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"An Act relating to franchising agreements involving gasoline refiners, distributors and dealers; and providing for an effective date."

COMMITTEE REPORT

HOUSE

4/15/76

Mr. Speaker:

Date May 22, 1976

The Committee on JUDICIARY has had SB. 438 am

under consideration. A Majority of the members of the Committee

() recommends it DO PASS

() recommends it DO NOT PASS

() recommends it DO PASS WITH ATTACHED AMENDMENT(S)

() recommends it BE REPLACED WITH CS FOR _____ AND THAT

CS FOR _____ DO PASS

() "and" recommends it BE REFERRED TO THE _____

COMMITTEE

() reports it back WITHOUT RECOMMENDATION

() "other"

Members signing the Majority report:

<u>[Signature]</u>	<u>[Signature]</u>	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

[Signature] Chairman

file
438

SENATE BILL 438
ALASKA GASOLINE PRODUCTS FRANCHISE ACT
WHAT DOES IT DO?

<u>REFERENCE</u>	<u>ITS IMPACT</u>
Page 2-810(a)3	Most if not all stations will be closed on Sunday. Getting gasoline in evenings will be much more difficult. Adverse impact on tourists, economy, emergency vehicles, and other travelers will result.
Page 2-810(a)5	Section provides for public utility control of our product pricing with courts serving as the regulatory agency. This conflicts with free enterprise system to the detriment of the consumer on product pricing.
Page 2-810(a)6	May enable dealers to buy and sell competitive gasoline. Subject to differing court interpretation. Impossible to administer. No sales assurance may mean no company investment in service stations.
Page 2-810(a)8	Allows dealers to lease or sublease stations. Dealer may have no concern for qualifications of sublessee or assignee. Level of service will drop to public. Dealer will assign lease to highest bidder. No company control over investment may mean no further investment in service stations.
Page 3-810(b)	Requires supplier to give dealer 90 days notice of termination in cases where there is a breach of contract. Does not afford dealer opportunity to cure the breach and avoid termination. Immediate termination is not included in cases of fraudulent and deceptive sales practices, in cases of fire caused by dealer, dealer mental incapacity, debts owed by dealer, etc.
Page 4-810(c)	Good causes for termination do not include dealers death, dealer debt, trademark violations, consumer complaints, etc. Part 4 allows for differing interpretation of "similar" stations in requiring our rental be the same for "similar retail outlets." Rental for all stations should not be the same since they are of different size, type, and in different locations.
Page 5-810(d)	Restrains competition. Would not enable supplier to lower prices to dealers experiencing bonafide competition; therefore consumer pays more.
Page 5-820	Enables dealers to sell good will. In conjunction with ability to assign lease, allows dealers to sell station to highest bidder, regardless of candidates qualifications to manage business or provide service to public. Results in station speculation by real estate investors. Service to public deteriorates. There is no justification for good will - There is nothing to sell. Supplier carries accounts receivable. Growth in business is due to location and one dealer s ability - not transferrable to succeeding dealers. Dealer does not pay company for good will initially.

Mr. Chairman and Members of the Committee:

My name is John Sanders. I am Division Manager for Standard Oil Company of California in its Alaska Division. I am responsible for the sale of its products throughout the state of Alaska. I appreciate the opportunity to present my company's views on this legislation, after which I will try to answer any questions you may have. As I understand it, the intent of this legislation is to guarantee service station dealers fair and equitable treatment by their petroleum suppliers. In my opinion, however, Senate Bill 438 would not do that. In some instances, it would merely duplicate existing state and federal law. In others, it would merely provide a shield for ineffective dealers and would be to the detriment of consumers and good dealers alike. At the onset, we believe additional legislation to protect the service station dealers is unnecessary. Furthermore, we believe the importance of an efficient and successful independent dealer organization cannot be over-emphasized. It is through such independent dealers that the vast majority of service station sales are made.

