the commissioner of consumer
134 protection, may enter into a contract with any
135 person for the services of such person acting as
136 an inspector appointed in accordance with the
137 provisions of section 19-327 of the general
138 statutes.
139 Sec. 4. This act shall take effect from its
140 passage.

CHAPTER 772

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THE COMMONWEALTH OF MASSACHUSETTS

IN THE YEAR ONE THOUSAND NINE HUNDRED AND SEVENTY-TWO

AN ACT PROVIDING FOR THE REGULATION OF DEALERS' AGREEMENTS FOR THE SALE OF GASOLINE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

The General Laws are hereby amended by inserting after chapter 93D the following chapter:

CHAPTER 93E

REGULATION OF DEALERS' AGREEMENTS FOR THE SALE OF GASOLINE.

Section 1. For the purpose of this chapter, the following words shall, unless the context otherwise requires, have the following meanings.

"Supplier", any person engaged in the sale, consignment or distribution of petroleum products to retail outlets.

"Dealer", any person who is not a petroleum supplier, engaged in the retail sale of gasoline to the motoring public in the commonwealth under written agreements entered into with a petroleum supplier.

"Agreement", means written agreements between a petroleum supplier and a a gasoline dealer under which the gasoline dealer is granted the right to use a trademark, trade name, service mark or other identifying symbol or name owned by the petroleum supplier.

Section 2. This chapter shall apply to agreements pertaining to the sale of gasoline and related products when (a) more than twenty per cent of the dealer's gross sales are covered by such agreement and (b) such gross sales covered by such agreement are more than twenty-five thousand dollars yearly.

Section 3. A supplier shall disclose in writing to any prospective dealer the following information, before any agreement is concluded.

(a) The gallonage volume history, if any, of the location under negotiation for and during the three year period immediately past or for the entire period which the location has been supplied by the supplier, which ever is shorter.

(b) The name and last known address of the previous dealer or dealers for the last three years, or for and during the entire period which the location has been supplied by the petroleum supplier, whichever is shorter, and the reason or reasons for the termination of each dealer agreement.

(c) Any legally binding commitments for the sale, demolition or other disposition of the location.

(d) The training programs, if any, and the specific goods and services the supplier will provide for and to the gasoline dealer.

(e) Full disclosure of any and all obligations which will be required of the dealer, including but not limited to, any obligation to exclusively deal in any of the products of the supplier, its subsidiaries or any other company or any advertising and promotional items that the dealer must accept.

(f) Full disclosure of all restrictions on the sale, transfer, renewal and termination of the agreement.

Section 4. In the event of any termination, cancellation or failure to renew, whether by mutual agreement or otherwise, a supplier shall make or cause to be made an offer in good faith to repurchase from the dealer at then current wholesale prices any and all merchantable products purchased by said dealer from the petroleum supplier, provided however, that in such event the petroleum supplier shall have the right to apply the proceeds against any existing indebtedness owed to him by the dealer and further provided that such repurchased obligation is conditioned upon there being no other claims or liens against such products by or on behalf of other creditors of the dealer.

Section 5. It shall be unlawful for a supplier to:-

(a) Cancel or terminate an agreement prior to its expiration date unless the dealer has defaulted under any term, condition or obligation set forth in his agreement.

(b) Fail to renew an agreement without giving the dealer written notice of the election not to renew at least sixty days prior to the expiration of the agreement. Such failure to renew shall be for cause, and shall include, but not be limited to, grounds for cancellation or termination under subsection (a)

Section 6. No supplier shall hinder, coerce or threaten any dealer for the purpose of preventing him from joining any trade association made up of dealers.

Section 7. A dealer may bring an action for damages sustained as a result of (1) Failure to make such disclosures as are required in section three; or (2) failure to make an offer in good faith to repurchase as required in section four; or (3) wrongful termination of or failure to renew his agreement as set forth in section five; or (4) any violation of section six. This remedy is in addition to all other remedies available under contract or provided by law. If the court finds that the violation of this chapter has been willful the court may allow reasonable attorney fees.

Section 8. No action may be brought under this chapter for a cause of action which arose more than one year prior to the date such action is brough

Section 9. This chapter shall apply only to agreements entered into, renewed or amended on or after November first, nineteen hundred and seventy-two.

House Of Representatives, July 1972

Passed to be enacted, Speaker

In Senate, July 1972

Passed to be enacted, President

1972 Approved, Governor.

Section 9. This chapter shall apply only to agreements entered into, renewed or amended on or after November first, nineteen hundred and seventy-two.

House of Representative, July 1972

Passed to be enacted. Speaker

In Senate, July 1972

Passed to be enacted. President

1972
Approved.

Governor.

New Jersey Franchise L

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CHAPTER 10. FRANCHISES [NEW]

Sec.

56:10-1. Short title.
56:10-2. Legislative findings.
56:10-3. Definitions.
56:10-4. Franchises to which act applicable.
56:10-5. Termination of franchise; notice; grounds.
56:10-6. Transfer of franchise; notice; approval; agreement of compliance.
56:10-7. Prohibited practices.
56:10-8. Application of act to prior grants of franchises.
56:10-9. Action against franchisor; defenses.
56:10-10. Action against franchisor; damages; injunction; costs.
56:10-11. Severability.
56:10-12. Limitation of liability of franchisor, its officers, agents or employees for furnishing information.

Law Review Commentaries
Right of franchisor to terminate franchise. (1973) 4 Seton Hall L.Rev. 683.

Library references
Trade Regulation ⟹871.
C.J.S. Trade-Marks, Trade-Names and Unfair Competition § 237.

56:10-1. Short title

This act shall be known and may be cited as the "Franchise Practices Act."
L.1971, c. 356, § 1, eff. Dec. 21, 1971.

Title of Act:
An Act to prohibit unfair practices in franchising and supplementing Title 56 of the Revised Statutes. L.1971, 356.

1. Construction and application
The Franchise Practices Act applies to a lease agreement which is part of the franchise or which is ancillary to the franchise agreement, and thus precludes franchisor-lessor from terminating lease except for good cause and upon at least 60 days' written notice setting forth all the reasons therefor. Shell Oil Co. v. Marinello, 120 N.J.Super. 357, 294 A.2d 253 (1972), modified on other grounds 63 N.J. 402, 307 A.2d 598; Marinello v. Shell Oil Co., 120 N.J.Super. 357, 294 A.2d 253 (1972), modified on other grounds 63 N.J. 402, 307 A.2d 598.

56:10-2. Legislative findings

The Legislature finds and declares that distribution and sales through franchise arrangements in the State of New Jersey vitally affects the general economy of the State, the public interest and the public welfare. It is therefore necessary in the public interest to define the relationship and responsibilities of franchisors and franchisees in connection with franchise arrangements.
L.1971, c. 356, § 2, eff. Dec. 21, 1971.

Library references
Contracts ⟹1.
C.J.S. Contracts § 1 et seq.

1. In general
Though the Franchise Practices Act does not apply to preexisting agreements, preexisting service station franchise arrangement would be subjected to scrutiny in light of the legislative declaration of public interest in the subject matter of the franchise and lease agreements. Shell Oil Co. v. Marinello, 120 N.J.Super. 357, 294 A.2d 253 (1972), modified on other grounds 63 N.J. 402, 307 A.2d 598; Marinello v. Shell Oil Co., 120 N.J.Super. 357, 294 A.2d 253 (1972), modified on other grounds 63 N.J. 402, 307 A.2d 598; Marinello v. Shell Oil Co., 120 N.J.Super. 357, 294 A.2d 253 (1972), modified on other grounds 63 N.J. 402, 307 A.2d 598.

56:10-3. Definitions

As used in this act:

a. "Franchise" means a written arrangement for a definite or indefinite period, in which a person grants to another person a license to use a trade name, trade mark, service mark, or related characteristics, and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement or otherwise.

b. "Person" means a natural person, corporation, partnership, trust, or other entity and, in case of an entity, it shall include any other entity which has a majority interest in such entity or effectively controls such other en-

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tity as well as the individual officers, directors, and other persons in active control of the activities of each such entity.

c. "Franchisor" means a person who grants a franchise to another person.

d. "Franchisee" means a person to whom a franchise is offered or granted.

e. "Sale, transfer or assignment" means any disposition of a franchise or any interest therein, with or without consideration, to include but not limited to bequest, inheritance, gift, exchange, lease or license.

f. "Place of business" means a fixed geographical location at which the franchisee displays for sale and sells the franchisor's goods or offers for sale and sells the franchisor's services. Place of business shall not mean an office, a warehouse, a place of storage, a résidence or a vehicle.

L.1971, c. 356, § 3, eff. Dec. 21, 1971.

Library references
Words and Phrases (Perm. Ed.).

56:10-4. Franchises to which act applicable

This act applies only to a franchise (1) the performance of which contemplates or requires the franchisee to establish or maintain a place of business within the State of New Jersey, (2) where gross sales of products or services between the franchisor and franchisee covered by such franchise shall have exceeded $35,000.00 for the 12 months next preceding the institution of suit pursuant to this act, and (3) where more than 20% of the franchisee's gross sales are intended to be or are derived from such franchise.

L.1971, c. 356, § 4, eff. Dec. 21, 1971.

Library references
Contracts ⟹2, 144.
C.J.S. Contracts § 12 et seq.

1. Construction and application

Where lease of service station premises and dealer agreement were entered into simultaneously, had same commencement and expiration dates, and expressly referred to service station premises, lease and dealer agreement were integral parts of a single business relationship, basically that of a franchise, and oil company could not successfully claim that its lease of station was independent of its dealer agreement and that its legal rights as a landlord under lease were absolute and could not be restricted. Shell Oil Co. v. Marinello, 63 N.J. 402, 307 A.2d 598 (1973).

The Franchise Practices Act applies to a lease agreement which is part of the franchise or which is ancillary to the franchise agreement, and thus precludes franchisor-lessor from terminating lease except for good cause and upon at least 60 days' written notice setting forth all the reasons therefor. Shell Oil Co. v. Marinello, 120 N.J.Super. 357, 294 A.2d 253 (1972); Marinello v. 2d 253 (1972), modified on other grounds 63 N.J. 402, 307 A.2d 598.

56:10-5. Termination of franchise; notice; grounds

It shall be a violation of this act for any franchisor directly or indirectly through any officer, agent, or employee to terminate, cancel, or fail to renew a franchise without having first given written notice setting forth all the reasons for such termination, cancellation, or intent not to renew to the franchisee at least 60 days in advance of such termination, cancellation, or failure to renew, except (1) where the alleged grounds are voluntary abandonment by the franchisee of the franchise relationship in which event the aforementioned written notice may be given 15 days in advance of such termination, cancellation, or failure to renew; and (2) where the alleged grounds are the conviction of the franchisee in a court of competent jurisdiction of an indictable offense directly related to the business conducted pursuant to the franchise in which event the aforementioned termination, cancellation or failure to renew may be effective immediately upon the delivery and receipt of written notice of same at any time following the aforementioned conviction. It shall be a violation of this act for a franchisor to terminate, cancel or fail to renew a franchise without good cause. For the purposes of this act, good cause for terminating, canceling, or failing to renew a franchise shall be lim-

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ited to failure by the franchisee to substantially comply with those requirements imposed upon him by the franchise.
L.1971, c. 356, § 5, eff. Dec. 21, 1971.

Library references
Contracts ⚘217, 271.
C.J.S. Contracts §§ 397, 402, 435, 449.

Index to Notes

Evidence 2
Service stations 1

1. Service stations
Public policy of state restricts unilateral right of oil company to terminate, cancel or fail to renew lease and dealer agreement with one of its service station operators to situation where "good cause" for such action exists. Texaco, Inc. v. Appleget, 63 N.J. 411, 307 A.2d 603 (1973).

Public policy of state restricted right of oil company to terminate, cancel or fail to renew franchise, including lease, in absence of a showing that service station operator had failed to substantially perform his obligations under lease and dealer agreement, i. e., for good cause. Shell Oil Co. v. Marinello, 63 N.J. 402, 307 A.2d 598 (1973).

2. Evidence
Evidence supported finding that service station operator had substantially performed his obligations in a satisfactory manner and had not given oil company any just cause to terminate lease and franchise. Shell Oil Co. v. Marinello, 63 N.J. 402, 307 A.2d 598 (1973).

56:10-6. Transfer of franchise; notice; approval; agreement of compliance

It shall be a violation of this act for any franchisee to transfer, assign or sell a franchise or interest therein to another person unless the franchisee shall first notify the franchisor of such intention by written notice setting forth in the notice of intent the prospective transferee's name, address, statement of financial qualification and business experience during the previous 5 years. The franchisor shall within 60 days after receipt of such notice either approve in writing to the franchisee such sale to proposed transferee or by written notice advise the franchisee of the unacceptability of the proposed transferee setting forth material reasons relating to the character, financial ability or business experience of the proposed transferee. If the franchisor does not reply within the specified 60 days, his approval is deemed granted. No such transfer, assignment or sale hereunder shall be valid unless the transferee agrees in writing to comply with all the requirements of the franchise then in effect.
L.1971, c. 356, § 6, eff. Dec. 21, 1971.

