



FEDERAL ENERGY ADMINISTRATION

WASHINGTON, D.C. 20461

September 10, 1975

OFFICE OF THE ADMINISTRATOR

SEP 12 1975

Honorable Nelson A. Rockefeller
President of the Senate
Washington, D. C. 20510

Dear Mr. President:

During the existence of price and allocation controls under the Emergency Petroleum Allocation Act of 1973, as amended (EPAA), independent retail marketers of gasoline have been reasonably assured of obtaining supplies of petroleum products at controlled prices. Though the EPAA was designed primarily to permit the Nation to deal with the acute shortage of the embargo, one of its effects was to regulate directly a variety of relationships between suppliers and retailers. Expiration of the rigid controls of the EPAA will terminate abruptly the constraints placed upon supplier-retailer relationships.

Independent retail gasoline dealers constitute a significant element in the distribution of petroleum products in interstate commerce. These dealers obtain their petroleum products from refiners or distributors pursuant to lease and franchise agreements which govern virtually every aspect of their businesses and, indeed, their livelihood.

As a result, the good faith performance of the obligations and duties imposed by lease and franchise agreements is essential to promote efficiency and competition in retail gasoline marketing. In many instances, however, the structure of this industry is such that there exists an imbalance of bargaining power between retail dealers and their suppliers.

In order to deter and provide redress to retail dealers for certain coercive or intimidative lease or franchise terminations or other coercive practices which may jeopardize these small businessmen, I am transmitting herewith the Gasoline Dealers' Protection Act of 1975.

Enclosure

This legislation, which is intended to supplement the anti-trust laws in the fashion of the Automobile Dealers' Day in Court Act of 1956, would:

- prohibit a refiner or distributor from canceling, failing to renew or otherwise terminating a petroleum products franchise unless he provides 90 days notice to the retail dealer affected, except for good cause.
- permit a retailer to bring a civil action for treble damages or injunctive relief in a federal district court against any refiner or distributor which fails to act in "good faith" in performing or complying with the terms of the franchise, or in terminating, canceling or failing to renew the franchise with the dealer.

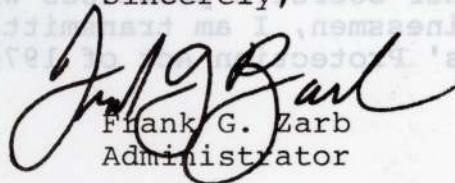
The term "good faith" is defined as the duty of each party to a petroleum products franchise to act in a fair and equitable manner toward each other, thereby insuring each party freedom from coercion, intimidation or threats of coercion or intimidation. It is designed to adopt the body of case law which has defined this term in cases brought under the Automobile Dealers' Day in Court Act of 1956.

The legislation provides a speedy, equitable and relatively inexpensive remedy where none presently exists. It does not, however, prevent mere failure to renew a lease or franchise agreement for legitimate business or economic reasons.

Prompt enactment of this legislation will assure retail dealers a remedy for coercive conduct, while using a well established body of law which permits necessary and proper adjustments in the petroleum marketing system.

The Office of Management and Budget has advised that enactment of this proposed legislation would be in accord with the program of the President.

Sincerely,


Frank G. Zarb
Administrator

Enclosure



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WASHINGTON, D.C. 20461

September 10, 1975

OFFICE OF THE ADMINISTRATOR

Honorable Carl Albert
Speaker of the House
of Representatives
Washington, D. C. 20515

Dear Mr. Speaker:

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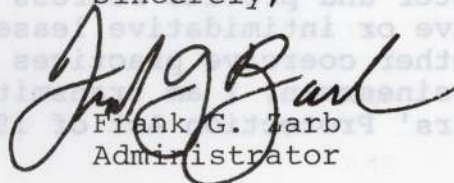
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Sincerely,



Frank G. Zarb
Administrator

Enclosure

A BILL

To provide for the protection of franchised dealers of petroleum products from coercive business practices, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Gasoline Dealers' Protection Act of 1975."

Findings and Purposes

Section 1. (a) The Congress hereby finds that:

(1) Retail gasoline dealers constitute a significant element in the distribution of petroleum products in interstate commerce;

(2) The terms and conditions of petroleum products franchises govern virtually every aspect of the retail dealer's business; and

(3) Good faith performance of the obligations and duties set forth in petroleum products franchises promotes efficiency and fair dealing in retail petroleum marketing, and contributes to the public welfare.

(b) It is the purpose of this Act --

(1) to supplement the antitrust laws of the United States by providing retail sellers of petroleum products with judicial recourse against certain business practices affecting interstate commerce;

(2) to enable a retail seller of petroleum products to

bring a civil action for declaratory or injunctive relief in a District Court of the United States and to recover threefold any damages sustained from the failure of his supplier or franchisor to act in good faith in performing or complying with the terms or conditions of a petroleum products franchise;

(3) to permit retail sellers of petroleum products to obtain redress, including treble damages, for coercive or intimidative terminations and non-renewals of lease and franchise agreements; and,

(4) to require refiners and other distributors of petroleum products to give effective and timely notice of terminations and non-renewals of lease and franchise agreements.

