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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 11

Session of  
1983

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Report of the Committee of Conference

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To the Members of the Senate and House of Representatives:

We, the undersigned, Committee of Conference on the part of  
the Senate and House of Representatives for the purpose of  
considering Senate Bill No. 11, entitled:

"An act amending Title 75 (Vehicles) of the Pennsylvania  
Consolidated Statutes, requiring school buses to stop at all  
railroad crossings; FURTHER PROVIDING FOR SPEED TIMING DEVICES;  
~~and~~ permitting local authorities to designate and use roads for  
nonvehicular purposes; ~~AND~~ FURTHER PROVIDING FOR LIMITED  
EXEMPTIONS FROM THE AXLE TAX AND THE ISSUANCE OF REGISTRATION  
AND CERTIFICATES OF TITLE; AND PROVIDING FOR THE MARKETING OF  
GASOLINE PRODUCTS,"

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respectfully submit the following bill as our report:

ROY W. WILT

DAVID J. BRIGHTBILL

EDWARD P. ZEMPRELLI

(Committee on the part of the Senate.)

WILLIAM WACHOB

FRED TAYLOR

(Committee on the part of the House of Representatives.)

AN ACT

1 Providing for the retail sale of gasoline; regulating certain  
2 relationships between retail gasoline dealers and  
3 manufacturers, refiners, suppliers and distributors; and  
4 providing for the recovery of damages in certain cases.

5 The General Assembly finds and declares that the distribution  
6 and sales of gasoline and petroleum products in this  
7 Commonwealth, including the rights and obligations of suppliers  
8 and dealers, vitally affects its general economy. In order to  
9 promote the public interest and public welfare of this  
10 Commonwealth; to avoid undue control of the dealer by suppliers;  
11 to foster and keep alive vigorous and healthy competition for  
12 the benefit of the public by prohibiting practices through which  
13 fair and honest competition is destroyed or prevented; to  
14 promote the public safety; to prevent deterioration of  
15 facilities for servicing motor vehicles on the highways of this  
16 Commonwealth; and to prevent dealers from unnecessarily going  
17 out of business, thereby resulting in unemployment with loss of  
18 tax revenue to the Commonwealth and its inevitable train of  
19 undesirable consequences, it is necessary to legislate standards  
20 pursuant to the exercise of the police power of this  
21 Commonwealth governing the relationship between suppliers and  
22 distributors of gasoline and petroleum products and the dealers  
23 who sell the products to the public.

24 The General Assembly of the Commonwealth of Pennsylvania  
25 hereby enacts as follows:

26 Section 1. Short title.

27 This act shall be known and may be cited as the Petroleum  
28 Practices Regulation Act.

29 Section 2. Definitions.

30 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

3 "Agreement." A contract or lease, or combination of both, or  
4 any other terminology used to describe the contractual  
5 relationship between the lessor, supplier and the lessee dealer.

6 "Controlled outlet." An outlet which is operated by a  
7 manufacturer or refiner or by partners or employees of a  
8 manufacturer, refiner or subsidiary thereof or commissioned  
9 agent of a manufacturer, refiner or subsidiary thereof or by any  
10 person manufacturer, refiner or subsidiary thereof.

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

17 "Imputed gasoline costs." The net wholesale price per gallon  
18 charged by the manufacturer, refiner or subsidiary thereof to  
19 the complaining retail service station dealer for each grade of  
20 branded gasoline during the period of an alleged violation of  
21 section 3.

22 "Imputed real estate costs." The fair market value of the  
23 controlled outlet multiplied by a percentage equal to the rate  
24 of return realized by the manufacturer, refiner or subsidiary  
25 thereof from the leasing of its retail service station to the  
26 complaining retail service station dealer. This rate of return  
27 is determined by dividing the retail service station dealer's  
28 rental by the fair market value of the property and expressing  
29 the quotient as a percentage.

30 "Manufacturer" or "refiner." A person, partnership, firm or

1 corporation engaged in producing, blending or compounding motor  
2 fuels.

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

7 "Relevant market area." An area in which a controlled outlet  
8 and a retail service station dealer are in direct, actual and  
9 substantial competition, and, absent other evidence, it is  
10 presumed to be for cities of the first, second, and their  
11 contiguous municipalities, and third class, an area consisting  
12 of one mile in all directions by the most direct surface route  
13 from a retail service station dealer. For all other areas of  
14 this Commonwealth, it shall be an area of three miles in all  
15 directions by the most direct surface route from a retail  
16 service station dealer.

17 "Retail sale." The sale of gasoline at retail.

18 "Retail service station dealer." A person, firm or  
19 corporation maintaining a place of business, other than a  
20 controlled outlet or jobber, where gasoline is sold at retail  
21 and delivered into the tanks of motor vehicles.

22 "Subsidiary." A company in which a manufacturer or refiner  
23 has more than a 50% beneficial or legal interest.