Library references
Assignments ⚘58.
C.J.S. Assignment § 75 et seq.

56:10-7. Prohibited practices

It shall be a violation of this Act for any franchisor, directly or indirectly, through any officer, agent or employee, to engage in any of the following practices:

a. To require a franchisee at time of entering into a franchise arrangement to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this act.

b. To prohibit directly or indirectly the right of free association among franchisees for any lawful purpose.

c. To require or prohibit any change in management of any franchisee unless such requirement or prohibition of change shall be for good cause, which cause shall be stated in writing by the franchisor.

d. To restrict the sale of any equity or debenture issue or the transfer of any securities of a franchise or in any way prevent or attempt to prevent the transfer, sale or issuance of shares of stock or debentures to employees, personnel of the franchisee, or heir of the principal owner, as long as basic financial requirements of the franchisor are complied with, and provided any such sale, transfer or issuance does not have the effect of accomplishing a sale of the franchise.

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e. To impose unreasonable standards of performance upon a franchisee.

f. To provide any term or condition in any lease or other agreement ancillary or collateral to a franchise, which term or condition directly or indirectly violates this act.

L.1971, c. 356, § 7, eff. Dec. 21, 1971.

Library references
Contracts ⟹105.
C.J.S. Contracts § 201.

1. Leases or other agreements

Where franchise arrangement between oil company and dealer involved economic imbalance between the parties and absence of free bargaining, standard form of agreement imposed by the oil company, and reasonable expectations of the parties that the relationship would continue if dealer substantially performed his obligations, and where it would be harmful to the public interest if contract provisions allowing termination without cause were enforced by the oil company, the service station lease and the dealer agreement would be subjected to the implied covenant that oil company would renew the agreements as long as dealer substantially performed his obligations to the oil company. Shell Oil Co. v. Marinello, 120 N.J.Super. 357, 294 A.2d 253 (1972); Marinello v. Shell Oil Co., 120 N.J.Super. 357, 294 A.2d 253 (1972), modified on other grounds 63 N.J. 402, 307 A.2d 598.

The Franchise Practices Act applies to a lease agreement which is part of the franchise or which is ancillary to the franchise agreement, and thus precludes franchisor-lessor from terminating lease except for good cause and upon at least 60 days' written notice setting forth all the reasons therefor. Id.

56:10-8. Application of act to prior grants of franchises

This act shall not apply to a franchise granted prior to the effective date of this act, provided, however, that a renewal of a franchise or an amendment to an existing franchise shall not be excluded from the application of this act.

L.1971, c. 356, § 8, eff. Dec. 21, 1971.

1. Construction and application

Public policy of state restricted right of oil company to terminate, cancel or fail to renew franchise, including lease, in absence of a showing that service station operator had failed to substantially perform his obligations under lease and dealer agreement, i. e., for good cause. Shell Oil Co. v. Marinello, 63 N.J. 402, 307 A.2d 598 (1973).

All preexisting franchises were intended to be exempt from any of the regulatory features of the Franchise Practices Act, and provision that "a renewal of a franchise or an amendment to an existing franchise shall not be excluded from the application of this Act" does not result in application of the Act to failure to renew a franchise agreement which was entered into before the effective date of the Act. Shell Oil Co. v. Marinello, 120 N.J.Super. 357, 294 A.2d 253 (1972); Marinello v. Shell Oil (1972), modified on other grounds 63 N.J. 402, 307 A.2d 598.

Neither oral agreement with respect to enforcement of service station lease provision requiring 24-hour service nor dealer's giving oil company a substantial order for accessories, each after the effective date of the Franchise Practices Act, constituted an amendment of either the lease or the dealer agreement so as to subject to the provisions of the Act the preexisting franchise arrangement between the dealer and the oil company. Id.

Though the Franchise Practices Act does not apply to preexisting agreements, preexisting service station franchise arrangement would be subjected to scrutiny in light of the legislative declaration of public interest in the subject matter of the franchise and lease agreements. Id.

56:10-9. Action against franchisor; defenses

It shall be a defense for a franchisor, to any action brought under this act by a franchisee, if it be shown that said franchisee has failed to substantially comply with requirements imposed by the franchise and other agreements ancillary or collateral thereto.

L.1971, c. 356, § 9, eff. Dec. 21, 1971.

56:10-10. Action against franchisor; damages; injunction; costs

Any franchisee may bring an action against its franchisor for violation of this act in the Superior Court of the State of New Jersey to recover damages sustained by reason of any violation of this act and, where appropriate, shall be entitled to injunctive relief. Such franchisee, if successful, shall also be entitled to the costs of the action including but not limited to reasonable attorney's fees.

L.1971, c. 356, § 10, eff. Dec. 21, 1971.

Library references
Actions ⟹34.
Injunctions ⟹59(1), 89(5).
C.J.S. Actions § 5.
C.J.S. Injunctions §§ 80, 123 et seq.

56:10-11. Severability

If any provision of this law or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions

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or applications of the law which can be given effect without the invalid provision or application, and to this end the provisions of this law are severable. L.1971, c. 356, § 11, eff. Dec. 21, 1971.

Library references
Statutes ⚷64(1).
C.J.S. Statutes § 92 et seq.

56:10-12. Limitation of liability of franchisor, its officers, agents or employees for furnishing information

No liability on the part of and no cause of action of any nature other than as provided by this act shall arise against any franchisor, its officers, agents or employees furnishing information as to reasons for termination, cancellation, intent not to renew, failure to renew, unacceptability of a proposed transferee, or relating to the character, financial ability or business experience of a proposed transferee, or for statements made or evidence submitted at any hearing or trial conducted in connection therewith.
L.1971, c. 356, § 12, eff. Dec. 21, 1971.

Library references
Libel and Slander ⚷41.
C.J.S. Libel and Slander §§ 89 et seq., 107 et seq.

INDEX

CONSULT GENERAL INDEX POCKET PART

KAREN MAYES

A.B. 265

AMENDMENTS TO AB-265

1. Page 1, Sec. 2, Sub. Sec. 2, Line 8:

   Insert after word "written" the words "or oral".

2. Page 2, Line 34, (b) change number "30" to "90".

3. Page 2, Line 44, Sub-sec. 3, delete word "crime" and insert in lieu thereof word "felony".

Also: Dealer should be compensated for good will in case of termination of lease.

Dealer's lease should be for at least five years.

Vargas
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Robert List, Attorney General, and *Robert O. Vaughan,* of Elko, City Attorney, for Respondent, The City of Wells.

1. HABEAS CORPUS.

   Habeas corpus was proper remedy to determine constitutionality of ordinances for violations of which petitioner was arrested. U.S.C.A.Const. Amend. 14; Const. art. 1, § 8.

2. CONSTITUTIONAL LAW.

   City ordinances prohibiting delivery of gasoline, within limited areas of city, into underground storage tanks of service stations and garages from a truck or truckwagon vehicle having a capacity in excess of 2000 gallons plus ten percent tolerance did not bear a reasonable relationship to declared objective of public safety and hence denied due process in view of showing that it was safer to deliver a given amount of gasoline with one load and dump than with several, and take delivery of gasoline by gravity flow to underground tanks was safer than delivery by pumping to overhead or surface storage tanks. U.S.C.A.Const. Amend. 14; Const. art. 1, § 8.

3. CONSTITUTIONAL LAW.

   City ordinances prohibiting delivery of gasoline, within limited areas of city, into underground storage tanks of service stations and garages from a truck or truckwagon vehicle having a capacity in excess of 2000 gallons plus ten percent tolerance are unconstitutional as denying equal protection of the laws since they are invidiously discriminatory in application since they do not apply to aboveground storage tanks, nor to all underground storage tanks within the city. U.S.C.A.Const. Amend. 14; Const. art. 1, § 8.

OPINION

By the Court, THOMPSON, J.:

[Headnote 1]

Emergency Ordinances Nos. 62 and 81 of the City of Wells prohibit the delivery of gasoline, within limited areas of the city, into underground storage tanks of service stations and garages from a truck or truckwagon vehicle having a capacity in excess of 2000 gallons plus ten percent tolerance. The ordinances do not apply to aboveground bulk storage tanks. Purportedly, they were enacted to decrease the danger of fire and thus promote public safety. The petitioner was arrested for violating the ordinances and, by this original proceeding for a writ of habeas corpus, seeks to be discharged from restraint. It is his contention that the prohibitions of the ordinances deny due process of law and equal protection of the laws in violation of the Fourteenth Amendment of the United States Constitution, and of the corresponding due process clause of our State

Constitution, art. 1, § 8. The selected remedy is appropriate. In re Laiolo, 83 Nev. 186, 426 P.2d 726 (1967); In re Philipie, 82 Nev. 215, 414 P.2d 949 (1966); NRS 34.500(4).[1] Evidence was presented to a district court and the entire record has been certified to this court for decision.

1. The petitioner was arrested because he delivered 9300 gallons of gas from a tanker trailer having a capacity of 9500 gallons, to an underground storage tank of a service station in the City of Wells. This single delivery at the station was accomplished in about forty minutes by the petitioner alone. To deliver equal gallonage in compliance with the ordinances would require multiple deliveries from a smaller truck, greater time, more personnel, and increased cost.

The following conclusions are solidly established by the record. First, the greatest danger of spillage and possible fire is presented when the gasoline is being transferred from the tank truck to the storage tank. Second, the danger of spillage from unloading a truck having a capacity in excess of 2200 gallons is no greater than the danger encountered in unloading gasoline from a truck having a capacity of less than 2200 gallons. Third, the danger of spillage and possible fire from unloading gasoline increases in direct proportion to the number of times the gasoline is handled at the transfer point, that is, from the truck to the storage tank. In short, it is safer to deliver a given amount of gasoline with one load and dump than with several. Once the gasoline is deposited underground, a significant hazard no longer exists. The safety objective is to decrease the number of occasions needed to refill underground tanks. Fourth, the delivery of gasoline by gravity flow to underground tanks is safer than delivery by pumping to overhead or surface storage tanks. These conclusions are not substantially denied by any evidence offered by the City.

The City does urge, however, that the ordinances are constitutional. The City points to the fact that the aboveground storage tanks and the non-affected underground tanks are not located within the populated area of the city, and that their exclusion from the ordinances is, therefore, reasonable and not discriminatory. With regard to public safety, the City contends

[1]The petitioner has not directly put in issue the propriety of the city council's action in enacting the ordinances as emergency measures. Cf. Ames v. City of North Las Vegas, 83 Nev. 510, 435 P.2d 202 (1967); Penrose v. Whitacre, 61 Nev. 440, 132 P.2d 609 (1942); Carville v. McBride, 45 Nev. 305, 202 P. 802 (1922); Chartz v. Carson City, 39 Nev. 285, 156 P. 925 (1916).

that large tank trucks moving along the main street where most of the service stations are located pose a greater traffic hazard than do the more maneuverable smaller trucks. Moreover, the City emphasizes the limited capability of its volunteer fire department to cope with the possibility of a large conflagration should total spillage of 9500 gallons occur from a large tank truck during the unloading process.

The City's argument has surface appeal, but that is all. Once it is shown that a single delivery of a given amount of gas from a large tank truck is safer than multiple deliveries from a truck of lesser capacity, the populated area of the city is best protected by requiring single deliveries and refills, rather than by prohibiting them. The ordinances may not be justified as traffic safety measures since they were not enacted for that purpose. In any event, it is questionable whether their enforcement would lessen the risk of accident since multiple deliveries increase the volume of traffic. Finally, the City's effort, through an expert witness, to hypothetically create the specter of a large conflagration from the possibility of a total spillage of 9500 gallons occurring from a large tank truck during delivery to a storage tank must be ignored since the record contains no information that such a total spillage has ever happened in Wells or elsewhere. Cf. Beasley v. State, 81 Nev. 431, 404 P.2d 911 (1965).

2. Although the case of Leathers v. City of Burns, 444 P.2d 1010 (Ore. 1968), may be read to support the City's position, the great majority of cases condemn similar prohibitory ordinances.

[Headnote 2]

In this case, as in State v. Redman Petroleum Corp., 77 Nev. 163, 360 P.2d 842 (1961), we find no good reason to depart from the majority view. Those cases declare that the prohibitions of the ordinances similar to those enacted by the City of Wells do not, in fact, bear a reasonable relationship to the declared objective of public safety and, therefore, deny due process. Humble Oil and Refining Co. v. City of Georgetown, 428 S.W.2d 405 (Civ.App.Tex. 1968); City of Colorado Springs v. Grueskin, 422 P.2d 384 (Colo. 1967); Standard Oil Company v. City of Gadsden, 263 F.Supp. 502 (U.S.D.Ct.Ala. 1967); Clark Oil & Refining Corp. v. City of Tomah, 141 N.W.2d 299 (Wis. 1966); McCoy v. Town of York, 8 S.E.2d 905 (S.C. 1940). The record before us compels the same conclusion.