In the state of Alaska, Standard Oil Company of California supplies products to 42 conventional dealer stations, all of which are operated by independent businessmen. We provide, at our expense, all the marketing research, site location, land acquisition, facility construction, fixed equipment, tankage, and signs. We then lease the complete facility and site to a dealer, with the

dealer being responsible only for such things as operating tools, moveable equipment, and inventory. There is no "Franchise Fee" for the dealer to pay Standard. This arrangement affords the dealer entry into the service station business at a comparatively modest initial investment; in most instances, between \$15,000 and \$25,000. On the other hand, in recent years, our average investment for a new service station has been approximately \$500,000, including real property and facilities.

Our enormous investment and our complete marketing reliance upon the service station dealer demonstrate a very fundamental point about us and Chevron dealers--we need each other, and we must assure the dealer a reasonable opportunity for success if we are both to profit.

Our forms of dealer supply contract and dealer lease are available to the committee if it wishes to see them. We think that these agreements testify to our good faith in providing to Chevron Dealers on commercially fair terms a very valuable place of business in which the dealer has a reasonable opportunity to make a good living. These agreements are for a five year term, and, after a brief initial trial period, they can be terminated by us during the term only for good cause. Our relationship with dealers is both fair and reasonable and is founded upon the mutual interest of both parties. From the very beginning we have been aware of the antitrust laws that govern our relationship with Chevron Dealers. Accordingly, Chevron Dealers are entirely free to price

their products and services and to purchase also from other suppliers as they may decide. In other words, we recognize and respect the dealer as an independent businessman. If we were to change our policy and seek improperly to control a dealer's pricing or purchasing discretion, we would surely be subject to the formidable sanctions of the antitrust laws, including treble damages. We therefore believe that the commercial interests of suppliers and the dealers who sell their products are mutual interests. These interests, together with the severe sanctions of the existing antitrust laws, are, we believe, entirely adequate to protect service station dealers and hence no further legislation is necessary.

We acknowledge that S.B. 438 was amended in the Commerce Committee to remove several undesirable and irresponsible provisions; however, the very fact that it comes to this body on the strength of only one affirmative vote, indicates that many problems remain intact in the legislation before you. With your permission, I will highlight these problem areas:

1. Section 45.50.810(a)(4)

This section would prohibit us from requiring Chevron Dealers to buy any quantity of our products unless we proved that such purchase obligations are "reasonably necessary for lawful purposes justified on business grounds and do not substantially affect competition."

This provision is unnecessary since the antitrust laws, including Alaska's antitrust statutes as well as the Federal Clayton Act and Sherman Act provide ample protection to dealers, including treble damage provisions, by forbidding any agreements which would require them to buy all or substantially all of their inventory requirements from a particular supplier. Accordingly a Chevron Dealer is merely required by contract to buy from us only such quantities of our products as may be necessary to satisfy customer demand for our products at his station. He may also handle any competitive products that he desires. Indeed, we find that most of our dealers do in fact choose to handle substantial quantities of competitive petroleum products and tires, batteries and accessories.

In addition, this section is wholly impractical because of the uncertainty of the language measuring the legality of the purchasing obligation. When are such obligations "reasonably necessary for lawful purposes justified on business grounds?" And when do they not "substantially affect competition?" The bill gives no guidance on this. Even entirely reasonable and otherwise lawful purchase obligations may affect competition as any aggregation of sales or purchases would, without in any way lessening or impairing competition. Suppliers cannot be expected to make the very substantial investments required for modern service stations if they do not have reasonable assurance that their products will be at least offered for sale at such stations.

Also, depending upon a court's interpretation of the wording in this section, it may be in conflict with current State and

Federal Trademark laws. If this section were to allow gasoline purchased by the dealer from another supplier to be sold through pumps marked with Standard's brands, then it appears obvious to us that it is in violation of applicable trademark laws.

This would obviously provide a great disservice to consumers who think they are buying Standard's products when, in fact, they may be sold someone else's product of lesser quality and performance characteristics. I think the Department of Weights and Measures would take a dim view of that situation.

