

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2125 Session of  
2003

INTRODUCED BY O'BRIEN, ARMSTRONG, THOMAS, WATSON, HERMAN,  
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HORSEY, CLYMER AND MELIO, OCTOBER 27, 2003

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, OCTOBER 27, 2003

AN ACT

1 Amending the act of November 26, 1975 (P.L.454, No.126),  
2 entitled "An act regulating the practices of suppliers,  
3 distributors and dealers of gasoline, petroleum products and  
4 accessories for motor vehicles and providing remedies for  
5 violations," further providing for legislative findings and  
6 purposes; adding definitions; further providing for  
7 prohibited practices and for penalties and enforcement.

8 The General Assembly of the Commonwealth of Pennsylvania  
9 hereby enacts as follows:

10 Section 1. Sections 1, 2 and 4 of the act of November 26,  
11 1975 (P.L.454, No.126), referred to as the Gasoline, Petroleum  
12 Products and Motor Vehicle Accessories Act, are amended to read:

13 Section 1. Legislative Findings and Purposes.--(a) The  
14 General Assembly of this Commonwealth finds and declares that  
15 the distribution and sales of gasoline and petroleum products in  
16 the Commonwealth of Pennsylvania, including the rights and  
17 obligations of suppliers and dealers, vitally affects its  
18 general economy. In order to promote the public interest and  
19 public welfare of this Commonwealth; to avoid undue control of

1 the dealer by suppliers; to foster and keep alive vigorous and  
2 healthy competition for the benefit of the public by prohibiting  
3 practices through which fair and honest competition is destroyed  
4 or prevented; to promote the public safety; to prevent  
5 deterioration of facilities for servicing motor vehicles on the  
6 highways of this Commonwealth; and to prevent dealers from  
7 unnecessarily going out of business, thereby resulting in  
8 unemployment with loss of tax revenue to the Commonwealth and  
9 its inevitable train of undesirable consequences; it is  
10 necessary to legislate standards pursuant to the exercise of the  
11 police power of this Commonwealth governing the relationship  
12 between suppliers and distributors of gasoline and petroleum  
13 products and the dealers who sell the products to the public.

14 (b) The General Assembly finds that:

15 (1) The preservation of independent and small dealers and  
16 distributors of motor fuel is essential to the preservation of a  
17 healthy and competitive motor fuel marketplace. Such a  
18 marketplace, in an industry that affects the life of virtually  
19 every resident of this Commonwealth on a daily basis, is  
20 essential to the health, safety and economic well-being of the  
21 public.

22 (2) Independent dealers and distributors are threatened by  
23 practices such as unfair wholesale pricing of motor fuel by  
24 refiners and others, and other costs imposed upon such dealers  
25 and distributors, all of which serve to increase the price of  
26 motor fuel to the consumer. Refiners often impose charges upon  
27 such dealers and facilities, that are not applied to a company-  
28 operated facility, a tactic that serves to drive out locally  
29 owned and operated businesses in favor of locations operated by  
30 multinational refiners.

1     (3) Such practices are inherently destructive of these  
2 competitors and therefor injure competition.

3     (4) Preservation of the dealers and distributors assures the  
4 greatest number of competitors able to invigorate competition  
5 among themselves, and assures consumers of the widest variety of  
6 goods and services available at motor fuel marketing facilities,  
7 as well as greater responsiveness to local market conditions.

8     (5) Displacement of dealers and distributors by refiner-  
9 operated facilities is contrary to interests of the citizens of  
10 Pennsylvania.

11     Section 2. Definitions.--The following words and phrases  
12 when used in this act shall have, unless the context clearly  
13 indicates otherwise, the meanings given to them in this section:

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

17     "Imposed charges." Any charge that is imposed upon a  
18 retailer by the refiner or distributor supplying motor fuel to  
19 the station in question. The term includes charges such as  
20 station rent, maintenance charges and any other charge that is  
21 within the reasonable control of the refiner or distributor.

22     "Lessee dealer." Any person, firm, corporation or  
23 association who leases from and enters into an agreement with a  
24 lessor supplier for the purpose of operating a gasoline service  
25 station.

26     "Lessor supplier." Any person, firm, corporation or  
27 association, resident or non-resident, who leases real estate  
28 and the improvements thereon for use as a gasoline service  
29 station and who also enters into an agreement with a lessee  
30 dealer to supply the lessee dealer with gasoline, petroleum

1 products and accessories necessary to the proper operation of a  
2 motor vehicle.