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[Headnote 3]

Moreover, the Emergency Ordinances are invidiously discriminatory in application since they do not apply to aboveground storage tanks, nor to all underground storage tanks within the City, thereby violating the command of equal protection of the laws. Humble Oil and Refining Co. v. City of Georgetown, supra; Ex Parte Rodgers, 371 S.W.2d 570 (Ct.Cr.App.Tex. 1963); Standard Oil Co. v. City of Charlottesville, 42 F.2d 88 (4 Cir. 1930).

We hold that Emergency Ordinances 62 and 81 of the City of Wells are unconstitutional. The petition of Al Martin for a writ of habeas corpus is granted and he is ordered released from restraint forthwith.

Zenoff, C. J., and Batjer, Mowbray, and Gunderson, JJ., concur.

LEON HARDISON, Appellant, *v.* JAMES P. CARMANY, WILLIAM H. BRIARE, JAMES A. BRENNAN, ROBERT N. BROADBENT, DARWIN W. LAMB, JAMES C. RYAN, DAVID B. HENRY and GEORGE E. FRANKLIN, Jr., Respondents.

No. 6731

December 15, 1972 504 P.2d 1

Appeal from judgment of the Eighth Judicial District Court, Clark County, denying relief sought by petition for writ of mandamus; Howard W. Babcock, Judge.

Petition for writ of mandamus ordering reinstatement of petitioner, an employee of Clark County Juvenile Services, with pay accruing since his discharge. The district court denied relief, and petitioner appealed. The Supreme Court, Gunderson, J., held that evidence was sufficient to show that juvenile service officer was not removed because of some proven dereliction of a substantial nature directly affecting the rights and interests of the public, but that he was discharged simply on the mere will of his superior, so that officer was entitled to be reinstated.

Reversed, with instructions.

Mowbray, J., dissented in part.

Charles L. Kellar, of Las Vegas, for Appellant.

Robert List, Attorney General, of Carson City; *Roy A. Woofter*, District Attorney, *Richard E. Vogel*, Deputy District

OARGAS

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January 24, 1975

MEMORANDUM

TO: MR. RICK CUSACK
MR. DAVID KORETSKY
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MR. W. W. MADDEN
Coordinator, Planning and
Evaluation, Marketing Dept.
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FROM: J. ROBERT McCLURE, JR.
Attorney At Law
Post Office Box 1716
Tallahassee, Florida 32302

AB 268

SUBJECT: EXXON, et al v. CONNER, et al
Circuit Court, Leon Co., Florida
#74-1449, #74-1577, #74-1772

Bob Abrams has today asked me to forward each of you the enclosed copy of the Final Judgment received by me today in the above matter.

JRM

JRM/nsh

AIR MAIL

cc: Robert G. Abrams, Esq.

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA.

EXXON CORPORATION, 1251 Avenue of the Americas, New York, New York, Plaintiff,	:	CASE NO. 74-1449
SHELL OIL COMPANY, One Shell Plaza, Houston, Texas 77001; and UNION OIL COMPANY OF CALIFORNIA, a California Corporation, Plaintiffs,	:	CASE NO. 74-1577
PHILLIPS PETROLEUM COMPANY, a Delaware corporation, and SUPERIOR OIL COMPANY, a Florida corporation, Plaintiffs,	:	CASE NO. 74-1772
vs.	:	
DOYLE CONNER, as Commissioner of Agriculture and Consumer Services of the State of Florida, and the DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES of the State of Florida, Defendants.	:	

FINAL JUDGMENT

This cause came on for final hearing on the pleadings, stipulations, admissions, answers to interrogatories and on the affidavits, depositions and other evidentiary papers on file (all of which is stipulated to constitute the record and evidence in these cases), and on the briefs and oral argument of counsel for the parties, and the Court having considered same and being otherwise advised, it is

DECLARED, ORDERED and ADJUDGED:

1. The several plaintiffs in these cases are producers and/or refiners of petroleum products, and a subsidiary of a producer, and are engaged in the marketing of their products in

Florida through various retail outlets. The petroleum products are refined outside of the state of Florida and shipped into the state. Such outlets include service stations owned or leased by the plaintiffs and operated by their salaried employees; independent service station operators who buy from plaintiffs and sell under "brand names" or under private brand names; operators who buy from jobbers who have purchased petroleum products from the plaintiffs; and various other independent retailers. The plaintiffs have challenged the validity of Chapter 74-387, Laws of Florida 1974, which created Section 526.151, Florida Statutes.

2. This statute provides that after October 1, 1974

> "No producer, refiner, or a subsidiary of any producer or refiner, shall operate with company personnel, in excess of three per cent of the total number of all classes of retail service stations selling its petroleum products, under its own brand or a secondary brand." Subsection 1.

It also provides:

> "2. Every producer or refiner of petroleum products supplying gasoline and special fuels to retail service station dealers shall apply all equipment rental charges uniformly to all retail service station dealers which they supply.
> 3. Provided, however, this act shall not apply to any service station operated by a producer or refiner of petroleum products who purchases or obtains more than 90% of the unrefined petroleum products from another producer or refiner of petroleum products.
> 4. A circuit court or circuit judge shall have jurisdiction . . . to grant an injunction restraining any person from violating or continuing to violate any of the provisions of this act."

3. This Court has already defined the term "service station" as used in the statute to mean "retail service stations offering a full line of automotive service, including the sale of petroleum products, the sale of tires, batteries and accessories, and the performance of automobile repair and maintenance work". Direct Oil Corp., et al. v. Doyle Connor, et al., Case No. 74-1185 (Circuit Court of Leon County). Thus the statute does not apply to retail outlets, whether producer operated or otherwise, which merely sell gasoline and oil or which are less than full service

operations involving the sale of accessories and repair and maintenance services.

4. The apparent object of the statute is to severely limit the right of producers, refiners and their subsidiaries to operate with their own personnel retail service stations in the state. It also seeks to require uniformity in rental charges by producers and refiners to retail service station dealers which they supply.

5. The statute is assailed as being an unconstitutional invasion of rights to operate a legitimate business; that it is an invalid exercise of police power; that it is unconstitutionally vague, indefinite and ambiguous; that it is a burden on interstate commerce; that it denies due process of law; denies equal protection of the law; is a taking of private property without just compensation; and is in conflict with the purpose and effect of the Federal Emergency Petroleum Allocation Act of 1973 (87 Stat. 627).

6. At the outset the Court is confronted with the rule that every legislative act is presumed to be valid and that all doubts must be resolved in favor of its constitutionality. One challenging the constitutionality of a statute must overcome that presumption, and if there is any reasonable theory upon which it can be upheld the Court must adopt it. The Court must adopt an interpretation which supports the statute if consistent with reason, rather than one which strikes it down. Courts are not permitted to strike down an act because it fails to square with the individual social or economic theories which the judges deem to be sound policy. See Ball v. Branch, 154 Fla. 7, 16 So. 2d 650 (1944). See also notes 115-123 under Fla. Const. Art. 3, Sec. 1, Vol. 25 AFSA pp. 567-572.

7. On the other hand, the Courts have the duty to inquire whether a statute brought into question is within constitutional limits, when such statute rests upon the police

power of the state, as the right to own, hold and enjoy property is nearly absolute and may be abridged only when the public health, safety, morals or welfare requires it. See Liquor Store v. Continental Distilling Corp., Fla. Sup. Ct. 1949, 40 So. 2d 371. Our constitutions, both state and federal, guarantee a certain liberty of action of its citizens and such guaranties preclude the state from forbidding the citizen's inherent right to engage in useful and legitimate business, though they do not prevent reasonable regulation. The test of validity is not what is set forth in the letter of the Act, but how it is operative in its practical application and effect. Riley v. Sweat, 110 Fla. 362, 149 So. 38. Stated another way, as in State v. Leone, Fla. Sup. Ct. 1960, 118 So. 2d 781 where it is said:

> "The limitation [on police power] is such that the police power may be used so as to interfere with the . . . constitutionally protected right of the individual to pursue a lawful business, or so as to discriminate against an individual, or class, where the public interest demands that the rights of the individual, or class give way in favor of the public generally. . . ." ". . . it must first be clear that the purpose to be served is not merely desirable but one which will so benefit the public as to justify interference with or destruction of private rights." ". . . Such interference or sacrifice of private rights can never be justified or sanctioned merely to make it more convenient or easier for the state to achieve the desirable end."

8. It is not contended, nor could it be, that the sale at retail of petroleum products is other than a legitimate business, or that limiting the number of company operated service stations is in any way related to public safety, health or morals. It is asserted that it does promote public welfare in that it protects the independent dealers from the great oil producers who, through their own service stations, can force them out of business or render their operations unprofitable. It has been held that in some cases the exercise of police power is justified to promote the economic welfare of the community. Eskind v. City of Vero Beach, Fla. Sup. Ct. 1963, 159 So. 2d 209. However, to

be valid such must have its foundation in reason and general community welfare. It must not impose discriminatory restrictions on the activities of a carefully selected business while permitting others similarly conditioned to engage in the prohibited activity. Discriminatory legislation damaging to one segment of a class of businesses and beneficial to another segment is not a valid exercise of the power. Eskind v. City of Vero Beach, supra. The real test of validity of police power is found in the effect which the pursuit of the calling involved has on the public weal rather than in the inherent nature of the calling. State ex rel Davis v. Rose, 97 Fla. 710, 122 So. 225. The state cannot arbitrarily interfere in private businesses or impose unreasonable and unnecessary restrictions upon them under the guise of protecting the public. A statute exercising police power must be supported by some sound basis of necessity to protect public welfare. It must not discriminate in its application and impact between individuals engaged in the same business, and if there is no reasonably identifiable rational relationship between the demands of the public welfare and the restraint upon the private business the latter will not be permitted to stand. Eskind v. City of Vero Beach, supra. As said in Connor v. Sullivan, Fla. DCA 1, 1963, 160 So. 2d 120:

> "Despite many inroads during recent years on the people's economic freedoms throughout the country on both state and federal levels, the principle still stands that the exercise of the police power cannot extend beyond reasonable interferences with the liberty of action of individuals as are really necessary to protect the public health and welfare."

9. Without examining in minute detail the extent of limitation sought to be imposed on company operated service stations or the mathematical difficulties which are involved in determining what the universe may be in computing the three per cent maximum which the statute sets as a limit, the Court will consider whether any restraint of this kind is a valid exercise

of the police power. The obvious result of restraint in the number of service stations a producer or refiner may operate is to reduce competition with the independent operators of such stations. The evidence indicates that company operated stations generally sell gasoline at lower prices than the independents. It is also shown that the oil industry is not concentrated in the hands of a few producers. In 1973 the largest was only 12% of the total domestic production, with 10 1/2% the largest in gasoline marketing nationally and 11 1/2% in Florida. The average retail dealer margin has nearly doubled since 1972 which results in higher profits to dealers. This is justified and is no criticism of the independent dealer, as he was confronted during the shortage with a reduced available gallonage for sale. However, since the shortage has been relieved these margins are largely maintained and they probably should be. It appears that as a general rule the tendency on the part of producers is to market the great bulk of their gasoline and other petroleum products through jobbers and independent dealers. The company operated station is employed largely when a company is breaking into new territory when there is a natural reluctance on the part of independent dealers or jobbers to make the investment and effort to market an untried product. Even so, it appears that once the market is established there is a definite trend for the company stations to be transferred to dealers as opportunities present themselves. Another instance of company operations is in certain specialized or innovative marketing techniques. Tunnel car washes which offer wash and wax services in connection with gasoline sales are an example. This perhaps meets a public need for car washes which had practically disappeared from most service stations, due to high labor costs and space limitations. The company stations also function to provide standards of service to promote public relations, and customer acceptance of its brand products. This serves to provide an

incentive to independents who may not be otherwise motivated to attend to the public needs for service station services.

10. Automobile owners have a great variety of needs and preferences in selecting the type of service in retail outlets of the fuel for their vehicles. Some are totally price conscious and will patronize the outlet which has the lowest per gallon charge, regardless of other services present or absent. Some desire the full service with battery, water and oil checks, availability of tires, batteries and other accessories and a reasonably competent mechanic to make repairs when necessary. Some are interested in other goods and services not related to the automobile, such as availability of beverages, snacks, souvenirs, telephones, trailer rentals, and even restaurants and overnight accomodations. The traveling motorist is certainly interested in rest rooms, which are perhaps one of the most essential of facilities expected of a service station. The station dependent upon local trade is concerned with maintaining good relations to build up a satisfactory custom. The cashing of checks, ordering some special item, keeping records of maintenance and a myriad of other real or fancied needs make up the operation. Independent dealers often charge higher gallon prices than others to cover the services they render, finding that the customers are willing to pay such a premium for the added attentions they get. Independent dealers also establish their own hours of operation, arranging such as they deem desirable. Company stations often arrange hours of operation to provide some service at all reasonable hours in the area.