2. Section 45.50.810(b)

Our Chevron dealer contracts now provide that the dealer must be given notice of default and 10 days within which to cure the default and thereby avoid termination in most situations. That is ample time. This section would require that a refiner or distributor give 45 days notice prior to terminating or failing to renew a franchise except where such termination or failure to renew is due to the voluntary abandonment of the station by the dealer; or where the dealer is convicted of a felony. This requirement is not needed for the protection of the dealer and is commercially unfair and impracticable.

But the 45 days prior notice is unrealistically long in many situations other than those two recognized in the bill. Consider for instance the case of a dealer engaged in fraudulent and deceptive sales practices against the motoring public. In this example, there is normally ample evidence of repeated illegal practices such as the deliberate damaging of tires and/or fan belts. Prompt termination was necessary in another situation, as

a result of a fire caused by the dealer's improper use of a welding torch in violation of city ordinances and contrary to our instructions against the practice. Obviously to permit such situations to continue for a minimum of 45 days would be to the detriment of consumers and good dealers alike.

In addition to that kind of illegal conduct by the dealer, there are numerous other situations in which 45 days prior notice would be wholly unrealistic. For example: (a) The Dealer's death or mental or physical incapacity to operate the station, (b) refusal by the dealer to pay debts owed to his supplier or the dealer's bankruptcy or insolvency, and (c) a breach of a contract or franchise which cannot be cured.

Any of these cases would prevent us from regaining possession of our investment for 45 days and would to that extent arbitrarily deprive us of our property and would require enormous efforts by a new dealer to rebuild the business that has been needlessly impaired by prolonged neglect or idleness.

3. Section 45.50.810 (c)

This section deals with the causes for termination and provides that no refiner or distributor may terminate, cancel, or fail to renew a dealer lease without good cause which is defined as including: "The failure of a franchisee to comply with the lawful material provisions of a franchise between distributor or refiner and the franchisee/dealer..."

What provisions in dealer agreements would meet these criteria is a speculative matter at best; and different courts or juries may be expected to have conflicting views of the same contractual provisions. Thus, a particular term or condition in the lease or supply contract may or may not be enforceable based upon the interpretation of a judge or jury without experience in such commerce. Moreover, this bill would give a judge or jury no instructive guidance for making the required determinations. We understand that some service station dealers are supplied petroleum products pursuant only to oral agreements; others, like our Chevron dealers, are supplied under quite detailed written agreements designed to clarify the continuing business relationship for the benefit of both parties. However, in addition to the fundamental obligations to sell, to buy and to pay for products, there are other commercially important provisions such as those relating to the maintenance of a very expensive station. Are these to be deemed non-material by a judge or jury unfamiliar with servicestation business practices?

And, while the bill provides for some specific situations to be construed as good cause for termination, cancellation, or non-renewal, it fails to recognize many others, such as:

- a dealer's death or mental or physical incapacity to operate the station;
- refusal by the dealer to pay debts owed to his supplier;

- adulteration, commingling, mislabeling or misbranding gasoline;
- trademark violation;
- repeated consumer complaints concerning the dealers;
- and
- the supplier's decision to materially alter the facilities to meet changing consumer needs.

Furthermore, it is unclear whether the requirement to give the franchisee a reasonable opportunity to cure a default is applicable only where the breach is curable, such as the failure to pay for goods delivered. Surely, for example, where a dealer is convicted for fraudulent or deceptive sales practices, or becomes bankrupt or abandons the station, the default is essentially non-curable.

Moreover, subpart (4) would, in effect, require that the terms of our agreements be essentially the same as those offered other dealers in similar retail outlets. Surely, there is no sound basis for requiring every franchise agreement to be the same as that offered to every franchise dealer. The term "similar" is undefined and like other terms in the bill would be subject to varying and conflicting interpretations.

Rental terms vary from dealer to dealer quite properly; there are differing types and sizes of service stations and differing locations. Also, when we lease station sites from property owners, they require differing ground rents. In addition, there are differences in the costs incurred in supplying products to various dealers.

