

MAINE STATE LEGISLATURE

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EMERGENCY
(Governor's Bill)
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 489

H. P. 485 House of Representatives, January 29, 1981
Reference to the Committee on Business Legislation suggested. Sent up for
concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Martin of Eagle Lake.

Cosponsors: Senator Conley of Cumberland, Representative L. Higgins
of Scarborough and Senator Collins of Knox.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

**AN ACT to Prohibit Suppliers from Reducing or Discontinuing Supplies of
Petroleum Products to Maine Customers**

Emergency preamble. Whereas, Acts of the Legislature do not become
effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the reduction or discontinuance of petroleum product supplies to the
State threatens the health, safety and welfare of Maine citizens; and

Whereas, such a reduction or discontinuance may occur immediately after the
repeal of federal legislation controlling the price and allocation of crude oil and
petroleum products; and

Whereas, decontrol of crude oil and petroleum products may occur by the end of
January, 1981, ahead of the scheduled date of September 30, 1981; and

Whereas, the State does not have the authority to prohibit suppliers from
reducing or discontinuing petroleum product supplies to Maine; and

Whereas, in the judgment of the Legislature, these facts create an emergency

within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

10 MRSA § 1458 is enacted to read:

§ 1458. Emergency Petroleum Products Supply Act

1. **Purpose and findings.** The reduction or discontinuance of petroleum supplies to customers in the State creates severe economic dislocations and hardships and threatens the public health, safety and welfare. The purpose of the Emergency Petroleum Products Supply Act is to preserve the existing marketing and distribution system in the State and to avert or minimize the hardships to Maine citizens associated with supply reductions or discontinuances.

2. **Definitions.** As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Bulk purchaser" means any firm which is an ultimate consumer which, as part of its normal business practices, purchases or obtains petroleum products from a supplier and receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location, excluding tanks used for residential or commercial heating and vehicular tanks.

B. "Customer" means any distributor, wholesaler, jobber, consignee, commission agent, retailer, bulk purchaser or other person who purchases petroleum products from a supplier.

C. "Monthly allocation" means the monthly amount of petroleum products sold or otherwise supplied to Maine customers based upon contractual agreements, upon purchases during a specified base period or upon some other factor.

D. "Petroleum products" means all petroleum products used for or in connection with vehicular transportation, including aircraft or heating purposes, including gasoline, unleaded gasoline, gasohol, kerosene, #1 and #2 heating oils, diesel fuel, kerosene base jet fuel, aviation gasoline, #4, #5 and #6 residual oil, Bunker C, propane, butane and liquified petroleum gases.

E. "Supplier" means any person who sells, markets or distributes refined petroleum products to Maine distributors, wholesalers, jobbers, consignees, commission agents, retailers or other persons who purchase or otherwise acquire possession of or an interest in petroleum products from a supplier for resale or for use by a bulk purchaser.

F. "To discontinue" means the failure or refusal of a supplier to sell a monthly allocation to a customer for a period of 2 consecutive months, unless the failure or refusal is the direct and proximate result of causes not reasonably within the control of the supplier.

G. "To reduce" means the failure or refusal of a supplier to deliver at least 75% of a monthly allocation to a Maine customer for a period of 2 consecutive months, unless the failure or refusal is the direct and proximate result of an allocation percentage factor applied by the supplier to all its customers or causes not reasonably within the control of the supplier.

3. Prohibited acts. The following are prohibited acts.

A. It is unlawful for any supplier who does not meet the requirements of subsection 4 to:

(1) Discontinue monthly allocations of petroleum products to a Maine customer, his successors in interest or qualified assigns, provided that the successors in interest or qualified assigns meet the supplier's usual contract terms for its other customers; or

(2) Reduce monthly allocations of petroleum products to a Maine customer, his successors in interest or qualified assignees, provided that the successors in interest or qualified assigns meet the supplier's usual contract terms for its other customers.

B. This prohibition applies in all cases except:

(1) In the event of failure by any Maine customer to comply with the requirements imposed upon him by his contract with the supplier;

(2) In the event of circumstances not reasonably within the control of the supplier; or

(3) In the event of requirements regulating allocations of petroleum products imposed by an agency of the Federal Government.

4. Waiver. A supplier is authorized to reduce or discontinue monthly allocations of petroleum products to any Maine customer if the supplier:

A. Furnishes the Maine customer with a reliable alternative source of monthly allocations of petroleum products of equal type, grade, quantity and equivalent delivery location; or

B. Agrees to supply the Maine customer with monthly allocations of petroleum products for a period of 12 months and furnishes the customer and the Governor with written notice of its intention to discontinue or reduce the allocations at least 12 months in advance of the discontinuance or reduction.

5. Right of action; injunction; damages. Whenever the Attorney General, after complaint has been filed by any person alleging injury under this section or upon his own initiative, after investigation, believes any supplier has violated, or is knowingly in violation of, the provisions of this Act, he shall bring an action to enjoin the violation in any Superior Court of the State. Additionally, any person, who is injured in his business or property by a violation of this Act, may bring an action to enjoin the violation and to recover all damages sustained thereby,

including costs of suit and a reasonable attorney's fee, in any Superior Court of the State. In an action for money damages, the court or jury may award punitive damages, not to exceed 3 times the actual damages, if the violation is found to be willful.

6. Termination. This section terminates on April 1, 1981.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

The purpose of the Emergency Petroleum Products Supply Act is to prevent or mitigate the effects of reductions or discontinuances of petroleum product supplies to the State. Once federal allocation controls expire or are repealed, major oil companies will be able to withdraw from the Maine market at will. The Emergency Petroleum Products Supply Act requires them to give at least one year's notice of a supply reduction or discontinuance to Maine customers or to locate an alternative supplier. Maintaining a continuous flow of petroleum products is essential to the health, welfare and safety of Maine citizens. Two states, New Mexico and Virginia, have enacted similar legislation.