11. Taking all into account the evidence indicates that the public would not be benefitted in any degree by the curtailment of company operated stations. Indeed the lessened competition to other stations would have a tendency to decrease the availability of needed goods and services, to lessen incentive

to maintenance of quality facilities and service, and to reduce pressures to hold down prices. Also, there would be a chilling effect on new refiner products being introduced into an area not previously served by such refiner. There would be discouragement, if not exclusion, from embarking on innovative operations such as car care centers, self repair stations, and other responses to customer needs in a changing situation. There are other particular functions of the company operated station which are not harmful to the public. They serve as testing grounds for merchandizing techniques, operating procedures, and financial control systems and equipment. This eventually inures to the benefit of all dealers as well as customers. Company stations also serve as training schools and company employees often qualify for and become independent dealers. Another function is the taking over and operating of a station which an independent dealer has for any reason had to give up. Most often this is a temporary operation, but it serves to provide a continuous operation so that an incoming dealer can more effectively succeed in a going business.

12. The evidence indicates that there are about 12,000 retail stations in this state. It is shown that the major oil companies in the United States operate about 3.5% of the total service stations selling their products as company-operated stations. In Florida the percentage is 1.1%. However, at the present time the plaintiff Exxon appears to operate about 6% as company operated stations. However, it does not appear that there is or is threatened any drastic change in the direction of significant increased company operations.

13. In evaluating legislation which tends to lessen competition, under the guise of advancing public economic interests, courts may not consider the relative numbers in or the popularity of the segments of an industry to be affected either

adversely or advantageously. As has been previously stated, legislation damaging to one segment of a class of a legitimate business and beneficial to another, with the general public not being protected or served, is an invasion of the liberties involved in constitutional guarantees of the right to acquire, own and enjoy property and to enter into and perform contracts. The statute under examination is found to serve no protection to public welfare but is discriminatory to that segment of petroleum retail service stations which are company operated. There is shown no constitutional impediment to what is described as vertical integration in the market place, namely the selling directly to the consumer of goods by those who produce and process them. The statute is unconstitutional. The rulings of a long line of Florida appellate decisions direct this result. Perry Trading Co. v. City of Tallahassee, 128 Fla. 424, 174 So. 854; Town of Bay Harbor Islands v. Schlapik (Fla. 1952) 57 So. 2d 855; Town of Miami Springs v. Scoville (Fla. 1955) 81 So. 2d 188; Tollius v. City of Miami (Fla. 1957) 96 So. 2d 122; City of Miami Beach v. Seacoast Towers (Fla. DCA 3, 1965) 156 So. 2d 528 (holding interference with private rights must be in the interests of the public generally as distinguished from those of a relatively few); Rabin v. Connor (Fla. 1965) 174 So. 2d 855; Fogg v. City of South Miami (Fla. DCA 3, 1966) 183 So. 2d 219; William Murray Builders, Inc. v. City of Jacksonville (Fla. DCA 1, 1971) 254 So. 2d 364.

14. The challenge to the vagueness of the act and the requirements of sufficient certainty to accord due process of law is deemed to be fully sustained. This is especially significant in that portion of the statute which deals with equipment rental charges to service station dealers which producers or refiners supply and which requires uniformity of such charges. The term "equipment" is vague and may include facilities that are real

estate as well as personalty. The amount of a rental would normally be variable depending upon the age and condition of the rented item, the location of same where mobility is limited, and many other rational differences. The test of a statute being sufficiently explicit is that it informs those who are subject to its provisions what conduct on their part will render them liable to its sanctions and penalties. Stated another way, the words employed in the statute must be reasonably clear to indicate the legislative purpose, so that a person who may be liable to the penalties may know that he is within its provisions or not. State ex rel Lee v. Buchanan, (Fla. 1966) 191 So. 2d 33; Brock v. Hardie, 114 Fla. 670, 154 So. 690. There is vagueness as to what would be included in the terms "equipment" and "equipment rental charges". Whether "equipment" means only movable items or includes lifts, tanks or even the station building itself is unclear and not susceptible to interpretation except to rewrite the statute to some extent. Also, the "equipment rental charge" is ambiguous as to whether that refers to straight dollar amounts for a specified period or some other measurement such as would be based on sales. This vagueness is particularly obvious in the requirement of uniformity ("uniformly") as to whether such is to be measured in cents per gallon or a fixed monetary charge for each item of equipment. The Court deems that Subsection (2) is not reasonably clear so that the producers or refiners may know whether or not they are within its provisions. In view of other dispositions, it is not deemed necessary or useful to consider the vagueness vel non of other portions of the statute. (See Aztec Motel, Inc. v. State ex rel Faircloth, Fla. 1971, 251 So. 2d 849.)

15. The Court will not consider or discuss the contention of plaintiffs of violation of due process because of unlawful delegation of authority to the Commissioner of Agriculture to make

rules without adequate statutory guidelines. What has been said on vagueness suffices. Also, it is not apparent that this statute would violate the constitutional prohibition of taking private property for public use without just compensation. There is no taking of property under the statute, but there is an impairment of its use which is protected by other constitutional provisions. There is substance to the complaint of denial of equal protection of the law. It singles out the major integrated oil companies and their subsidiaries for drastic limitation at the retail level, but leaves untouched other major integrated companies, such as the motor industry, the appliance manufacturers, and others. There does not appear to be a reasonable classification for such restrictions. See State v. Blackburn, Fla. Sup. Ct., 104 So. 2d 19; Lasky v. State Farm Insurance Company, (Fla. 1974), 296 So. 2d 9; Castlewood International Corp. v. Wynne, (Fla. 1974), 294 So. 2d 321.

16. The claim of conflict with a federal statute regulating commerce and thus offending the supremacy clause is not well taken. Any effect on allocations of petroleum under The Federal Emergency Petroleum Allocation Act of 1973 is insubstantial and incidental. The assertion of violation of the commerce clause is a close question that need not be decided in view of other more clearly demonstrated grounds of invalidity. Walling v. Jacksonville Paper Co., 317 U.S. 564, 63 S. Ct. 332, 87 L. Ed. 460 would indicate that plaintiffs operations of their stations is interstate commerce.

17. In view of the foregoing, it is hereby DECLARED that, as applied to plaintiffs, Chapter 74-387, Laws of Florida, Acts of 1974 is unconstitutional and void for the reasons stated, and the defendant Doyle Conner, as Commissioner of Agriculture and Consumer Services of the State of Florida and the defendant Department of Agriculture and Consumer Services of

the state of Florida, and their agents, employees and representatives are enjoined from taking any action against any of the plaintiffs in any of the above cases to enforce said statute (Section 526.151). Each party shall bear its own costs.

DECLARED, ORDERED and ADJUDGED in Chambers at Tallahassee, Florida this 23rd day of January, A.D. 1975.

BEN C. WILLIS, CIRCUIT JUDGE

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VARGAS

FEB 13 1975

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STATE RELATIONS MEMO

8,090

American Petroleum Institute
1801 K STREET, N.W. • WASHINGTON, D.C. 20006

January 10, 1975

TESTIMONY ON MASSACHUSETTS
DIVORCEMENT/DIVESTITURE LEGISLATION

Enclosed is a copy of testimony given by Dr. Theodore Levitt, Professor of Business Administration at the Harvard Business School, on behalf of the Massachusetts Petroleum Council dealing with proposed divorcement/divestiture legislation introduced in the Massachusetts legislature. We have also included the statement on the same legislative proposals presented by Wilfred H. Hall on behalf of the Independent Oil Men's Association of New England.

Among the other witnesses testifying in opposition to the legislation were J. William Dalgetty of Mobil (appearing on behalf of the Massachusetts Petroleum Council) and Irving Slifkin of Shell. We would be happy to provide copies of their testimonies on request.

Frank J. Jandrowitz,
Director

FJJ:sjb

Enclosures

TO: Administrative Officers of State and
Regional Organizations
API Regional Directors
General Committee on State Relations
Regional Advisory Committees on
Government Relations

2/20/75 FYI

TO: STATE LEGISLATIVE ADVOCATES

FROM: ROBERT HARRISON

cc: C. D. Walz, Jr. Chairman LC

Statement of Dr. Theodore Levitt before the Joint Committee on Commerce and Labor, Massachusetts Legislature, on House Bills 741, 1457 and 3059. January 30, 1975.

Good morning gentlemen, thank you for letting me appear before this committee. My name is Theodore Levitt, I am a Professor of Business Administration at the Harvard Business School. I would like to address my analysis of the bills under consideration from a consumer's point of view. Because it is the basic function of marketing in business to satisfy the needs of consumers and potential consumers I shall put much of my testimony in a marketing context. For the record, I am the author of five books in marketing and one of a more general nature, The Third Sector - New Tactics for a Responsive Society, published in 1973. I have also published nearly one hundred articles in marketing, management, economic and political matters since 1951, a number of which have received various awards for excellence. I have written about the petroleum industry since 1957. My background also includes a Ph.D. in economics. I have been a consultant to various corporations, including petroleum companies, the U.S. government, the Canadian government and the AFL-CIO.

For the sake of simplicity in testifying I would like to discuss the bills under consideration in two groups. Bill 1457, with certain qualifications, prohibits the operation of service stations by gasoline suppliers. Bills

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741 and 3059 go even further than 1457 as I understand them, by prohibiting any ownership interest by gasoline suppliers in retail service stations. These two bills would actually prohibit dealers from leasing stations from suppliers, by far the most common form of station financing prevalent in the industry today.

Briefly, I would like to touch on some of the more obvious economic and social implications of 741 and 3059. There were, in 1974, approximately 5,000 gasoline service stations operating in Massachusetts. Of these outlets an estimated 60% were leased by dealers from oil suppliers. **The average replacement cost of a gasoline station today is on the order of $250,000.** If suppliers were forced to divest themselves of their branded outlets somebody would obviously have to buy $750 million dollars worth of property. Two kinds of buyers are possible -- those who wish to use the service station in their current function and those who want to convert them to another use. **Conversion of service stations is a very real possibility due to the high value of land along heavily trafficed highways. This would be harmful to the public because it would reduce the number of outlets available, thus decreasing supply and competition and increasing price.** The former course, however, is probably the one in the minds of the authors of this bill. Some elementary economics are in order here.

If the current cost of a gas station is $250,000 we must assume that forced divestiture will lower its market price to, say, $200,000 (land is consid-

ered to be 60% of station cost and therefore puts an effective floor on the price of at least $150,000). Any dealer willing to purchase his old station would therefore be forced to raise $200,000. Whether he could or not is, to say the least, questionable, but even if he did our problems are not ended here. Suppliers lease stations to dealers based on average land and construction costs which include properties purchased many, many, years earlier at a time of relatively low interest rates. If one considers a modest 8% per annum appreciation in land and building costs, a station which costs $250,000 today, costs only $75,000 15 years ago. These lower costs are realized by the dealer in his lease agreement which typically only calls for payment of $450 to $600 monthly rent on average stations doing 30,000 to 40,000 gallons per month volume. If a dealer were to purchase his station from his supplier he would have to substitute mortgage payments for rental fees. Considering a $200,000 investment, a 40 year mortgage at even a prime corporate rate of 10% would require monthly payments of $1,700. The average dealer, however, because of his relatively higher financing charges would indeed be fortunate to secure a loan in the 12-13% range which would require monthly payments of $2,200-2,500. Subtracting a current rental of $600 per month from say, $2,200, a dealer in order to be in the same cash position at the end of a month, would have to find a way of recovering $1,600. If this amount were to be spread out over 40,000 gallons per month of gasoline sales volume, pump prices would have to be upped 4.0¢ per gallon. Assuming this situation affected dealers selling 60% of all retail gallonage sold in Massachusetts,

the total additional cost to the Massachusetts motoring public, who consumed 2.4 billion gallons of gasoline in 1973, would be approximately $58 million dollars in this year alone.

Of course, there are all sorts of permutations to this situation which we have not discussed, such as banks or real estate interests coming in and buying up whole chains of service stations. Considering the extraordinary financing requirements, such massed purchases might be inescapable if the stations were to continue to operate. This could actually result in more concentrated ownership than that which exists today. However, with the lack of petroleum retailing and management experience in such new financial holding companies, with no right (under the proposed bills) for such station combinations to do their own wholesale distribution to cut costs, and with the additional overhead which holding companies would have to cover, it is not unrealistic to think that their cost structure would be at least the same, and probably higher, than those of independent operations. In any case, even though our calculations, at most, may be termed "back of the envelope," they do indicate that Bills 741 and 3059, in addition to displaying effects similar to 1457, will cost Massachusetts motorists additional expense on the order of tens of millions of dollars yearly.

Focusing now on Bill 1457 together with 741 and 3059, I feel that the proposed legislation will be harmful to the consumer in Massachusetts because it will result in:

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A. Decreased convenience and services to consumers.