4. Section 45.50.810 (d)

This section provides that no refiner or distributor may charge different prices to dealers unless they are based upon the quantity purchased or transportation costs. Such a provision is plainly anticompetitive.

The Federal Robinson-Patman Act does not forbid all price differences between customers, but only those that threaten substantial anticompetitive effects. Moreover, in order to avoid the anticompetitive effects of rigid price uniformity, the Federal statute provides that a lower price given to one customer, but not to others, is lawful if granted "in good faith to meet an equally low price of a competitor" (15 USC S 13(a)(b)). The purpose of this provision in the Federal statute was to give a supplier sufficient flexibility to respond to differing competitive conditions, when and where they occur. For example, a gasoline price war may break out in one city within the State but not elsewhere. To assist its dealers to remain competitive in the area of the price war, Standard under present law would be able to lower its price to them without lowering it Statewide. If such a price reduction had to be extended Statewide, it probably would not be made at all. This feature of the bill would provide a strong upward pressure on pricing to the detriment of competition and the motoring public. Thus, this provision is anticompetitive since it unduly limits the very price competition that is the principal goal of both the Alaskan and Federal antitrust legislation.

Consider also the not uncommon situation in Alaska where a service station dealer himself has made the investment in the station. That investment will normally induce suppliers to offer an investment allowance on gasoline to reflect the fact that the dealer and not the supplier in this instance is furnishing the station. In these circumstances, a competing supplier, such as Standard, should be able to respond to this competitive situation by offering a comparable allowance to obtain or retain this dealer's business. But here too, if the same price must be offered to all dealers throughout the State, regardless of the commercial circumstances, it is probable that such an allowance for the dealer's investment would not be offered. Again, the result of this section of the bill would clearly be to reduce competition and encourage price rigidity. It would be anomalous for Alaska, having recently passed general antitrust legislation, now to pass a law which would encourage uniform, rigid price competition.

5. Section 45.50.820

In its original form, this provision was objectionable because it provided that, in some cases, upon termination the supplier would have to compensate the dealer for the "fair market value of the service, including good will." Recognizing that there is nothing in the nature of good will that is transferrable from a dealer to its supplier or to a successor dealer where the station is owned by the supplying company, the Commerce Committee deleted the reference to good will. In order to

avoid confusion and possible judicial misinterpretation, we would recommend also the deletion of the reference to good will in Line 25 of Page 4.

But even if that were done this section would still require the supplier to compensate the dealer for the "fair market value of the franchise." While the focus of this provision is upon compensation for the dealer's inventory and equipment when purchased from the refiner, these items do not appear to limit the supplier's obligation since they are merely "included" in the fair market value of the franchise for which compensation must be paid. It is therefore possible that this broad phrase would be held by a court to require compensation for good will, bringing us back to face the difficulties of the original language. If there is to be legislation on this point--and to us it seems unnecessary--we recommend that it be limited to requiring the supplier to repurchase merchantable inventory. We should not be required to repurchase equipment since it will be in used condition and will often be equipment that the outgoing dealer didn't need and the incoming dealer doesn't want.

6. Section 45.50.800

This provision would require the refiner to disclose to the dealer "Facts which would reasonably be considered material to the dealer's decision to enter the franchise." These facts shall include but not be limited to various kinds of data described in subparts 1-7. Due to the practical uncertainty

in defining "facts which would reasonably be considered material," we recommend the section be amended to state that the refiner must disclose to the dealer, "The following facts material to a dealer's decision to enter into the franchise," followed by a list of such facts.

7. Section 45.50.840(4)

So as to confine the applications of this bill solely to service stations as distinguished from wholesale distributors or jobbers who sell to other types of consumer accounts and hence might be considered to operate "retail outlets", we recommend that Subpart 4, defining "dealer" be amended by adding "to the motoring public" after "gasoline."

