

THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 1620

Session of  
1979

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JULY 10, 1979

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REFERRED TO COMMITTEE ON STATE GOVERNMENT, JULY 10, 1979

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AN ACT

1 Relating to the marketing of gasoline products and the operation  
2 of retail service stations.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the "Gasoline  
7 Products Marketing Act."

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall  
10 have the meaning given them in this section unless the context  
11 clearly indicates otherwise:

12 "Controlled outlet." An outlet which is operated by a  
13 distributor or operated by company employees, a subsidiary  
14 company, commissioned agent, or by any person who manages the  
15 outlet on a fee arrangement with the distributor.

16 "Dealer." A person engaged in the retail sale of gasoline

1 products under a marketing agreement, at least 30 percent of  
2 whose gross revenue is derived from the retail sale of gasoline  
3 products; however, the term does not include an employee of a  
4 distributor.

5 "Distributor." A person who:

6 (1) Engages in the sale, consignment, or distribution of  
7 gasoline products through retail outlets which he owns or  
8 leases.

9 (2) Maintains an oral or written contractual  
10 relationship with a dealer for the sale of the products.

11 The term includes any subsidiary or affiliated corporation in  
12 which a distributor holds at least 30% voting control.

13 "Gasoline." Gasoline, benzol, benzine, naphtha and any other  
14 liquid prepared, advertised, offered for sale, sold for use as,  
15 or used for, the generation of power for the propulsion of motor  
16 vehicles including any product obtained by blending together any  
17 one or more products of petroleum with or without other  
18 products, if the resultant product is capable of the same use.

19 "Independent jobber." An individual who purchases gasoline  
20 products from a wholesaler for resale to a dealer.

21 "Major brand." The primary trade name or trademark most  
22 commonly associated with and identified with a manufacturer and  
23 refiner's retail service station.

24 "Manufacturer or refiner." Any person, firm or corporation  
25 engaged in producing, blending or compounding motor vehicle  
26 fuels.

27 "Marketing agreement." An oral or written agreement between  
28 a distributor and a dealer under which the dealer is granted the  
29 right, for the purpose of engaging in the retail sale of  
30 gasoline products supplied by the distributor, to:

1           (1) use a trademark, trade name, service mark, or other  
2     identifying symbol or name owned by the distributor; or

3           (2) occupy premises owned, leased, or controlled by the  
4     distributor.

5     "Person." An individual, corporation, business trust,  
6     estate, trust, partnership, association, two or more persons  
7     having a joint or common interest, or any other legal or  
8     commercial entity.

9     "Petroleum products." Motor vehicle fuel, residual oils  
10    number 4, 5 and 6, and all grades of jet (turbo fuels).

11    "Retail service station dealer." Any person, firm or  
12    corporation maintaining a place of business where motor vehicle  
13    fuel is sold and delivered into the tanks of motor vehicles.

14    "Retail sale." The sale of a product for purposes other than  
15    resale.

16    "Secondary brand." A trade name or trademark, other than a  
17    major brand, used to identify a manufacturer and refiner's  
18    retail service station.

19    "Special fuels." Diesel oils, kerosene, and heating oils or  
20    liquids used in diesel engines or in internal combustion engines  
21    for the propulsion of motor vehicles, including any product  
22    obtained by blending together any one or more products of  
23    petroleum with or without other products, if the resultant  
24    product is capable of the same use.

25    "Unbranded." An independent retail service station dealer  
26    marketing gasoline or other petroleum products under its own  
27    brand, trade name or trademark other than those of a  
28    manufacturer and refiner or any subsidiary thereof.

29    Section 3. Legislative finding and declaration.

30    The General Assembly finds and declares that since the

1 distribution and sale through marketing arrangements of  
2 petroleum products in this Commonwealth vitally affect the  
3 economy of the Commonwealth, and its public interest, welfare,  
4 and transportation, it is necessary to define the relationships  
5 and responsibilities of the parties to certain agreements  
6 pertaining to these marketing arrangements.