B. Increased barriers to entry to new competition.

C. Reduced flow of innovation from which the consumer could benefit and,

D. Increased prices paid for gasoline by the consumer.

Let us deal with each one of these topics in turn. The proposed bills will result in decreased convenience to consumers because:

- National or large regional companies have enormous investments to protect, not just in retailing but also in physical distribution and refining. To do this they must attract and hold retail patronage at all their branded stations. They use company-operated stations to train independent dealers, experiment with improved technology and systems, and provide standards of service excellence for dealers. These high standards of housekeeping, maintenance, service, and hours of operation benefit the public. In an independently run national survey 64% and 77% of respondents respectively rated "service at station" and "convenience of station" either very important or absolutely essential. In comparison, brand reputation of gasoline was rated similarly by only 39% of consumers. If the large national and regional integrated companies cannot own or lease stations that hold to these high service standards, the public will suffer.

o From a remedial standpoint, company-operated stations are much easier to deal with than are dealer outlets. This is true for two reasons. First, and most obvious, is the fact that they are company controlled. This permits the company to move directly to remedy consumer complaints, eliminating the necessity of working through the dealer. This is especially important when dealing with "personal" issues, i.e., rude or abusive treatment of the consumer purchasing gasoline or having maintenance work performed. Second, the major oil company is in a much more visible and thus more vulnerable position than is the independent dealer. Any dealer performing substandard maintenance work or charging exorbitant prices to a transient or an unfamiliar customer may simply displease a person from whom he would not expect additional business. From the company's viewpoint, however, all service and work performed at one of their retail stations reflects upon the image of the entire retail operation. Thus, services performed at company-operated stations should always be offered with more than consideration of short run profitability, if for no other purpose than the company's own long run benefit. Indeed, major oil company-operated stations are often utilized to properly perform substandard maintenance work which a dealer refuses to correct.

The proposed bills will create significant barriers to entry for new competition wishing to enter the Massachusetts retail gasoline market and result in a decrease of the number of retail outlets available to the consumer.

- Suppliers of petroleum products have traditionally entered new retail markets through the use of company-operated stations. Once the new outlets are operating smoothly and profitably, such company-operated stations are generally converted to dealer operations.

- The necessity of utilizing company-operated stations for initial market penetration is dictated by a number of considerations. First, there is significant market risk involved in opening service stations carrying an "unknown" or unaccepted brand of gasoline in a new marketing area. Retail outlets in new markets are characteristically unprofitable in their first years of operation. This initial lack of profits is the price which must be paid for the development of brand recognition and customer acceptance. Understandably, independent retail dealers are largely unwilling and generally unable to pay this price. Thus, suppliers must commit their financial resources until the retail operations are capable of supporting dealers.

- Second, the use of company-operated stations during initial market penetration permits the establishment of more rigid standards of quality and service for the brand than would be possible utilizing dealer-operated stations. Concurrently, the initial formation of company-operated outlets permits the formal training of future dealers.

- Third, company operation enables actual evaluation of the particular geographical locations selected. Initial operation discloses which sites are likely to result in profitable operation.

- Last, the use of company-operated outlets during the initial stage of market penetration is almost mandated due to lack of good alternatives. It is virtually impossible to attract dealers to sell, at an untested location, a brand of gasoline which is "unknown" or unaccepted. The brand image and reputation must be established before an independent businessman will risk his limited resources to sell the product and to assume such operational functions as price setting and the hiring and training of employees.

- The end result of the prohibition of company-operated stations will therefore drive any new potential suppliers to more congenial states than Massachusetts. This will reduce gasoline supply and create upward price pressures in Massachusetts.

The proposed bills will reduce the flow of innovation in gasoline retailing from which the consumer could benefit.

- It is a fundamental concept that consumer needs and desires change over time. The rapidity with which companies can receive and respond to consumer demand serves not only the company but the public as well. Prohibiting petroleum suppliers from operating directly in the retail marketplace delays and diminishes the amount of consumer originated communication a supplier can receive and respond to.

- Any supplier, before making any major changes in his widespread dealer network will perform controlled market tests to see whether they will meet with public favor. Because such tests can best be performed at company-operated stations, the elimination of such stations will severely hinder the introduction of innovative concepts to the marketplace.

- Any artificial restriction on the natural economic structure of the marketplace is a prima facia barrier to innovation and experimentation. This is due to the lessened number of competitors and hence the reduction in urgency and speed with which the remaining competitors need respond to consumer demands.

The preceding factors all have at least an indirect effect on increasing gasoline prices paid by the consumer. Additionally, the legislation under consideration would, if enacted, remove the biggest, and therefore the most price sensitive, competitors from the marketplace. There are several reasons why suppliers act significantly different, with regard to gasoline prices, than do dealers.

- First, suppliers have a high incentive to sell a large volume of gasoline, as opposed to emphasizing automobile repairs or other product sales, due to their relatively high fixed costs. In general, the larger the supplier, the greater the role of fixed costs in determining marketing strategy. Such fixed expenses include refining costs, pipelines, delivery trucks, tank terminals, and the like. To cover these costs they must sell huge quantities of gasoline. Thus, the conventional company-operated stations of large suppliers, as well as a majority of their specialized self-service and gas only operations, rely more heavily on selling a large volume of low-priced gasoline to generate revenue than do neighborhood dealer outlets. To get this revenue, they must keep prices as low as possible.

- By contrast, dealers have a higher incentive to perform a large volume of repair and service work, as opposed to emphasizing gasoline sales. First, they have proportionately low fixed costs, and second, repair and service work provides both a good source

of revenue and increases customer loyalty to a dealer's station. Customer loyalty resulting from repair and service work enables dealers to charge an additional amount for gasoline without losing the patronage of their customers.

- Third, major petroleum companies are pressured by the public, as well as the government, to keep margins low, whereas the individual dealer is neither exposed to nor the target of organized consumer pressure. In this regard it should be noted that during the aftermath of the recent gasoline shortage, company-operated outlets often posted prices significantly lower than did dealer stations. This difference was reflected in the increasing margins of the nation's dealer-operated stations which were reported by the FEA to be as follows:

1973	October	7.4¢/gal.
	November	7.7
	December	8.2
1974	January	8.9
	February	9.1
	March	10.8
	April	10.7
	May	10.5
	June	10.3

Although the dealer's rationale in obtaining such increased margins was to make up for gallonage availability lost during the shortage, such margins continued well after any product scarcity had been resolved. The natural reluctance of independent dealers to maintain low retail margins (and

thus offer consumers lower selling prices) is indicated by expressed dealer attitudes and collective actions. The documents I shall hand out at the conclusion of my testimony set forth several examples of dealer collaboration to maintain high prices and to limit station hours of operation.

In summary, I feel a number of points are worth reiterating.

- Legislation which prohibits any marketer, large or small, from active participation in the marketplace can only lead to a reduction in innovative activity and a lag in the fulfillment of market demand. The consumer suffers.

- The bills under consideration would specifically restrict that type of retail gasoline outlet offering consumers both price and non-price advantages over dealer-operated sites.

- The bills under consideration would, if enacted, have a significant negative impact on competition and the number of competitors in the retail gasoline market in the Commonwealth of Massachusetts. As a result of this, gasoline pump prices could be expected to climb.

In your evaluation of these bills it should be noted that company-operated stations (excluding jobbers) do not form a large segment of the market and are not growing at the expense of dealers. As of June 30, 1974, of the 212,000 retail gasoline outlets carrying the signs of the 22 major oil companies in the United States, only 7,400 or 3.5% were company-operated. During 1973, there were 965 company-operated stations converted to dealer operations while only 608 dealer-operated stations were converted to company operations. Thus, the presence of the company-operated outlet can hardly be construed as a threat to the existence of the independent dealer.

I should be glad to entertain any questions the Committee may have.

PINELLAS COUNTY CHAPTER
ALLIED GASOLINE RETAILERS ASSOCIATION

MEETING OF ALL SERVICE STATION MEN AND WIVES

7:30 P.M., Tuesday, November 19th

German American Hall
8098 66th Street, North
Pinellas Park

THANKSGIVING DINNER WIVES URGED TO ATTEND

DON'T GET CAUGHT WITH YOUR PRICES DOWN!!!!

There will be new regultions on allocations and prices effective on December 1st. We anticipate that dealer margin will be frozen as of your margin on a certain date that is to be selected - it could be today, tomorrow or yesterday. This will be to replace the May 15th price date it may already be too late if your prices are down since the date selected may be prior to this date. It is going to be difficult to agrue with the FEA that dealers can not get along on their margin, since they gave the dealers a three cent increase and many dealers then gave it away.

BE AT THIS MEETING TO FIND OUT ABOUT WHAT TO EXPECT IN THE NEW REGULATIONS.

WHAT ABOUT SELF SERVICE REGULATIONS?

IS RATIONING COMING?

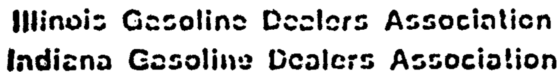
ARE PRICES GOING UP OR DOWN?

WILL ALLOCATIONS BE REDUCED SOON?

DON'T FORGET THE MEETING :

7:30 P.M., Tuesday, November 19th

German American Hall
8098 66th Street, North
Pinellas Park



September 20 1974

NO. 9 1974

SPECIAL BULLETIN TO ALL DEALERS-ALL TERRITORYS

Attention all dealers:

We have been getting phone calls and letters from dealers all over the states of Illinois-Indiana-Iowa and Missouri for the past three weeks concerning price cutting...Representatives of the major oil companys are telling dealers to cut their prices in order to dispose of the allocation...to build volume they say......We say bullshit.

This is insanity--It is your profit that they are asking you to give up. VOLUME IS NOT PROFIT. You need to sell one hell of a lot of extra gasoline to make up for a two or a three cent reduction in your profit margin ...and you'll work harder and/or spend more money on labor to pump that extra gas. Even if you do reach the point of increased volume that you dont lose profit you will soon that volume as more and more dealers enter the pricing game. Soon....ery soon ALL dealers will be the losers.

Resist your sales reps suggestions-Tell him that if the company wants the price dropped to the consumer then the company should lower your tankwagon price and you'll be glad to pass on the savings to your customers. Remember that the oil companys are making fantastic new profits. They are making more per gallon than you. It is unbelievable that you should seek more volume by lowering your price. You are setting the stage for your own ruination and that of your fellow dealer. remember he can ...and he will respond.

Your supplier CANNOT force you to lower prices. If the threaten you with failure to renew a lease or in any way attempt to coerce you on the subject of price...or TBA purchases for that matter...they are violating the Federal Laws. Call this office --collect--at once, and we will come down on them like a ton of bricks. Enclosed with this bulletin is a sign. Tape it up in your office and point it out to your salesman when he starts talking price to you.

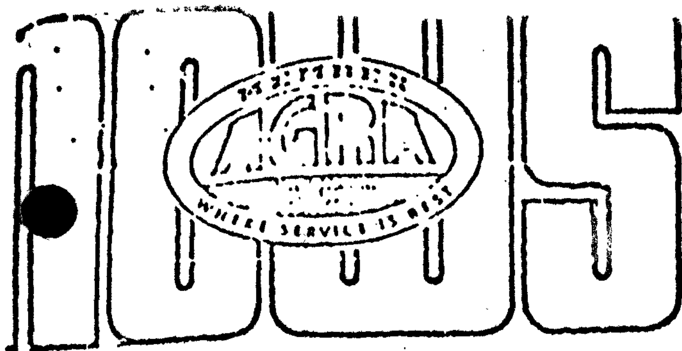
This association fought long and hard to get you a decent margin of profit. Victory..did not come easy. In March of this year we got you a two cents per gallon margin increase. You were entitled to it then..and you are entitled to it now. You got it.......now KEEP IT. to those of you who have cut the price already I urge you to PULL DOWN THOSE SIGNS: RAISE THOSE PRICES BACK UP. Help yourselves to stay in business. We are facing grave days ahead. Many of the major oil companys are looking at their dealer operations with covetous eyes, more andmore company operations are springing up. Secondary branding is on the rise. We must close ranks NOW to stop company takeover of stations and company dictation of price. We either hang together on these issues or by thunder we'll all hang separatly.

(OVER)

Act now to preserve your business. Go across the street and talk to your competitor. Show him this bulletin if he is not a member and has not recieved it. ask him if this does'nt make sense. ACT NOW--ACT NOW--ACT NOW Talk to the guy with the price sign. I know your sore at him but go over and see him anyway. Swallow your anger and go counsel with him. We here at the association will be doing our part but we need YOUR help. so help us --Help yourselves. Lets get these signs down before it goes too far. We will bring you all up to date on the battle for better rates from the AMOCO Motor Club in the next bulletin. Hang in there

Robert J. Jacobs

Robert J. Jacobs executive director
ILLINOIS INDIANA IOWA MISSOURI
GASOLINE DEALERS ASSOCIATIONS INC.



NOVEMBER

1974

0441

DON'T SAY WE
DIDN'T WARN YOU!

PRICE CUTS NOW BUT SHORTAGES TO COME SOON

Throughout most of the nation dealers are cutting prices on their own because of slow business and competition. Roll backs ordered by the FEA have triggerred the price situations. FEA orders a company or dealer to roll back their price due to overpricing. Now that supply is at a plentiful level, this forces dealers who are nearby to meet this competition. These dealers did not enjoy the benefits of the illegally high profits, so the honest dealers are being penalized by the overpricing of their competitors.