In closing, I would restate that no where else can a dealer obtain a half-million dollar income-producing investment with such minimal risks. No where else does the consumer enjoy the level of assurance of product quality, service, skills, and competitive pricing, that have been achieved through our system as it is presently operated. This legislation would discourage the investments required to construct service stations today. Such an act would be counter-productive, working against the common goals of both the consumer and dealer.

I hope the views I have expressed will be helpful to you. This legislation is unnecessary. I respectfully urge you to consider our views and to reject this bill. If you have any questions, I would be pleased to respond.

MEMORANDUM

April 22, 1976

SOCAL - 1976 Alaska
Legislation - S.B. 438

Amendment Preferences

§ 45.50.810(a)(4) -- See 4/16/76 memo under
§ 45.50.810(a)(6), p. 1.

§ 45.50.810(b) -- See 4/16/76 memo, Exhibit A-1
as amended and attached hereto.

§ 45.50.810(c) -- See 4/16/76 memo, Exhibit B-3,
as amended and attached; or Exhibit D, California Bus. & Prof.
Code § 20999.1 as amended and attached.

§§ 45.50.820 -- See 4/16/76 memo, Exhibit C.
45.50.830
Substitute Exhibit C-2 as amended or, if necessary, Exhibit
C-1 as amended, both attached hereto.

D. T. Van Camp

Attachs.

EXHIBIT A

Alternative 1

(b) No refiner or distributor may terminate, cancel or fail to renew a franchise unless such refiner or distributor furnishes notification pursuant to this subsection to the other party to the franchise. Such notification shall be in writing addressed to such other party and sent by certified mail, deposited in the mail no less than 45 days prior to the date on which such franchise is to be terminated, cancelled or not renewed; provided, however, that if in light of the circumstances, it would not be reasonable to provide notice 45 days in advance of such termination, cancellation or failure to renew the refiner or distributor shall provide such notice less than 45 days as may be reasonable in the circumstances. Notification shall contain a statement of intention to terminate, cancel, or decline to renew such franchise, together with the reasons therefor, and the date on which such termination, cancellation or failure to renew shall take effect.

EXHIBIT B

Alternative 3

(c) Notwithstanding the terms of any franchise, no refiner or distributor shall terminate, cancel or fail to renew a franchise without good cause, except that a refiner or distributor shall be permitted to provide in the franchise for the termination thereof without cause during a reasonable trial period, not to exceed one (1) year, where the dealer involved has not been a dealer of the refiner or distributor for that period of time at the premises described in the franchise.

As used in this section good cause shall include the following:

(1) The dealer failed to comply with reasonable requirements of the franchise agreement;

(2) The dealer failed to act in good faith in carrying out the terms of the franchise; or

(3) Other legitimate business reasons (except that a termination or cancellation of a franchise for the purpose of enabling the refiner or distributor to assume operation of the dealer's business, shall not be considered to be a legitimate business reason unless the dealer is offered repurchase at current wholesale prices of all merchantable inventory purchased from the refiner or distributor and repurchase at fair market value of all equipment purchased from the refiner or distributor.

EXHIBIT C
Alternative 1

Section 45.50.820. REPURCHASE OF GOODS. In the event that the refiner or distributor terminates, cancels or fails to renew the franchise, such refiner or distributor shall make or cause to be made a good faith offer to repurchase from the dealer, his heirs, successors or assigns, at the current wholesale prices, any and all merchantable products and merchandise which are undamaged and unaltered from their original form, purchased by the dealer from the refiner or distributor; provided, that such refiner or distributor shall have the right to apply the proceeds against any existing indebtedness owed to him by the dealer; and, further provided that such repurchase obligation is conditioned upon there being no claims or liens by or on behalf of other parties, including creditors and governmental agencies, against such products and merchandise.

EXHIBIT C
Alternative 2

Section 45.50.820. DISPOSITION OF INVENTORY.

Upon any termination, cancellation or failure to renew a franchise, the refiner or distributor shall at the request of the dealer, take back any merchantable inventory from the dealer to which he has good title free from any claims or liens of others, which was supplied by the refiner or distributor and which has not diminished substantially in value and is of similar quality as when originally supplied. The refiner or distributor at its option shall reimburse the dealer for not less than ninety per cent of the cost paid by the dealer or shall cancel not less than ninety per cent of any debts owed on account of the inventory.