Section 2. As used in this Act, the term -

(1) "Commerce" means commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

(2) "Distributor" or "distributorship" means a person engaged in commerce in any State in the marketing of petroleum products through the sale, consignment, or distribution of such products to wholesale or retail outlets (whether or not such person owns, leases, or in any way controls such outlets) under a petroleum products franchise.

(3) "good faith" means the duty of each party to a petroleum products franchise, and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other, so as to guarantee each party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: Provided, That recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith.

(4) "petroleum products" means gasolines and diesel fuels for use in motor vehicles, distillates used as heating fuel, and kerosene;

(5) "petroleum products franchise" means any agreement or contract --

(A) between a refiner or a distributor and a retailer or between a refiner and distributor, under which such retailer or distributor is granted authority to use a trademark, trade name, service mark, or other identifying symbol or name, owned by such refiner or distributor; or,

(B) which grants such a retailer or distributor the authority to occupy premises owned, leased, or in any way controlled by a party to such agreement or contract; or,

(C) which delineates in writing the terms and conditions by which a refiner or distributor supplies a retailer with any petroleum product.

(6) "Refiner" means a firm which refines petroleum products or blends and substantially changes petroleum products, or refines liquid hydrocarbons from oil and gas

field gases, or recovers liquefied petroleum gases incident to petroleum refining and sells those products to distributors, retailers, or ultimate consumers. "Refiner" includes any owner of petroleum products which contracts to have those products refined and then sells the refined petroleum products to distributors, retailers, or ultimate consumers.

(7) "Retailer" means a person engaged in the sale of any petroleum product in commerce under a petroleum products franchise in any State.

(8) "State" means any state of the United States, its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Canal Zone.

Section 3(a). A refiner or distributor shall not cancel, fail to renew, or otherwise terminate a petroleum products franchise except for good cause, unless he furnishes prior notification pursuant to this paragraph to each distributor or retailer who is a party to the petroleum products franchise agreement. Such notification shall be in writing and shall be sent to such distributor or retailer by certified mail not less than ninety days prior to the date on which such petroleum products franchise will be canceled, not renewed, or otherwise terminated. Such notification shall contain a statement of intention to cancel, not renew, or to terminate (together with the reasons therefor); the date on which such action shall take effect; and a statement of the remedy or remedies available to such distributor or retailer under

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this Act, including a summary of the applicable provisions of this Act.

(b) As used in this section, "good cause" exists when any one or more of the following circumstances have occurred:

(1) conviction of the retailer of any state or federal crime directly related to the petroleum products franchise or the associated business.

(2) fraudulent operation of the retail establishment, such as intentionally damaging automobiles, intentionally overcharging or intentionally deceiving customers as to repairs which are not needed.

(3) court determined mental incompetency of the retailer.

(4) failure of the retailer to pay obligations due the refiner or distributor, such as rent, franchise fees or charges for petroleum products sold to the retailer, within a reasonable period of time.

(5) abandonment of the retail establishment leased from the distributor or refiner.

(6) adulteration, mislabeling, or misbranding of a petroleum product.

(7) violation of trademark rights associated with any petroleum product sold by the refiner or distributor to the retailer pursuant to a petroleum products franchise.

(8) mutual agreement of the parties to terminate the petroleum products franchise.

Section 4(a). A retailer may bring a civil action for declaratory or injunctive relief against any refiner or distributor engaged in commerce, in any district court of the United States in the district in which said refiner or distributor resides, or is found, or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained and the costs of suit by reason of the failure of said refiner or distributor to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer: Provided, that in any such suit the refiner or distributor shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith. Provided further, that in any action based on the cancellation, termination or failure to renew a petroleum products franchise, it shall be a complete defense that such cancellation, termination or failure to renew was due to the retailer's failure to comply substantially with the provisions of such franchise.

(b) No action under this section shall be maintained unless it is commenced within three years after the cancellation, failure to renew, termination or modification of the applicable petroleum products franchise.

(c) The court shall grant such relief as is necessary or appropriate to remedy the effects of conduct it finds to exist if such conduct is prohibited under sections 3(a) and 4(a) of this Act. Such relief may include, but is not limited to, declaratory judgments, mandatory or prohibitive injunctive relief, interim equitable relief, and actual and exemplary damages in an amount equal to three times the damages suffered as a result of such action.

RELATIONSHIP TO OTHER LAWS

Section 5(a). Nothing in this Act shall be deemed to convey to any individual, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions under the antitrust laws.

(b). As used in this section, the term "anti-trust law" means --

(1) The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(2) the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12 et seq.), as amended;

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

(4) sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes:", approved August 27,

1894 (15 U.S.C. 8 and 9), as amended; and

(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

(c) No provision of this Act shall be construed as limiting or in any way affecting any remedy or penalty that may result from any legal action or proceeding arising from any acts or practices that occurred --

(1) prior to the date of enactment of this Act, or

(2) outside the scope and purpose, or not in compliance with, the terms of this Act.

SEPARABILITY

Section 6. If any provision of this Act, or the application of such a provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such a provision to any other person or circumstance, shall not be affected thereby.