

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 844, L.D. 2148, Bill, "An Act to Establish the Petroleum Market Share Act"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 3 MRSA §927, sub-§2, ¶B, as amended by PL 1991, c. 376, §5, is further amended to read:

B. Independent agencies:

- (1) Maine Blueberry Commission;
- (2) Blueberry Advisory Committee;
- (3) Seed Potato Board;
- (4) Maine Milk Commission;
- (5) State Harness Racing Commission;
- (6) Maine Agricultural Bargaining Board;
- (7) State Board of Veterinary Medicine;
- (8) Maine Dairy and Nutrition Council;
- (9) Board of Pesticides Control;
- (10) Maine Dairy Promotions Board;
- (11) State Board of Property Tax Review;

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- (12) Maine Technical College System;
- ~~(13) --Maine-Commission-for-Women;~~
- ~~(14)~~ (13) Maine Human Rights Commission; and
- ~~(15)~~ (14) Educational Leave Advisory Board; and
- (15) Petroleum Advisory Committee.

Sec. 2. 5 MRSA §12004-I, sub-§2-B is enacted to read:

<u>2-B.</u>	<u>Petroleum</u>	<u>For</u>	<u>10 MRSA</u>
<u>Business</u>	<u>Advisory</u>	<u>Legislative</u>	<u>§1678</u>
	<u>Committee</u>	<u>Members</u>	
		<u>\$25/Day and</u>	
		<u>Expenses</u>	

Sec. 3. 10 MRSA c. 308 is enacted to read:

CHAPTER 308

PETROLEUM MARKET SHARE ACT

§1671. Short title

This chapter may be known and cited as the "Petroleum Market Share Act."

§1672. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Affiliate. "Affiliate" means any person who controls, is controlled by or is under common control with any other person.

2. Control of retail outlet. "Control of retail outlet" means the power, whether or not exercised, to establish, fix or direct the retail price of home heating oil or motor fuel sold by a retail outlet, through ownership of stock in or assets used by the retail outlet or through contract, agency, consignment or otherwise, whether that power can be exercised directly or indirectly or through parent corporations, subsidiaries, related persons and entities or affiliates.

3. Home heating oil. "Home heating oil" means #2 fuel oil sold for heating residential, industrial or commercial space or water.

2 4. Motor fuel oil. "Motor fuel oil" means internal
combustion fuel sold for use in motor vehicles as defined in
4 Title 29, section 1, subsection 7.

6 5. Refiner. "Refiner" means any person who is engaged
directly or indirectly or whose affiliate is engaged directly or
8 indirectly in the refining of crude oil, including any person who
is engaged directly or indirectly in the production of crude oil
10 who contracts with another person to refine petroleum products
for the purpose of resale.

12 6. Retail outlet. "Retail outlet" means a service station
or filling station used in the sale of motor fuel in the State, a
14 sales office servicing retail customers by soliciting or
accepting orders for the purchase of home heating oil to end
16 users for consumption in the State, or a bulk storage facility or
depot used in the sale of home heating oil to end users for
18 consumption in the State.

20 7. Retailer. "Retailer" means a person that sells motor
fuel oil or home heating oil to an end user for consumption in
22 the State.

24 8. Wholesaler. "Wholesaler" means a person that sells
motor fuel oil or home heating oil for resale through retail
26 outlets and retailers.

28 §1673. Reporting

30 1. Reporting by wholesaler. A wholesaler shall provide
reports to the Department of the Attorney General in a manner,
32 frequency, time and form specified by the Attorney General, but
at no greater frequency than 4 times per year, setting forth the
34 total gallons of home heating oil and motor fuel oil sold by the
wholesaler to each retail outlet or retailer.

36 2. Report by retailer. A retailer of home heating oil
shall provide reports to the Department of the Attorney General
38 in a manner, frequency, time and form specified by the Attorney
General, but at no greater frequency than 4 times per year,
40 setting forth the total gallons of home heating oil sold to
customers in each county from each of its retail outlets.

44 3. Reports by refiner. A refiner shall make the following
reports.

46 A. Within 30 days of the effective date of this chapter, a
48 refiner controlling retailers or retail outlets shall file
with the Department of the Attorney General a list showing
50 the business name and location of each retail outlet

2 controlled by the refiner on the effective date of this
3 chapter and specifying whether the retail outlet sells home
4 heating oil, motor fuel oil or both.

6 B. Within 60 days of the effective date of this chapter,
7 and every 60 days thereafter, a refiner shall file with the
8 Department of the Attorney General a list showing any
9 changes in the number and location of retail outlets
10 controlled by the refiner during the preceding 60 days.

11 4. Repeal. This section is repealed October 1, 1994.