EXHIBIT D

California (as amended)

Notwithstanding the terms of any franchise, no refiner or distributor shall terminate, cancel or refuse to renew any existing franchise without good cause.

As used in this section good cause is limited to the following:

(a) The dealer failed to comply with reasonable requirements of the franchise agreement;

(b) The dealer failed to act in good faith in carrying out the terms of the franchise; or

(c) Other legitimate business reasons (except that a termination or cancellation of a franchise for the purpose of enabling the refiner or distributor to assume operation of the dealer's business shall not be considered to be a legitimate business reason unless the dealer is offered repurchase at current wholesale prices of all merchantable inventory purchased from the refiner or distributor and repurchase at fair market value of all equipment purchased from the refiner or distributor.

STATEMENT OF J. R. SANDERS
ON BEHALF OF
STANDARD OIL COMPANY OF CALIFORNIA
ON SENATE BILL 438
"ALASKA GASOLINE PRODUCTS FRANCHISE ACT"

BEFORE THE HOUSE OF THE STATE OF ALASKA

Mr. Chairman and Members of the Committee:

My name is John Sanders. I am Division Manager for Standard Oil Company of California in its Alaska Division. I am responsible for the sale of its products throughout the State of Alaska. I appreciate the opportunity to present my Company's views on this legislation after which I will try to answer any questions you may have.

As I understand it, the intent of this proposed legislation is to guarantee service station dealers fair and equitable treatment by their petroleum suppliers. I don't think it would do that. In fact, in my opinion, it would merely provide a shield for ineffective dealers and would be to the detriment of consumers and good dealers alike. At the onset, we believe that additional legislation to protect the service station dealer is unnecessary. Furthermore, we believe the importance of an efficient and successful independent dealer organization cannot be overemphasized. It is through such independent dealers that the vast majority of service station sales are made. In the State of Alaska, Standard Oil Company of California supplies products to 42 conventional dealer stations plus about 112 car washes, garages, new car dealerships, and other miscellaneous accounts, all of which are operated by independent businessmen. With respect to dealer stations, (those being the 42 conventional stations) we presently provide, at our expense, all the marketing research,

site location, land acquisition, facility construction, fixed equipment, tankage and signs. We then lease the completed facility and the site to a dealer with the dealer being responsible only for such things as operating tools, movable equipment, and inventory. There is no "franchise fee" for the dealer to pay Standard. This arrangement affords the dealer entry into the service station business at a comparatively modest initial investment, in most instances between \$15-25,000. On the other hand, in recent years, our average investment for a new service station has been approximately \$500,000 including real property and facilities.

Our enormous investment and our complete marketing reliance upon the service station dealer demonstrate a very fundamental point about us and Chevron dealers: We need each other and we must assure the dealer a reasonable opportunity for success if we are both to succeed.

Our forms of dealer supply contract and dealer lease are available to the committee if it wishes to see them. We think that these agreements testify to our good faith in providing to Chevron Dealers on commercially fair terms a very valuable place of business in which the dealer has a reasonable opportunity to make a good living. These agreements are for a five year term and, after a brief initial trial period, they can be terminated by us during the term only for good cause. Our

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relationship with dealers is both fair and reasonable and is founded upon the mutual interest of both parties. From the very onset we have been aware of the antitrust laws that govern our relationship with Chevron Dealers. Accordingly, Chevron Dealers are entirely free to price their products and services and to purchase also from other suppliers as they may decide. In other words, we recognize and respect the dealer as an independent businessman. If we were to change our policy and seek improperly to control a dealer's pricing or purchasing discretion we would surely be subject to the formidable sanctions of the antitrust laws, including treble damages. We therefore believe that the commercial interest of suppliers and the dealers who sell their products are mutual interests. These interests, together with the severe sanctions of the existing antitrust laws, are we believe entirely adequate to protect service station dealers and hence no further legislation is necessary. But, even if additional legislation were needed, Senate Bill 438 would be ill advised for the following principal reasons:

1. Section 43.50.810(a)(6)

This section would prohibit us from requiring Chevron Dealers to buy any quantity of our products unless we proved that such purchase obligations are "reasonably necessary for lawful purposes justified on business grounds and do not substantially affect competition".