#### 24 Section 3. Discrimination.

25 (a) General rule.--It shall be a violation of this act for  
26 manufacturers, refiners or subsidiaries thereof to discriminate  
27 against their own retail service station dealers in this  
28 Commonwealth. Discrimination shall be established whenever a  
29 manufacturer, refiner or subsidiary thereof either:

30 (1) Offers to sell or sells a grade of branded gasoline

1 at retail at a controlled outlet at a price per gallon which  
2 is less than the wholesale price which the manufacturer,  
3 refiner or subsidiary thereof charges its own retail service  
4 station dealer within a relevant market area for the same  
5 grade and brand of gasoline where the effect is to  
6 substantially lessen competition or tends to create a  
7 monopoly.

8 (2) Determines the rent charged to its own retail  
9 service station dealer upon a basis which does not include an  
10 objectively reasonable and economically realistic criteria or  
11 applies the rent to its own retail service station dealers in  
12 a nonuniform manner across the State.

13 (3) Fails to recover costs at a controlled outlet which  
14 is within a relevant market area of its own retail service  
15 station dealer. The failure shall exist whenever the  
16 controlled outlet's total actual proceeds do not exceed the  
17 imputed costs of that controlled outlet. Imputed costs shall  
18 be determined by examining all of the actual costs of  
19 operating the controlled outlet. However, its own retail  
20 service station dealer's imputed real estate costs and  
21 imputed gasoline costs shall be substituted for those same  
22 costs at the controlled outlet.

23 (b) Confidential information.--Any information concerning  
24 proceeds and costs obtained pursuant to an actual or alleged  
25 violation of subsection (c) shall be proprietary information for  
26 the litigants and shall not be subject to public inspection.

27 (c) Construction of section.--Nothing in this section shall  
28 be construed as limiting, restricting or waiving those rights  
29 and protections afforded under the Petroleum Marketing Practices  
30 Act (15 U.S.C. § 2801 et seq.).

1 Section 4. Application to prior agreements.

2 This act shall not apply to any rental agreement entered into  
3 prior to the effective date of this act, except that renewal of  
4 an agreement shall not be excluded.

5 Section 5. Damages due to discrimination.

6 (a) Notice of complaint.--Upon any alleged or actual  
7 violation of section 3, a retail service station dealer shall  
8 first notify his manufacturer, refiner or subsidiary thereof, by  
9 certified mail, of his specific complaint, in writing to the  
10 manufacturer, refiner or subsidiary thereof or an agent thereof  
11 as designated in the lease or the invoice. The manufacturer,  
12 refiner or subsidiary thereof shall have ten business days in  
13 which to respond to its own retail service station dealer and  
14 shall, if possible, adequately resolve any dispute within a  
15 reasonable time. If the resolution of any dispute by the  
16 manufacturer, refiner or subsidiary thereof does not conform to  
17 the time requirements of this section or is not satisfactory to  
18 the retail service station dealer, the dealer may file a suit  
19 within the court of common pleas where the violation occurred or  
20 where the affected retail service station is situated. The court  
21 of common pleas may issue an injunction if appropriate.  
22 Otherwise, the court shall convene an initial hearing within 30  
23 days.

24 (b) Measure of damages.--If the retail service station  
25 dealer prevails in any action under section 3, the dealer shall  
26 be entitled to the following:

27 (1) Actual damages.

28 (2) In the case of any action which is based upon  
29 conduct of the manufacturer, refiner or subsidiary thereof  
30 and which was in willful disregard of section 3 or the rights

1 of the retail service station dealer thereunder, exemplary  
2 damages, where appropriate, to be determined by the court of  
3 common pleas and not by a jury.

4 (3) Reasonable attorney and expert witness fees to be  
5 paid by the manufacturer, refiner or subsidiary thereof,  
6 unless the court determines that only nominal damages are to  
7 be awarded to the retail service station dealer, in which  
8 case the court, in its discretion, need not direct that the  
9 fees be paid by the manufacturer, refiner or subsidiary  
10 thereof.

11 Section 6. Damages for a manufacturer, refiner or subsidiary.

12 If the manufacturer, refiner or subsidiary thereof prevails  
13 in any action brought under section 3, the manufacturer, refiner  
14 or subsidiary thereof may be awarded, in the court's discretion,  
15 reasonable attorney and expert witness fees to be paid by the  
16 retail service station dealer if the court of common pleas finds  
17 that the action is frivolous.

18 Section 7. Study and report.

19 The Governor's Energy Council shall commence a study one year  
20 from the effective date of this act to determine the effects of  
21 this act upon petroleum marketing within the Commonwealth. The  
22 council shall make a report of its findings and recommendations  
23 to the President pro tempore of the Senate and to the Speaker of  
24 the House, within 180 days of the completion of the study.

25 Section 8. Effective date.

26 This act shall take effect immediately.