3 "Wholesale price." The tankwagon price or other price  
4 charged to a motor fuel retailer or the rack price charged to a  
5 distributor.

6 Section 4. Prohibited Practices.--(a) It shall be a  
7 violation of this act for any lessor supplier, directly or  
8 indirectly, through any officer, agent or employee to engage in  
9 the following practices:

10 (1) To require a lessee dealer at the time of entering into  
11 an agreement to assent to a release, assignment, novation,  
12 waiver or estoppel which would relieve any person from liability  
13 imposed by this act.

14 (2) To prohibit, directly or indirectly, the right of free  
15 association among lessee dealers for any lawful purpose.

16 (3) To prohibit the transfer by will of the gasoline service  
17 station business and the right of the lessee dealer under the  
18 agreement to a spouse, child or children.

19 (4) To require a lessee dealer to accept a lease for the  
20 premises of a term less than one year.

21 (5) To provide any term or condition in any lease or other  
22 agreement which term or condition directly or indirectly  
23 violates this act.

24 (b) It shall be a violation of this act for any refiner or  
25 distributor or any affiliate or subsidiary thereof, as the case  
26 may be, to charge any retailer a wholesale price that fails to  
27 comply with the prohibitions of this section. The following  
28 actions are hereby defined to constitute unfair wholesale  
29 pricing practices:

30 (1) Charging a wholesale price that is equal to or greater

1 than the lowest retail price charged by such refiner or  
2 distributor at a station operated by employees, commission  
3 agents or other contractual arrangement that allows the refiner  
4 or distributor to set the ultimate retail price, where such  
5 station is served out of the same terminal as the station of the  
6 complaining retailer, less imposed costs as defined in section  
7 2.

8 (2) Charging a different wholesale price to retailers served  
9 out of the same terminal, unless such difference in price is due  
10 to cost differentials incurred in serving such retailers.

11 (3) Discriminating in price between customers served out of  
12 a terminal who are in different classes of trade, unless such  
13 discrimination is based upon:

14 (i) cost differentials incurred in serving such customers;

15 (ii) a price discrimination is made in good faith to meet  
16 the price of a competitor who is selling a motor fuel of like  
17 grade and quality, and provided further, that such price  
18 differential is made available to all customers; or

19 (iii) cost savings that are due to the functions performed  
20 by such customer.

21 (4) Any contract provision or action by a franchisor that  
22 has the practical effect of determining a franchisee's retail  
23 price or price level shall be conclusively presumed to violate  
24 this act.

25 (c) Every franchise agreement in this Commonwealth shall  
26 contain the following language in bold face print of not less  
27 than 12-point type:

28 "The franchisee is an independent businessperson, and the  
29 determination of a retail price shall be made by such  
30 businessperson, and such businessperson alone."

Section 2. The act is amended by adding a section to read:

Section 6.1. Penalties, Enforcement.--(a) Any party found to have violated the provisions of this act shall pay a civil penalty of not less than \$10,000 per day, per location for each day such violation is found to have occurred.

(b) An action to enforce this act may be brought in a court of competent jurisdiction by any affected party, as well as the Attorney General of the Commonwealth, the attorney for any subdivision within this Commonwealth or a trade association.

(c) In any action under this act, the court shall order such equitable relief as the court determines is necessary to remedy the effects of any requirement or prohibition contained in this act, including declaratory judgment, mandatory or prohibitive injunctive relief and interim equitable relief. In any action under this act, the court shall grant a preliminary injunction if the complaining party shows:

(i) that a violation or threatened violation of this act exists;

(ii) that serious questions making fair ground for litigation exist with respect to the merits of the claim; and

(iii) that on balance the hardships imposed upon the motor fuel supplier will be less than hardships imposed upon the complaining party if such preliminary injunctive relief were not granted.

(d) Any party found to have violated the provisions of this act as a result of an action brought pursuant to subsection (b) shall be liable for:

(1) three times the actual damages sustained by the complaining party;

(2) in the case of a willful violation of any provision of

1 this act, exemplary or special damages; and

2 (3) reasonable attorney and expert witness fees as well as  
3 all costs of the action incurred by the complaining party.

4 (e) Rights and obligations under this act may not be waived.

5 (f) This act shall be liberally construed in order to carry  
6 out its remedial purposes.

7 Section 3. This act shall take effect in 60 days.