This provision is unnecessary since the antitrust laws provide ample protection to dealers by forbidding any agreements which would require them to buy all or substantially all of their inventory requirements from a particular supplier. Accordingly a Chevron Dealer is merely required by contract to buy from us only such quantities of our products as may be necessary to satisfy customer demand for our products at his station. He may also handle any competitive products that he desires. Indeed, we find that most of our dealers do in fact choose to handle substantial quantities of competitive petroleum products and tires, batteries and accessories.

In addition, this section is wholly impractical because of the uncertainty of the language measuring the legality of the purchasing obligation. When are such obligations "reasonably necessary for lawful purposes justified on business grounds?" And when do they not "substantially affect competition?" The bill gives no guidance on this. Even entirely reasonable and otherwise lawful purchase obligations may affect competition as any aggregation of sales or purchases would, without in any way lessening or impairing competition. Suppliers cannot be expected to make the very substantial investments required for modern service stations if they do not have reasonable assurance that their products will be at least offered for sale at such stations.

Also, depending upon a court's interpretation of the wording in this section, it may be in conflict with current State and

Federal Trademark Laws. If this section were to allow gasoline purchased by the dealer from another supplier to be sold through pumps marked with Standard's brands, then it appears obvious to us that it is in violation of applicable trademark laws.

This would obviously provide a great disservice to consumers who think they are buying Standard's products when, in fact, they may be sold someone else's product of lesser quality and performance characteristics. I think the Department of Weights and Measures would take a dim view of that situation.

2. Section 45.50.810 (d)

This section provides that no refiner or distributor may charge different prices to dealers unless they are based upon the quantity purchased or transportation costs. Such a provision is plainly anticompetitive.

The Federal Robinson-Patman Act does not forbid all price differences between customers, but only those that threaten substantial anticompetitive effects. Moreover, in order to avoid the anticompetitive effects of rigid price uniformity, the Federal statute provides that a lower price given to one customer, but not to others, is lawful if granted "in good faith to meet an equally low price of a competitor" (15 USC § 13(a)(b)). The purpose of this provision in the Federal statute was to give a supplier sufficient flexibility to respond to differing competitive conditions, when and where they occur. For example, a gasoline price war may break out in one city

within the State but not elsewhere. To assist its dealers to remain competitive in the area of the price war, Standard under present law would be able to lower its price to them without lowering it Statewide. If such a price reduction had to be extended Statewide, it probably would not be made at all. This feature of the bill would provide a strong upward pressure on pricing to the detriment of competition and the motoring public.

Thus, this provision is anticompetitive since it unduly limits the very price competition that is the principal goal of both the Alaskan and Federal antitrust legislation.

Consider also the not uncommon situation in Alaska where a service station dealer himself has made the investment in the station. That investment will normally induce suppliers to offer an investment allowance on gasoline to reflect the fact that the dealer and not the supplier in this instance is furnishing the station. In these circumstances, a competing supplier, such as Standard, should be able to respond to this competitive situation by offering a comparable allowance to obtain or retain this dealer's business. But here too, if the same price must be offered to all dealers throughout the State, regardless of the commercial circumstances, it is probable that such an allowance for the dealer's investment would not be offered. Again, the result of this section of the bill would clearly be to reduce competition and encourage price rigidity. It

would be anomalous for Alaska, having recently passed general antitrust legislation, now to pass a law which would encourage uniform pricing and discourage price competition.

3. Section 45.50.810 (a)(8)

This section would forbid us to "unreasonably disapprove the transfer or assignment of a franchise by a dealer to a qualified transferee or assignee."