These "price wars" are not being given support by the suppliers, except they are urging their dealers to be "competitive". Company profits are declining due to margin reductions and increasing costs.

What will happen in the future? You can expect a sharp reduction in allocations about January 1. New allocation and price regulations are in the making and should be ready about December 1. It is possible that prices will be frozen at a new freeze date which will catch the dealers who have cut their prices.

STATEWIDE DEALER MEETING

ON NEW ALLOCATION AND PRICE REGULATIONS

1:00 P.M., SATURDAY, DEC

ORLANDO

POS[illegible]ED

NEW DA[illegible]

DETAILS TO FOLLOW TO ALL MEMBERS.

Our nation must cut back the amount spent on foreign oil if we are going to straighten out our economy. In the first seven months of 1973 we spent $3.6 billion on foreign oil while this year for the same period we spent $13.2 billion. Either the price of foreign oil must come down, or we will have to buy less oil. The latter is the logical answer. Import quotas will be cut which will force cuts in allocations. We will not be back into the long lines of early 1974, but we will have a short supply, and more than likely some method of rationing early in 1975.

RADIANT OIL COMPANY
JOE CAPITANO
BOX 5751
TAMPA, FLA. 33605

BULK RATE
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ORLANDO, FLA.

ALLIED GASOLINE RETAILERS ASSN.
P. O. BOX 14064
ORLANDO, FLORIDA 32807

ADDRESS CORRECTION REQUESTED

AGRA OPPOSES DEALER MARGIN CUT

In the last three meetings of the FEA, Dealers Advisory Group, the subject of a reduction in dealer margins has been discussed. Consumer groups have been urging that gasoline prices be cut. Since the supply of gasoline has been restored to normal, they say the need for the two cent margin increases to dealers no longer exists.

At the recent meeting in Atlanta, six representatives from AGRA pointed out that any move to cut dealer margins would be met with violent opposition. They urged that dealer margins should be increased due to inflation of costs instead of reduced. A final decision will be reached by FEA by December 1.

We need facts to back up our opposing the move to cut margins. Please fill in the survey form in the middle of this magazine and return it at once.

AGRA LEGAL FUND GROWING AND WE NEED MORE

AGRA has established a legal fund for the purpose of defending members who may be in difficulty and need the defense of the association. For example, if a member has his lease cancelled and investigation is made and determines that the dealer did a good job in his station and there was no good reason for the termination, then the AGRA Legal Fund Trustees will take under consideration about the use of the Legal Fund to help defend that dealer. They will take under consideration the facts of the case and also the effect on the entire membership of the defense of that dealer. If they feel that it will be in the best interest of that dealer and the entire membership, they may vote to use part of the legal funds to defend that member. We prefer that the member also contribute part of the legal funds to insure that we will not back out once a case is started.

To build up this find we have asked that all members contribute $20 to the AGRA Legal Fund. A lot of you have sent in your checks, but we need much more to have a fund that will be ready to meet the needs of our members when necesssary. Mail in your check for $20 to the AGRA Legal Fund today, P. O. Box 14064, Orlando 32807.

PHILLIPS DEALERS GET FIVE YEAR LEASES

0442

About five years ago we received a letter from an AGRA member who was trying to sell his station due to serious illness. He was having alot of difficulty in finding buyers since Phillips would only offer the new dealer a 30-day lease. AGRA filed a complaint with the Federal Trade Commission and then spent two weeks working with their attorneys interviewing dealers, former dealers, and former Phillips employees. It took five years to bring this matter to trial, but the work was worth the effort. Phillips has signed an order agreeing to the following:

Within 90 days to renew all leases to leasee dealers with few exceptions for a term of not less than five years. Dealers have the right to arbitration in case their lease is cancelled. Phillips cannot restrict dealers from purchasing gasoline from non-Phillips sources, however, Phillips may require a dealer to maintain on the premises a representative amount of Phillips gasolines.

Phillips cannot refuse to accept authorized charges on Phillips credit cards in the sales of non-Phillips TBA and refined petroleum products. Phillips cannot condition the availability of product financing upon the purchase of Phillips products.

While this consent order only applies to Phillips dealers leasing directly from Phillips, it will indirectly be effective on all Phillips jobber and other supplier leases.

AGRA PROTESTS INSPECTION HEADLIGHT ADJUSTMENT

AGRA President Jim Miller and Executive Director Bill Tucker voiced their opposition to the practice of county operated inspection stations adjusting headlights at the time of vehicle inspections. This is now being done at stations in Orange and Collier Counties. Not only does this take away from revenue for service stations and garages, but dealers have spent considerable amounts for equipment to adjust headlights. Also it was the intent of the Legislature that no repairs would be made at inspection stations. The programs now in effect in these two counties are on a trial basis, so we hope that this practice will end at the end of the trial period.

STATEWIDE DEALER MEETING ON DECEMBER 7

THE HOUSTON POST
Wednesday, November 13, 1974

Dealers in 2 states to close service stations on Sundays

CHICAGO (I) — An association of gasoline dealers said Tuesday its 7,000 members in Illinois and Indiana would sell no gasoline on Sundays beginning Dec. 1.

Robert Jacobs, executive director of the Illinois Gasoline Dealers Association, said the group's executive board voted unanimously to lock their gas pumps indefinitely on Sundays.

He said the action was being taken as a protest against what he said was unfair treatment by the government and by the major oil companies.

Jacobs said he hopes for 80 to 85 per cent of the association members to abide by the shutdown decision, but "I'll be happy to get 70 to 75 per cent."

In Illinois, the association's membership is most heavy in the northern and southern counties. In Indiana, more than half of the member dealers are in the northernmost counties.

"The Federal Energy Administration is very concerned about the profits of the major oil companies," Jacobs said, "but not about the dealers."

"The big oil companies say, 'don't worry about our big profits; we need them for the massive investments in new refineries and exploration'," Jacobs said.

"But instead of investing in oil," Jacobs said, "the big oil companies are buying department stores and circuses and what-have-you."

Meanwhile, he said, the government is threatening to roll back dealer profits by 2 cents a gallon.

"Well if they do that," Jacobs said, "you're going to find dealers closing up all over the place, and I don't mean just Illinois and Indiana. I mean all over the country."

Jacobs said that oil industry appeals to conserve fuel are not genuine.

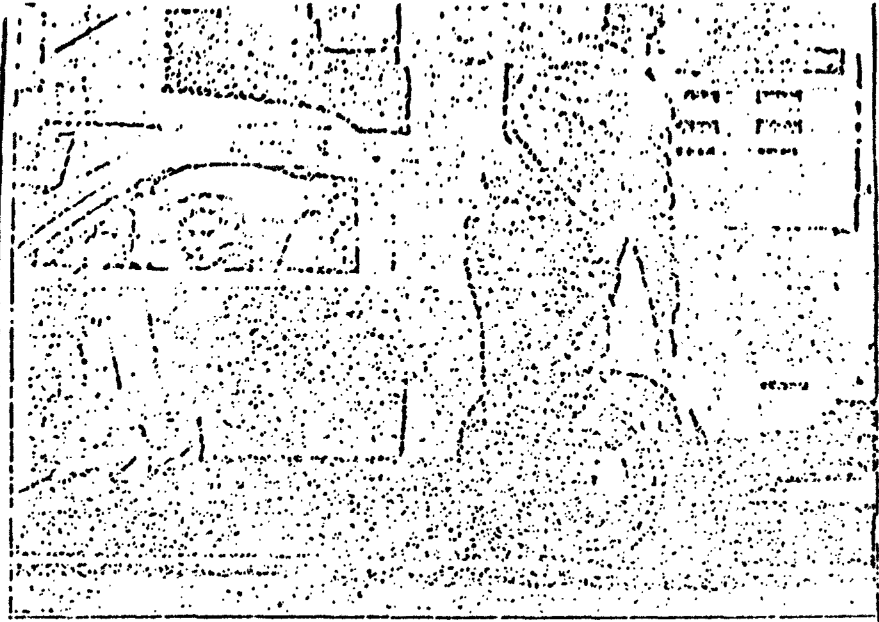
"While they're talking about conserving gasoline," he said, "every major oil company—and I mean every one—is telling the dealers to sell all the gas they can or they won't get their leases renewed."

Jacobs said the proposed Sunday closing will benefit dealers in ways other than drawing attention to what they believe is an unjust situation.

"It will reduce their overhead somewhat," Jacobs said, "and it will give them Sundays with their families—something they learned to enjoy" during the Sunday closings last winter.

DAILY NEWS

2-21-74



News photo by Harry Hamburg

Attendant fills tank of customer willing to pay price on Route 1 in South Brunswick, N.J.

Station Owners Here Cry 'Shutdown'

By NEAL HIRSCHFELD and HARRY STATHOS

Angry owners and operators demanded last night a complete shutdown of gas stations here following the first widespread closing of gas pumps in suburban Greenwich, Conn., where all 36 independently-owned service stations stopped selling gas yesterday.

Representatives of some 500 gas stations in the metropolitan area held a raucous meeting in the Bronx to map strategy for a giant protest march on Washington to express their dissatisfaction with the government's handling of the gasoline shortage.

Several speakers were drowned out by shouts and jeers in the large crowd that jammed Tardi's Restaurant, 737 Throg's Neck Expressway. Rep. Peter Peyser (R-N.Y.) warned that a shutdown would be "catastrophic."

In Port Chester, near Greenwich, 75% of the service stations refused to sell gas. However, similar threats of closings at White Plains and Harrison, failed to materialize.

Insisting on the right to reserve 25% of their gas allocation for regular customers, the stations in Greenwich locked their pumps, leaving the community with only two [illegible] stations as sources of fuel. Seven stations operated in Port Chester.

Peyser urged the Bronx meeting to postpone any shutdown for two to three weeks to let the federal energy office re-evaluate the problem.

"A shutdown would cripple the entire economy and present numerous dangers that would be staggering," he declared.

Peyser said he spoke with John Sawhill, deputy director of the federal energy office, who told him that there would be a meeting in Washington next Monday with all the major oil companies to find out why they had not stuck to the guidelines in speeding up gasoline allocations to hard-hit areas.

Mac Victor, executive director of the 1,000-member [illegible] Service Stations Association, which called last night's meeting, said his group was opposed to a shutdown.

"It won't help our image," Victor said. "We don't want to lose public support."

Victor said the association wanted to stage a march on Washington to help pressure the government into providing a better distribution of fuel in the New York area.

Another speaker, John Edwards, head of the State Fuel and Energy Office, told the group: "I know you're on the firing line. I'm on that same firing line. I don't have all the answers."

Edwards said that last week the state had distributed 5 million gallons of gasoline to hardship areas and this week another 10 million gallons would be distributed.

While he was speaking several dissident gas station owners voiced their objections. Alex Feldman, owner of Alpath Service Ltd., [illegible] Jerome Ave., Bronx, said he had waited for five hours to get an allocation of emergency fuel for Montefiore Hospital's ambulances. He said no one at the Federal Energy Office spoke

(Continued on page 46, col. 4)

(Continued from page 5)

to him, even though the allotment had been authorized.

Edwards told Feldman: "I want you to get in touch with me later and I'll make sure you get that fuel."

In Greenwich, attorney Richard Roina, who represents the closed gas stations, said the gas would stay in the pumps "until we get a proper response from energy officials."

Cites Washington, Oregon

That proper response, Roina said, will be something similar to the arrangement worked out in the states of Washington and Oregon earlier this month when a West Coast federal energy office ruled that station owners might hold back a percentage of their gas for regular customers.

In a move to head off any further shut downs by gas stations in Westchester County, County Executive Alfred DelBello disclosed that he had sent a telegram to William Simon, federal energy administrator, requesting that he relax the federal regulations against all discriminatory gasoline sales for regular customers.

STATEMENT

of

INDEPENDENT OIL MEN'S ASSOCIATION

of NEW ENGLAND

before

MASSACHUSETTS JOINT COMMITTEE on COMMERCE & LABOR

January 30, 1975

Regarding

PETROLEUM DIVORCEMENT & DIVESTITURE BILLS

House # 741, 1457 & 3059

Mr. Chairman, and Members of the Committee

My name is Wilfred H. Hall, and I serve as Executive Director of the Independent Oil Men's Association of New England. This group consists of independent branded and private branded marketers in the six New England states. In Massachusetts there are 98 licensed distributros. Of this group, 17 are integrated companies, 51 are independent branded distributors, and 30 are independent private brand distributors. We appear in opposition to the Divorcement and Divestiture bills.

In the Bay State, we estimate that there are presently about 4,000 Class "A" stations. That is a station where 50% or more income at the outlet comes from the sale of petroleum products.

Although the independent sector - branded and private branded marketer - sells about 1/3 (28%) of the market in this state, our surveys indicate that they do this through probably half of the outlets. This is because our members are heavier in rural areas than are majors, and in these cases volume is smaller per retail unit. Therefore, 2,000 stations, or 1/2 of the stations in the Commonwealth are represented by the independent group.