12 **§1674. Investigation by Attorney General**

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15 The Attorney General may require, by summons, the attendance
16 and testimony of witnesses and the production of books and papers
17 related to the Attorney General's determination of the market
18 shares held by retailers. A summons must be served in the same
19 manner as a summons for a witness in a criminal case and all
20 provisions of law related to that service apply to a summons
21 issued under this section insofar as they are applicable. All
22 investigations or hearings pursuant to this chapter must be held
23 in Kennebec County or in another county as the Attorney General
24 may designate. A Justice of the Superior Court may, by order,
25 upon application of the Attorney General, compel the attendance
26 of witnesses, the production of books and papers and the giving
27 of testimony before the Attorney General in the same manner and
28 to the same extent as before that court. Failure to obey such an
29 order of the court is punishable by the court as a contempt of
30 court.

31 **§1675. Confidentiality**

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33 Information received by the Department of the Attorney
34 General pursuant to sections 1673 and 1674 constitutes a
35 confidential investigative record under Title 5, section 200-D.

36
37 **§1676. Prohibitions of anticompetitive, unfair and deceptive**
38 **trade practices**

39
40 1. Geographic radius restrictions on new motor fuel
41 outlets. A refiner controlling a retail outlet for the sale of
42 motor fuel oil in a city, town or municipality may not secure
43 control of additional retail outlets for the sale of motor fuel
44 oil within a 2-mile radius of any of its existing retail outlets
45 in that city, town or municipality unless, in the Attorney
46 General's sole discretion, the Attorney General concludes that
47 the additional outlet will increase competition in the retail
48 motor fuel oil market.

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2 2. Duration of home heating oil contracts. After September
3 1, 1992, a retailer, wholesaler or refiner may not enter into an
4 agreement of a duration of more than one year for the retail sale
5 of home heating oil to any residential customer.

6 3. Deceptive sales practices. A retailer, wholesaler or
7 refiner may not misrepresent the efficiency of an oil furnace or
8 engage in a deceptive act or practice in connection with the sale
9 of home heating oil, service or equipment.

10 4. Resale price-fixing. A refiner may not fix or maintain
11 the price of motor fuel oil sold by a franchisee, as defined in
12 section 1453, subsection 5.

13 §1677. Report by Attorney General to Legislature

14 Annually by December 31st, the Attorney General shall make a
15 report to the Legislature describing the concentration of retail
16 outlets in the State or in sections of the State without
17 disclosing the name of any particular retailer or retail outlet.
18 The Attorney General shall include in the annual report a
19 recommendation to the Legislature as to whether additional
20 legislation is needed to further limit or curtail the activity of
21 refiners operating retail outlets.

22 §1678. Petroleum Advisory Committee

23 A Petroleum Advisory Committee, as established by Title 5,
24 section 12004-I, subsection 2-B, is created for the purpose of
25 assisting the Department of the Attorney General in formulating
26 recommendations to the Legislature as required by section 1677.
27 The committee consists of 7 members: the President of the Maine
28 Oil Dealers Association, the Executive Director of the Maine
29 Petroleum Association and 5 members, appointed for one-year
30 terms, as follows.

31 1. Gubernatorial appointees. The Governor shall appoint
32 one refiner, one wholesaler and one retailer.

33 2. President of Senate appointee. The President of the
34 Senate shall appoint one Senator serving on the joint standing
35 committee of the Legislature having jurisdiction over business
36 legislation matters.

37 3. Speaker of the House of Representatives appointee. The
38 Speaker of the House of Representatives shall appoint one member
39 of the House of Representatives serving on the joint standing
40 committee of the Legislature having jurisdiction over business
41 legislation matters.

2 The Attorney General shall convene the first meeting of the
3 Petroleum Advisory Committee. At the end of the first meeting,
4 the committee shall appoint a chair from among its members. The
5 committee shall consult with and advise the Attorney General as
6 to all matters relating to the marketing of petroleum products,
7 including, but not limited to, whether changes need to be made in
8 the reporting requirements set forth in section 1673 to reduce
9 any burden on retailers caused by those reporting requirements.

10 Committee members are entitled to compensation in accordance
11 with Title 5, section 12004-I, subsection 2-B.

12 **§1679. Penalties and injunctive action**

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15 A person that violates this chapter is subject to a civil
16 penalty not to exceed \$10,000. In any action initiated by the
17 Attorney General seeking a civil penalty for violation of section
18 1676, each day that the refiner controls a retail outlet in
19 violation of that section constitutes a separate violation. The
20 Attorney General may initiate an action in Superior Court for
21 injunctive and other equitable relief to enforce compliance with
22 this chapter. In any action commenced by the Attorney General
23 for violation of section 1676, the Superior Court may order the
24 refiner to divest any retail outlet established or operated in
25 violation of this chapter and may order the refiner to disgorge
26 any gross revenues earned from sales or operations in violation
27 of this chapter. In any action commenced by the Attorney General
28 under this chapter for injunctive and other equitable relief or
29 for civil penalties, the Attorney General, if on the prevailing
30 side, must be awarded necessary and reasonable investigative
31 costs, reasonable expert witness fees, reasonable attorneys' fees
32 and court costs.