7 Section 4. Disclosures by distributor to prospective dealer.

8 Before any marketing agreement is concluded, a distributor  
9 shall disclose fully to a prospective dealer the following  
10 information:

11 (1) Any gallonage history of the location under  
12 negotiation for the shorter of:

13 (i) the three-year period immediately past; or

14 (ii) the entire period during which the location has  
15 been supplied by the distributor.

16 (2) The name, last known address, and reason for the  
17 termination of the marketing agreement of each person who was  
18 a dealer at the location during:

19 (i) the five-year period immediately past; or

20 (ii) the entire period during which the location has  
21 been supplied by the distributor.

22 (3) Any commitment for the sale, demolition, or other  
23 disposition of the location.

24 (4) Any training program and any specific goods and  
25 services which the distributor will provide for and to the  
26 dealer.

27 (5) Any obligation which will be required of the dealer.

28 (6) Any restriction on the sale, transfer, and  
29 termination of the agreement.

30 (7) The total amount of any cash deposit required, any

1 amount of interest to be paid on the deposit, and the  
2 conditions for the return of the deposit.

3 Section 5. Marketing agreement subject to certain provisions.

4 (a) In general.--Every marketing agreement is subject to the  
5 provisions of this section, whether or not expressly set forth  
6 in the agreement.

7 (b) Dealer's right to cancel.--

8 (1) Until midnight of the seventh business day after the  
9 day a marketing agreement is signed or entered into, the  
10 dealer may cancel it by giving written notice of cancellation  
11 to the distributor in person or by registered or certified  
12 mail.

13 (2) Within 10 days after delivery of the notice of  
14 cancellation, the dealer shall return to the distributor full  
15 possession of any service station, location, money,  
16 equipment, or merchandise loaned, sold, or delivered under  
17 the marketing agreement to the dealer by the distributor.

18 (3) The distributor shall give the dealer full credit or  
19 its cash equivalent for all money, equipment, and merchandise  
20 returned.

21 (c) Price setting.--The distributor may not set or maintain  
22 or attempt to set or maintain the price at which the dealer  
23 sells any product, and the price of any product may not be  
24 subject to enforcement or coercion by the distributor in any  
25 way. However, the distributor may counsel with the dealer  
26 concerning prices and may suggest prices to him.

27 (d) Hours of business.--A distributor may only require a  
28 dealer to keep his retail outlet open for business for a  
29 specified number of hours per day or days per week when this  
30 requirement is negotiated in good faith by both parties and

1 arrived at in mutual agreement and it is on the basis of a bona  
2 fide business need.

3 (e) Promotions.--The distributor may not require the dealer  
4 to use any promotion, premium, coupon, give-away, or rebate in  
5 the operation of the business. However, if not otherwise  
6 prohibited by law, the dealer may participate in a promotional,  
7 premium, coupon, give-away, or rebate program sponsored by the  
8 distributor.

9 (f) Notice of intent not to renew.--A distributor who  
10 intends not to renew a marketing agreement shall give notice of  
11 his intent to the retail service station dealer at least 90 days  
12 before the expiration of the term of the marketing agreement,  
13 whether or not the marketing agreement contains a provision for  
14 automatic renewal or, by its terms, expires at a fixed time.  
15 Failure to give notice constitutes a renewal of the marketing  
16 agreement for a term of one year from its stated expiration  
17 date.

18 (g) Distributor may not unreasonably withhold certain  
19 consents; reasons for nonrenewal to be set forth in notice.--The  
20 distributor may not unreasonably withhold his consent to any  
21 assignment, transfer, sale, or renewal of a marketing agreement,  
22 whether or not the marketing agreement contains a provision for  
23 automatic renewal or, by its terms, expires at a fixed time.  
24 Notice of intent not to renew a marketing agreement shall set  
25 forth, in specific detail, the reasons relied upon by the  
26 distributor for the nonrenewal.