Initially, let me point out that our members do not own any oil production. We are marketers. As marketers, we operate through service stations in three ways. Some 17% of members' stations are operated with salried personnel. Some 45% are leased to dealers and the balance of the stations are owned by dealers or various other types of arrangements.

We estimate less than 10% of the Class "A" larger stations are owned by the dealer. Obviously, these bills under question would affect our group, since it would wipe out their principal investment in service stations.

We should ask ourselves why more dealers do not own their own stations. We believe the answer lies in the following facts:

1) Establishing the outlet. Before a new gasoline station is built today, it takes roughly six months' investment in time and money. Traffic counts must be made, land is then purchased, zoning must be achieved, in most cases; plans drawn, and presented to Planning Boards; components purchased from several and stored until needed; plans let out to bid; construction achieved, meeting various building standards along the way - and, eventually, the station is ready to sell product. Thus, it takes considerable knowledge and investment just to arrive at this point. It also takes quite a bit of specialized knowledge not usually available in one man's skills.

2) Training and Operating. I'm sure that members of this Committee know that any business requires training and specialized sales knowledge. Today, the dealer must have much more knowledge than in prior years. First, he must be a money manager, and a security manager. Today, he has to understand price control regulations, EPA regulations dealing with product transfer and oil spills. He must know how to hire and control men and have considerable mechanical apptitude. He must know bookkeeping. Usually he gets this knowledge from going to school. Certainly, he will fail unless he has training. Also, he needs advertising to help him open the outlet. He needs assistance to get the service station into business. Usually it is the major or independent jobbers who provides the training and opening promotional campaigns.

3) Capital Requirements. It costs between $100,000 and $500,000 to erect a service station in a metropolitan area today. Self service station improvements alone cost about $120,000. It is usually a major refiner or an independent jobber who has the ability to invest a quarter of this amount and has the credit to finance the balance. After this investment for the facility he must now stock the outlet. In the simplest of no-repair self service facilities the inventory of gasoline and products runs about $9,000. If repairs are involved, the inventory investment could be double. Usually this is accomplished by the major or independent jobber giving a dealer this credit with a minor investment by the dealer. A dealer might put up $3,000 of the $30,000 cash needed to build and finance the inventory (let alone the $100,000 mortgage). As you can see, it is doubtful that most dealers starting in this business would have the experience or the capital to start such a venture by themselves.

I. But what if we just turned over existing stations to dealers by the requirement of these proposals? There is considerable doubt that dealers have the borrowing power to acquire existing outlets -- even at depreciated prices that such a law would cause. The law, if passed, would cause mass dumping of outlets - depriving our members of funds which have been built up by generations of hard work - but would dealers be able to buy even at reduced prices?

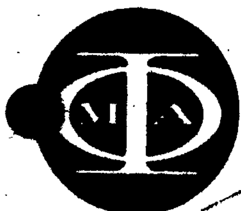
II. Also, the market is changing. We estimate that up to 1/3 of all stations will be self service in five years. This is coming about because customers like self service and because they benefit by lower prices which stem from lower operating costs. This move will require knowledge of self service operation and considerable further investment.

Also, gasoline station tie-ins with grocery stores and car washers are combinations which the public wants. Both require knowledge, investment, and backup. So, even if we sold an existing dealer an outlet, would he have the knowledge, funds, and backup to move with these changes? If not, the consumer would suffer.

Finally, would the dealer be precluded from operating more than one outlet? If so, you limit his opportunity; if not, then you would encourage development of large chain dealer operations --- which is where many think we are headed. Some of our members operate this way now. This is the old Kresge principle - you cut overhead by spreading certain costs like bookkeeping, building costs, etc., over several outlets --- And you wind up marketing products cheaper than one outlet can ------. You're now full circle to what has evolved in the marketplace.

We conclude that marketing efficiency benefits the consumer; that this can only come about through the kind of knowledge, accumulation of capital, and economies of scale in operating more than one outlet. Most people accept the supermarket concept and would not be willing to pay higher prices necessitated by having all grocery stores buy products and market individually, in a single location. This is also true of gasoline.

We appreciate the opportunity of appearing before you today, and hope you will determine that these bills are not in the public interest; do not encourage marketing innovation, and will take away free enterprise from our wholesaler members.



INDEPENDENT
OIL MEN'S ASSOCIATION
OF NEW ENGLAND

WORTH PLAZA · 10 VAUGHAN MALL · PORTSMOUTH, N.H. 03801 · TEL. 603 - 436-8424

CALIFORNIA LEGISLATURE—1973–74 REGULAR SESSION

0450

ASSEMBLY BILL No. 3101

Introduced by Assemblymen Fenton, Moretti, Meade, Bill Greene, and Lockyer

Lew signed July, 1974

February 11, 1974

REFERRED TO COMMITTEE ON TRANSPORTATION

An act to add Chapter 7.8 (commencing with Section 21140) to Division 8 of the Business and Professions Code, relating to franchise agreements.

LEGISLATIVE COUNSEL'S DIGEST

AB 3101, as introduced, Fenton (Trans.). Franchise agreements.

Allows franchised petroleum dealers, notwithstanding the terms of the franchise, to purchase petroleum products from any available source if the franchisor is unable to supply them.

Provides that no franchisor shall coerce the franchisee to deal only in tires, batteries and accessories supplied by the franchisor.

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

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 7.8 (commencing with Section
2 21140) is added to Division 8 of the Business and
3 Professions Code, to read:

0451

1 CHAPTER 7.8. FRANCHISE DEALERS FAIR PRACTICES
2
3 21140. As used in this chapter:
4 (a) A "franchise" is a written agreement between two
5 or more persons having all of the following conditions:
6 (1) A commercial relationship of definite duration or
7 continuing indefinite duration.
8 (2) The franchisee is granted the right to offer and sell
9 at retail petroleum products manufactured or distributed
10 by the franchisor.
11 (3) The franchisee constitutes a component of the
12 franchisor's distribution system.
13 (4) The operation of the franchisee's business is
14 substantially associated with the franchisor's trademark,
15 trade name, advertising, or other commercial symbol of
16 designating the franchisor.
17 (5) The operation of a portion of the franchisee's
18 business is substantially reliant on the franchisor for a
19 continued supply of petroleum products.
20 (b) A "franchisee" is any person who, pursuant to a
21 franchise, receives petroleum products from the
22 franchisor and who sells such products at retail.
23 (c) A "franchisor" is any person who manufactures or
24 distributes petroleum products.
25 21140.1. Notwithstanding the terms of any franchise,
26 a retail gasoline station owned or operated by a
27 franchisee shall not be precluded from purchasing
28 gasoline or other petroleum products from any available
29 source if the franchisor is unable to supply the franchisee
30 with such products.
31 This provision shall not be construed to permit a
32 franchisee to purchase more gasoline or other petroleum
33 products than may be allowed by any federal statute or
34 regulation.
35 21140.2. No franchisor shall coerce or attempt to
36 coerce any franchised retail gasoline dealer to sell only
37 tires, batteries, and accessories supplied by the
38 franchisor. A franchised retail gasoline dealer may sell
39 any tires, batteries, and accessories as may be available to
40 him for retail sale.

O

$50,000 fine

Assembly Bill No. 3101

CHAPTER 498

An act to add Chapter 7.8 (commencing with Section 21140) to Division 8 of the Business and Professions Code, relating to franchise agreements, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 11, 1974. Filed with Secretary of State July 11, 1974.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3101, Fenton. Franchise agreements.

Allows franchised petroleum dealers, notwithstanding the terms of the franchise, to purchase gasoline or diesel fuel from any available source if the franchisor is unable or refuses to supply them.

Provides that no franchisor shall coerce the franchisee to deal only in tires, batteries and accessories supplied by the franchisor.

Provides that no appropriation is made for reimbursement of local agencies for costs incurred by them pursuant to this act because the Legislature recognizes that during any legislative session a variety of changes to laws relating to crimes and infractions may cause both increased and decreased costs to local government entities which, in the aggregate, do not result in significant identifiable cost changes.

To take effect immediately, urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Chapter 7.8 (commencing with Section 21140) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 7.8. FRANCHISE DEALERS FAIR PRACTICES

21140. As used in this chapter:

(a) A "franchise" is any contractual or written agreement between a petroleum corporation or distributor and a gasoline dealer under which the gasoline dealer is granted the right to use a trademark, trade name, service mark, or other identifying symbol or name owned by the corporation or distributor, or any agreement between a petroleum corporation or distributor and a gasoline dealer under which the gasoline dealer is granted the right to occupy premises owned, leased, or controlled by the corporation or distributor, for the purposes of engaging in the retail sale of petroleum and other products of the corporation and distributor.

(b) A "franchisee" is any person who, pursuant to a franchise, receives gasoline or diesel fuel from the franchisor and who sells such products at retail.

0453

be paid to the treasurer of the county and one-half to the city.

21140.4. Any person who is injured in his business or property by reason of a violation of this chapter may sue therefor in any court having jurisdiction in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and to recover three times the damages sustained by him, and shall be awarded attorneys' fees together with the costs of the suit. Any action brought pursuant to this section shall be commenced within four years after the cause of action accrued.

SEC. 2. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section nor shall there be any appropriation made by this act because the Legislature recognizes that during any legislative session a variety of changes to laws relating to crimes and infractions may cause both increased and decreased costs to local government entities and school districts which, in the aggregate, do not result in significant identifiable cost changes.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order to furnish the maximum quantity of gasoline available to the public and to prevent increased closings of gasoline dealers because of a lack of supplies at the earliest time, it is necessary that this act take immediate effect.

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(c) A "franchisor" is any person or corporation which refines, processes, or distributes gasoline or diesel fuel.

21140.1. Notwithstanding the terms of any franchise, a retail gasoline station owned or operated by a franchisee shall not be precluded from purchasing gasoline or diesel fuel from any available source if the franchisor is unable or refuses to supply the franchisee with such products.

Failure to deliver contracted, agreed upon, or requested quantities of gasoline or diesel fuel within 72 hours of such specified contract time, agreement, or request shall constitute an inability or refusal to supply a franchisee. Requests for deliveries of gasoline or diesel fuel may be telephoned to the franchisor, except that when the franchisee intends to seek gasoline or diesel fuel from another supplier pursuant to Section 21140.1 should the franchisor be unable or refuse to supply him, a request for gasoline or diesel fuel must be made in writing to a franchisor at least 48 hours before desired delivery.

Nondelivery of gasoline or diesel fuel, by the franchisor due to accident, fire, theft or other similar acts shall not constitute an inability or refusal to supply the franchisee.

If the franchisee sells gasoline supplied from a source other than the franchisor, the franchisee shall prominently post a sign disclosing this fact to the public on each pump dispensing gasoline or diesel fuel purchased from other than the franchisor. The sign shall not be smaller then 8" x 10" with letters not less than three inches in height.

This provision shall not be construed to permit a franchisee to purchase more gasoline or diesel fuel than may be allowed by any federal statute or regulation.

21140.2. From the effective date of this section it shall be illegal for any franchisor by any action to require a franchisee to purchase only those tires, batteries, and other automotive accessories sold by the franchisor. A franchised retail gasoline dealer may sell any tires, batteries, and other automotive accessories as may be available to him for retail sale.

21140.3. The franchisor's executive officer, representative or agent of the franchisor who negotiates any contract in violation of this chapter or who otherwise coerces a franchisee in violation of this chapter shall be subject to a civil penalty of up to fifty thousand dollars ($50,000) for each offense.

Such penalty shall be assessed and recovered in a civil action brought by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction. If brought by a district attorney or county counsel, the entire amount of the penalty shall be paid to the treasurer of the county in which the judgment was entered. If brought by the Attorney General, one-half of the penalty shall be paid to the treasurer of the county where the action was brought and one-half shall be paid to the State Treasurer. If brought by a city attorney, one-half of the penalty shall

TEXT OF FRANCHISE LAW

HOUSE BILL NO. 1132 AS PASSED BY THE 77TH GENERAL ASSEMBLY, AN ACT RELATING TO CERTAIN MERCHANDISING PRACTICES, WITH PENALTY PROVISIONS.
(Effective 8-13-74)

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. As used in this act:

(1) The term "sale or distribution" includes the acts of leasing, renting or consigning;

(2) The term "goods" includes any personal property, real property, or any combination thereof;

(3) The term "other property" includes a franchise, license distributorship, or other similar right, privilege, or interest;

(4) The term "person" includes an individual, corporation, trust, estate, partnership, unincorporated association, or any other legal or commercial entity; and

(5) The term "pyramid sales scheme" includes any plan or operation for the sale or distribution of goods, services, or other property wherein a person for a consideration acquires the opportunity to receive a pecuniary benefit, which is not primarily contingent on the volume or quantity of goods, services, or other property sold or distributed or to be sold or distributed to persons for purposes of resale to consumers, and is based upon the inducement of additional persons, by himself or others, regardless of number, to participate in the same plan or operation;

(6) "Franchise" means a written arrangement for a definite or indefinite period, in which a person grants to another person a license to use a trademark, service mark, or related characteristic, and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement, or otherwise; except that, the term "franchise" shall not apply to persons engaged in sales from warehouses or like places of storage, leased departments of retail stores, or places of original manufacture.