33 **§1680. Private right of action**

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36 A retailer, wholesaler or refiner that suffers injury to
37 business or property or is threatened with such injury as a
38 result of a violation of Title 5, section 207 or section 1676 may
39 maintain a civil action in Superior Court against the violator
40 for damages and equitable relief. In any action, the Superior
41 Court shall enter a temporary, preliminary or permanent
42 injunction to restrain further violations or threatened
43 violations of section 1676, regardless of whether the complaining
44 party has an adequate remedy in damages. If the complaining
45 party prevails in any action, the party is entitled to an award
46 of reasonable attorneys' fees and court costs, including expert
47 witness fees.

48 **§1681. Fees**

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2 Annually by September 1st, a wholesaler shall pay to the
3 Attorney General a fee for each 10,000 gallons of home heating
4 oil and motor fuel oil sold to retail outlets or retailers during
5 the previous 12-month period ending June 1st. The fee that must
6 be paid by September 1, 1992 is 45¢ for each 10,000 gallons or
7 portion thereof. The fee for each subsequent year is 40¢ for
8 each 10,000 gallons or portion thereof. The fees must be
9 deposited in a dedicated, nonlapsing account, known as the
10 Petroleum Marketing Fund. The Attorney General shall administer
11 the fund. This section is repealed October 1, 1994.

12 **§1682. Rulemaking**

14 The Attorney General may adopt rules necessary to implement
15 this chapter.

16 **Sec. 4. Allocation.** The following funds are allocated from
18 Other Special Revenue to carry out the purposes of this Act.

20 1992-93

22 **ATTORNEY GENERAL, DEPARTMENT OF THE**

24 **Administration - Attorney General**

26	Positions	(1.0)
	Personal Services	\$36,489
28	All Other	12,100
	Capital Expenditures	3,000

30 Provides for the allocation of funds for one
32 Research Assistant position, compensation
33 for legislative committee members and costs
34 associated with implementing the provisions
35 of the Petroleum Market Share Act.

36 **DEPARTMENT OF THE ATTORNEY GENERAL**
38 **TOTAL** \$51,589

40 **FISCAL NOTE**

42 1992-93

44 **APPROPRIATIONS/ALLOCATIONS**

46 Other Funds \$51,589

50 **REVENUES**

2 Other Funds \$67,500
4 This bill provides an allocation of dedicated revenue to the
6 Department of the Attorney General in fiscal year 1992-93 in the
8 amount of \$51,589 for an additional position and costs associated
10 with implementing the provisions of the Petroleum Market Share
Act. Fees imposed on petroleum wholesalers will generate an
estimated \$67,500 annually to this dedicated revenue account
beginning in fiscal year 1992-93.

12 The collection of civil penalties will increase General Fund
14 revenue by an amount that can not be determined at this time.
16 The additional workload and administrative costs associated
18 with the minimal number of new cases filed in the court system
can be absorbed within the budgeted resources of the Judicial
Department.'

20 **STATEMENT OF FACT**

22 The original bill requires wholesalers of heating oil and
24 motor fuel oil and retailers of heating oil to report gallonage
26 information to the Attorney General and requires wholesalers to
28 pay a fee of 35¢ for each 10,000 gallons of oil sold to retailers
in the previous year. The retailer information is reported by
30 municipality. The Attorney General is required to make an annual
report to the Legislature. Violations of these provisions are
subject to a civil penalty not to exceed \$10,000.

32 This amendment is the majority report by the Joint Standing
34 Committee on Business Legislation. The amendment changes the
36 retailer reporting requirement to require reports by county. It
38 adds a requirement that refiners submit a report every 60 days
listing the retail outlets that they control and any changes in
40 the number and location of retail outlets from the previous
list. It raises the reporting fee to 45¢ per 10,000 gallons the
first year and 40¢ in succeeding years. It repeals all reporting
provisions effective October 1, 1994.

42 The amendment adds the following prohibitions.

- 44 1. A refiner may not secure control of a retail outlet for
46 motor fuel that is within 2 miles of an existing outlet of that
refiner unless the Attorney General concludes that this addition
will increase competition.
48
50 2. A contract for home heating oil may not be for more than
one year.

COMMITTEE AMENDMENT "A" to S.P. 844, L.D. 2148

2 3. A retailer, wholesaler or refiner may not misrepresent
the efficiency of an oil furnace.

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6 4. A refiner may not fix or maintain the price of fuel oil
sold by a franchisee.

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The amendment allows a business suffering injuries due to a
violation of any of these provisions to bring a civil action.

10

12 The amendment also sets up a committee to advise the
Attorney General on matters pertaining to marketing of petroleum
products.

Reported by the Majority for the Committee on Business
Legislation. Reproduced and Distributed Pursuant to
Senate Rule 12.

(3/18/92)

(Filing No. S-640)