27 (h) Repurchase on termination or cancellation.--

28 (1) Except with respect to a cancellation to which  
29 subsection (b) applies, within 30 days after the date a  
30 marketing agreement is terminated or cancelled, whether by

1 mutual agreement or otherwise, the distributor shall  
2 repurchase from the dealer at the then current wholesale  
3 price all merchantable products purchased by the dealer from  
4 the distributor.

5 (2) The distributor may apply the proceeds of any  
6 repurchased product against any existing debt owned by the  
7 dealer to the distributor.

8 (3) The obligation to repurchase under this subsection  
9 is enforceable only to the extent that there are not other  
10 valid claims or liens against the products by or on behalf of  
11 other creditors of the dealer.

12 (i) Payment for goodwill.--

13 (1) In addition to the provisions of subsection (h), if,  
14 without the written consent of the dealer, the distributor  
15 terminates, cancels, or unreasonably refuses to renew the  
16 marketing agreement, the distributor shall pay to the dealer  
17 the full value of any business goodwill which the dealer  
18 enjoys at the time he is notified of the termination,  
19 cancellation, or refusal to renew.

20 (2) The distributor shall make the payment required by  
21 this subsection within 30 days from the effective date of the  
22 termination, cancellation, or refusal to renew.

23 (3) This subsection does not apply if the dealer  
24 materially breaches the marketing agreement.

25 (j) Agreement may not waive certain rights.--The marketing  
26 agreement may not waive the right of either party to trial by  
27 jury or interposition of counter-claims or cross-claims.

28 (k) Service station lease providing for minimum monthly  
29 rental.--A clause in any lease or contract from a producer or  
30 refiner to a dealer for the use of a retail service station

1 providing for a minimum monthly rental based on a certain volume  
2 of sales is not enforceable to the extent the minimum rent  
3 exceeds a sum equal to the minimum rent provided for in the  
4 lease or contract times a fraction, the denominator of which is  
5 the number of gallons of gasoline on which the minimum rent is  
6 based and the numerator of which is the number of gallons of  
7 gasoline made available by the producer or refiner to the dealer  
8 for that month.

9 (1) Wholesale price of gasoline to noncontrolled outlets.--

10 (1) A distributor who sets the retail price of gasoline  
11 through controlled outlets shall provide those noncontrolled  
12 outlets that it supplies with gasoline products at a  
13 wholesale price of at least 4¢ per gallon under the lowest  
14 price posted for each grade of gasoline at any controlled  
15 outlet.

16 (2) The provisions of this act shall not apply to  
17 independent jobbers and farm cooperatives.

18 Section 6. Defenses to action based on termination or  
19 cancellation of marketing agreement.

20 Subsection to the notice requirements of section 7, in any  
21 action filed under this act which is based on a termination or  
22 cancellation of a marketing agreement, it is a defense that the  
23 marketing agreement was terminated or cancelled:

24 (1) by mutual agreement of the parties. However, the  
25 mutual agreement is void and unenforceable unless it clearly  
26 states that it is not effective until the seventh business  
27 day after the date of its execution during which time either  
28 the dealer or the distributor have the absolute right to  
29 rescind such mutual agreement by written notice to the other  
30 party;



1           (2) because of the bankruptcy or insolvency of the  
2 dealer;

3           (3) because the dealer failed to comply with an express  
4 requirement of the marketing agreement; or

5           (4) because the dealer failed to act in good faith in  
6 carrying out the terms of the marketing agreement.

7 Section 7. Notice of intent required to raise defenses.

8       (a) Notice required to raise defense.--A party to a  
9 marketing agreement may not raise any defense set out in section  
10 6 unless he gives written notice to the other party of his  
11 intent to terminate or cancel the agreement. This notice shall  
12 be given in person or by registered or certified mail at least  
13 60 days before the date on which he intends to terminate or  
14 cancel it.

15       (b) When notice not required.--The 60-day notice is not  
16 required if at the time of termination or cancellation of the  
17 marketing agreement any of the following is proven:

18           (1) Criminal misconduct.