Section 2. No person shall, directly or through the use of agents or intermediaries, in connection with the sale or distribution of goods, services, or other property, sell, offer or attempt to sell a participation or the right to participate in a pyramid sales scheme. No person who has granted a franchise to another person shall cancel or otherwise terminate any such franchise agreement without notifying such person of the cancellation, termination or failure to renew in writing at least ninety days in advance of the cancellation, termination or failure to renew, except that when criminal misconduct, fraud, abandonment, bankruptcy or insolvency of the franchisee, or the giving of a no account or insufficient funds check is the basis or grounds for cancellation or termination, the ninety days notice shall not be required.

Section 3. 1. Any contract made in violation of section 2 of this act is void and any person who, directly or through the use of agents or intermediaries, induces or causes another person to participate in a pyramid sales scheme will be liable to that person in civil damages in an amount equal to the sum of twice the amount of consideration paid, and in the case of any successful action to enforce such liability, the costs of the action together with a reasonable attorney's fee, as determined by the court. An action under this section may be brought in the circuit court having venue within five years from the date on which the consideration was paid.

2. A franchisee suffering damage as a result of the failure to give notice as required of the cancellation or termination of a franchise, may institute legal proceedings under the provisions of this act against the franchisor who canceled or terminated his franchise in the circuit court for the circuit in which the franchisor or his agent resides or can be located. When the franchisee prevails in any such action in the circuit court, he may be awarded a recovery of damages sustained to include loss of goodwill, costs of suit, and any equitable relief that the court deems proper.

Section 4. In addition to other penalties and remedies provided in this act, whenever it appears that any person is engaged or is about to engage in any act or practice which constitutes a pyramid sales scheme, the attorney general may bring an action in the circuit court having venue to enjoin such act or practice, and upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be granted without bond.

Section 5. Any person willfully violating any of the provisions of section 2 of this act is guilty of a felony and, upon conviction, shall be punished by a fine of not more than five thousand dollars or by imprisonment by the department of corrections for a term not to exceed five years, or by both such fine and imprisonment.

HOUSE BILL NO. 636
AS ENACTED BY
GENERAL ASSEMBLY OF VIRGINIA

A BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 2.2, containing sections numbered 59.1-21.7 through 59.1-21.17, so as to create the Virginia Petroleum Products Franchise Act; to define certain terms; to provide certain provisions which certain agreements are required to contain; to provide how such agreements may be terminated, cancelled or not renewed; to provide for civil actions for violations; and to provide for the dissermination of certain information.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding in Title 59.1 a chapter numbered 2.2, containing sections numbered 59.1-21.7 through 59.1-21.17, as follows:

§ 59.1-21.7. This chapter may be cited as the "Virginia Petroleum Products Franchise Act."

§ 59.1-21.8. The General Assembly finds and declares that since the distribution and sales through franchise arrangements of petroleum products in the Commonwealth of Virginia vitally affects the economy of the State, the public interest, welfare, and transportation, it is necessary to define the relationships and responsibilities of the parties to certain agreements pertaining thereto.

§ 59.1-21.9. As used in this chapter, the terms (a) "distributor" means any person engaged in the refining and subsequent sale, consignment or distribution of petroleum products to retail outlets which it owns, leases, controls or with which it maintains a contractual relationship for the sale of such products and shall include a subsidiary or other entity in which such person has more than a thirty percent beneficial interest;

(b) "dealer" means any person, other than an agent or employee of a distributor, who is engaged in the retail sale of petroleum products under a franchise agreement as defined in this chapter;

(c) "franchise" or "franchise agreement" means an agreement express or implied between a distributor and a dealer under which the dealer is granted the right to use a trademark, trade name, service mark, or other identifying symbol or name owned by the distributor, or an agreement between a distributor and a dealer by which the dealer is granted the right to occupy premises owned, leased or controlled by the distributor, for the purpose of engaging in the retail sale of petroleum products of the distributor;

(d) "engaged in the sale of petroleum products" means, in the case of a dealer, that at least fifty per centum of the gross revenue is derived from such sale;

(e) "retail" means the sale of a product for purposes other than resale;

(f) "retail outlet" means the premises at which such products are sold;

(g) "person" means person as defined in § 1.13-19 of the Code. 0457

§ 59.1-21.10. Every agreement between a distributor and a dealer shall be subject to the following provision, whether or not expresly set forth therein: (a) The dealer may agree, but in the absence of an agreement shall not be required, to keep his retail outlet open for business for more than sixteen consecutive hours per day, nor more than six days per week; provided that this subsection shall not be construed to prevent any retail outlet being open when required to be open to conform to any State or federal law or regulation.

(b) The dealer or distributor shall have the right to cancel any such agreement until midnight of the third business day after the day on which such agreement was signed, by giving the other party to such agreement, in person or by certified mail, written notice of such cancellation; provided that any money, equipment, or merchandise loaned, sold or delivered to the dealer are returned to the distributor for full credit, together with delivery of full possession of the service station location to the distributor.

(c) The right of either party to trial by jury or to the interposition of counterclaims or crossclaims shall not be waived.

(d) In the absence of any express agreement, the dealer shall not be required to participate financially in the use of any premium, coupon, give-away or rebate in the operation of his retail outlet, provided that the distributor may require the dealer to distribute to customers premiums, coupons or give-aways which are furnished to the dealer at the expense of the distributor.

(e) No transfer or assignment of a franchise by a dealer to a qualified transferee or assignee shall be unreasonably disapproved by the distributor;

(f) The term of the initial agreement between the distributor and the dealer relating to specific premises shall not be less than one year; the term of the second agreement between the distributor and the dealer, relating to the same premises, shall also be for not less than one year; and the term of all subsequent agreements between the distributor and the dealer, relating to the same premises, shall not be for less than two years; provided that where the distributor is the lessee of the premises, this subsection shall not be construed to require a term of greater duration than the remainder of the term to which the distributor is entitled under its lease without regard to any renewal rights which the distributor may have.

§ 59.1-21.11. (a) Any person who violates any provision of this chapter shall be civilly liable for liquidated damages of five hundred dollars, plus provable damages caused as a result of such violation, and be subject to such other remedies, legal or equitable, including injunctive relief, as may be available to the party damaged by such violation. Such action shall be brought in the circuit court of [illegible] jurisdiction wherein the franchised premises are located.

(b) No action may be brought under the provisions of this chapter for a cause of action which arises more than two years prior to the date on which such action is brought.

§ 59.1-21.12. In the event of any termination, cancellation or failure to renew whether by mutual agreement or otherwise, a distributor shall make or cause to be made a good faith offer to repurchase from the dealer, his heirs, successors and assigns, at the current wholesale prices any and all merchantable products purchased by such dealer from the distributor; provided, however, that in such event the distributor shall have the right to apply the proceeds against any existing indebtedness owed to

him by the dealer and provided further that such repurchase obligation is conditioned upon there being no other claims or liens against such products by or on behalf of other creditors of the dealer.

§ 59.1-21.13. No distributor may directly or indirectly through any officer, agent or employee, terminate, cancel or fail to renew a franchise without having first given written notice by certified mail to the dealer at least sixty days in advance of such termination, cancellation, or failure to renew; provided, however, that where the cancellation, termination or failure to renew is based upon (1) voluntary abandonment by the franchisee of the franchise relationship, or (2)conviction of the franchisee of an offense involving moral turpitude, the aforementioned cancellation, termination or failure to renew shall be effective immediately upon notice given by certified mail to the franchisee at his last known address.

§ 59.1-21.14. A distributor shall disclose to any prospective dealer the following information, before any franchise agreement is concluded:

(a) The gallonage volume history, if any, of the location under negotiation for and during the three year period immediately past or for the entire period for which the location has been supplied by the distributor, whichever is shorter;

(b) The name and last known address of the previous dealer or dealers for the last three years, or for and during the entire period which the location has been supplied by the distributor, whichever is shorter.

(c) Any legally binding commitments for the sale, demolition or other disposition of the location.

(d) The training programs, if any, and the specific goods and services the distributor will provide for and to the dealer.

(e) Full disclosure of any and all obligations which will be required of the dealer.

(f) Full disclosure of all restrictions on the sale, transfer, and termination of the agreement.

§ 59.1-21.15. Nothing in this chapter shall be construed as limiting the authority of the Attorney General under the provisions of § 59.1-68.2.

§ 59.1-21.16. The provisions of this chapter shall be applicable to franchise agreements entered into on and after July one, nineteen hundred seventy-three.

§ 59.1-21.17. Each and every application and provision of this chapter is severable, and if any provision or application hereof is held invalid by a court from which no appeal may be taken, the remaining provisions and applications of this chapter shall remain in full force and effect.

Senate bill 465

MARYLAND DIVORSEMENT BILL:

AN ACT concerning

Licenses - Retail Service Stations

FOR the purpose of prohibiting producers or refiners of petroleum products from operating retail service stations, permitting the Comptroller to adopt rules or regulations which define the circumstances on which a producer or refiner may operate temporarily a previously dealer operated station, requiring the Comptroller to permit certain exceptions to the divestiture dates by considering all of the relevant facts and reaching certain conclusions, and regulating voluntary allowances and rental agreements.

BY repealing and re-enacting, with amendments,
Article 56 - Licenses
Section 157E
Annotated Code of Maryland
(1972 Replacement Volume and 1973 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 157E of Article 56 - Licenses, of the Annotated Code of Maryland (1972 Replacement Volume and 1973 Supplement) be and it is hereby repealed and re-enacted, with amendments, to read as follows:

Article 56 - Licenses

157E

(A) For the purpose of this law all gasoline and special fuels sold or offered or exposed for sale shall be subject to inspection and analysis as hereinafter provided. All motor fuel wholesalers, diesel fuel sellers, heating oil distributors, manufacturers, refiners, jobbers and retail service station dealers before selling or offering

for sale any gasoline; other motor vehicle fuels, or special fuels under whatever name designated for power and heating purposes shall file with the Comptroller of the Treasury a declaration or statement that they desire to sell such products in this State and shall furnish the name, brand or trademark of the products which they desire to sell together with the name and address of the supplier thereof and that all such products are in conformity with the specifications established by the Comptroller of the Treasury, as purchased from the supplier and he will make no alteration to any such product received from the supplier.

(B) AFTER JULY 1, 1974, NO PRODUCER OR REFINER OF PETROLEUM PRODUCTS SHALL OPEN A MAJOR BRAND, SECONDARY BRAND OR UNBRANDED RETAIL SERVICE STATION IN THE STATE OF MARYLAND, AND OPERATE IT WITH COMPANY PERSONNEL, A SUBSIDIARY COMPANY, OR A COMMISSIONED AGENT.

(C) AFTER JULY 1, 1975, NO PRODUCER OR REFINER OF PETROLEUM PRODUCTS SHALL OPERATE A MAJOR BRAND, SECONDARY BRAND, OR UNBRANDED RETAIL SERVICE STATION IN THE STATE OF MARYLAND, WITH COMPANY PERSONNEL, A SUBSIDIARY COMPANY, OR A COMMISSIONED AGENT.

(D) EVERY PRODUCER, REFINER, OR WHOLESALER OF PETROLEUM PRODUCTS SUPPLYING GASOLINE AND SPECIAL FUELS TO RETAIL SERVICE STATION DEALERS SHALL EXTEND ALL VOLUNTARY ALLOWANCES UNIFORMLY TO ALL RETAIL SERVICE STATION DEALERS SUPPLIED.

(E) EVERY PRODUCER, REFINER, OR WHOLESALER OF PETROLEUM PRODUCTS SUPPLYING GASOLINE AND SPECIAL FUELS TO RETAIL SERVICE STATION DEALERS SHALL APPLY ALL EQUIPMENT RENTALS UNIFORMLY TO ALL RETAIL SERVICE STATION DEALERS SUPPLIED.

(F) EVERY PRODUCER, REFINER OR WHOLESALER OF PETROLEUM PRODUCTS SHALL APPORTION UNIFORMLY ALL GASOLINE AND SPECIAL FUELS TO ALL RETAIL SERVICE STATION DEALERS DURING PERIODS OF SHORTAGES ON AN EQUITABLE BASIS, AND SHALL NOT DISCRIMINATE AMONG THE DEALERS IN THEIR ALLOTMENTS.

(G) THE COMPTROLLER MAY ADOPT RULES OR REGULATIONS DEFINING THE CIRCUMSTANCES IN WHICH A PRODUCER OR REFINER TEMPORARILY MAY OPERATE A PREVIOUSLY DEALER-OPERATED STATION.

(II) THE COMPTROLLER MAY PERMIT REASONABLE EXCEPTIONS TO THE DIVESTITURE DATES SPECIFIED BY THIS SECTION AFTER CONSIDERING ALL OF THE RELEVANT FACTS AND REACHING REASONABLE CONCLUSIONS BASED UPON THOSE FACTS.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1974.