19           (2) Fraud.

20           (3) Abandonment.

21           (4) Bankruptcy or insolvency of the dealer.

22           (5) Adulteration of product;

23           (6) Giving a check which is dishonored for insufficient  
24 funds.

25       (c) Notice by registered or certified mail.--If notice is  
26 given by registered or certified mail, it shall be effective on  
27 the date of mailing.

28 Section 8. Certain operations prohibited.

29       (a) Certain openings prohibited.--After January 1, 1980, no  
30 manufacturer or refiner of petroleum products shall open a major

1 brand, secondary brand or unbranded retail service station in  
2 this Commonwealth and operate it with company personnel, a  
3 subsidiary company, commissioned agent, or under a contract with  
4 any person, firm or corporation managing a service station on a  
5 fee arrangement with the manufacturer or refiner. The station  
6 must be operated by an independent retail service station  
7 dealer.

8 (b) Certain operations prohibited.--After January 1, 1981,  
9 no manufacturer or refiner of petroleum products shall operate a  
10 major brand, secondary brand or unbranded retail service station  
11 in this Commonwealth, with company personnel, a subsidiary  
12 company, commissioned agent or under a contract with any person,  
13 firm or corporation managing a service station on a fee  
14 arrangement with the manufacturer or refiner. The station must  
15 be operated by an independent retail service station dealer.

16 (c) Rules authorizing temporary operation.--The Department  
17 of Commerce may adopt rules or regulations defining the  
18 circumstances in which a manufacturer or refiner temporarily may  
19 operate a previously dealer-operated station.

20 (d) Divestiture exceptions.--The Department of Commerce may  
21 permit reasonable exceptions to the divestiture dates specified  
22 by this section after considering all of the relevant facts and  
23 reaching reasonable conclusions based upon those facts.

#### 24 Section 9. Extension of voluntary allowances.

25 Every manufacturer or refiner, or wholesaler of petroleum  
26 products supplying gasoline and special fuels to retail service  
27 station dealers shall extend all voluntary allowances uniformly  
28 to all retail service station dealers supplied.

#### 29 Section 10. Application of equipment rentals.

30 Every manufacturer or refiner, or wholesaler of petroleum

1 products supplying gasoline and special fuels to retail service  
2 station dealers shall apply all equipment rentals uniformly to  
3 all retail service station dealers supplied.

4 Section 11. Uniform apportionment during shortage.

5 Every manufacturer or refiner or wholesaler of petroleum  
6 products shall apportion uniformly all gasoline and special  
7 fuels to all retail service station dealers during periods of  
8 shortages on an equitable basis, and shall not discriminate  
9 among the dealers in their allotments.

10 Section 12. Remedies.

11 Any person who violates any provision of this act is liable  
12 for damages caused by the violation and is subject to the other  
13 legal or equitable remedies available to the party injured by  
14 the violation.

15 Section 13. Application to prior agreements.

16 This act shall not apply to any agreement entered into prior  
17 to the effective date of this act, except that a renewal of such  
18 agreement shall be subject to the provisions herein provided.

19 The provisions of the act of November 25, 1975 (P.L.454,  
20 No.126), entitled "An act regulating the practices of suppliers,  
21 distributors and dealers of gasoline, petroleum products and  
22 accessories for motor vehicles and providing remedies for  
23 violations," which is repealed by section 14 of this act are  
24 hereby saved insofar as they are otherwise applicable to  
25 agreements in effect prior to the effective date of this act.

26 Section 14. Repeal.

27 The act of November 25, 1975 (P.L.454, No.126), entitled "An  
28 act regulating the practices of suppliers, distributors and  
29 dealers of gasoline, petroleum products and accessories for  
30 motor vehicles and providing remedies for violations," is hereby

- 1 repealed absolutely except to the extent it is temporarily saved
- 2 by section 13.
- 3 Section 15. Effective date.
- 4 This act shall take effect in 30 days.