This section constitutes a totally unreasonable and arbitrary interference with our property rights. Having made a \$500,000 investment, and in light of a dealer's relatively small investment, it is only proper and just that we have the right to select a candidate whom we feel best qualified to operate a first class service station.

The consumer stands to lose the most from such a provision. If the dealer is permitted to assign his lease, there is the inevitable question of personal motivation in making the assignment. At Standard our motivation is simply to select dealers who are best qualified to manage the station and who are committed to providing the service to which we believe the motoring public is entitled.

4. Section 45.50.820

This section would require a supplier, upon termination or non-renewal of the franchise, to repurchase certain tangible assets from the dealer and, in certain circumstances, to compensate the dealer for "goodwill". We at Standard are opposed

to the payment of any sum of money for alleged dealer goodwill.

There is nothing in the nature of goodwill that is transferable from a dealer to his supplier or to a successor dealer where the station is owned by the supplying company. If a dealer's business is successful because the station is well located, and has excellent facilities, that portion of the success properly remains with the supplier. In this connection, all dealers, new or old, receive the benefit of large sums of money we have spent on advertising to promote public acceptance of our brands of products at our retail outlets. They also receive the benefit of the large number of credit cards we have solicited and the millions of dollars in accounts receivable we carry for the dealers. These things are in addition to the service station facility itself, which we furnish to the dealer and which currently costs us on an average about \$500,000 per unit. None of these sources of "goodwill" attributable to the station can be transferred by the dealer to us or to his successor.

Likewise, that portion of the dealer's success attributable to his personal skills, personality or the relationship he established with his customers belongs to him and is taken with him when he leaves and cannot be effectively transferred to us or to a succeeding dealer.

Thus it is a misnomer to say that the departing dealer has any "goodwill" that is transferable either to the supplier or to the new dealer.

5. Section 45.50.810 (a)(3)

This section would prohibit us from requiring a dealer to operate his station for more than 12 consecutive hours per day or more than six days per week.

It is safe to say that this provision would effectively eliminate gasoline availability on Sundays and between the hours of 10:00 p.m. and 6:00 a.m. This would be detrimental to the consumer and to the economy of the State of Alaska. Gasoline would be unavailable for emergency vehicles for such agencies as the police department; local travelers would be inconvenienced and tourism would be discouraged. Additionally, this provision completely disregards operating hour requirements imposed by many lessors in their ground leases to us; and while it does seem to recognize that longer hours may be required by the state or the federal government it does not recognize that as a condition to zoning permits, we may be required by municipal or borough authorities to provide for longer hours in certain locations.

6. Section 45.50.810 (a)(5)

This section provides that it would be a violation of law for us to sell, rent or offer to sell to a dealer any product or service for more than a "fair and reasonable" price.

This section would in effect subject the pricing of our service station products to a kind of public utility control with the courts serving as the regulatory agency. Apart from governmental price control during periods of acute economic distress,

at which rare times control could be vested in an administrative agency such as the Federal Energy Administration, it is neither desirable nor necessary to supplant ordinary market forces as proper regulators of prices and rents. Competition establishes fair market prices which balance all the effects of supply, demand and necessary return on capital. On the other hand, when prices are fixed at levels different from those established by the fair market this balance is inevitably upset and economic dislocations result, all to the public's disadvantage.

7. Section 45.50.810 (a)(10)

Under this section it would be a violation for a supplier to fail to deal with a dealer in "good faith". That phrase is so vague and generalized that it would be impossible to administer or comply with. No standards are stated as to how good faith is to be measured. We expect that every difference of opinion or commercial judgment would become a controversy over good faith. Such a provision would inescapably provoke endless dispute and litigation.

8. Section 45.50.810 (b)

This section would require that a refiner or distributor give 90 days notice prior to terminating or failing to renew a franchise except where such termination or failure to renew is due to the voluntary abandonment of the station by the dealer; or where the dealer is convicted of an indictable offense

directly related to the business. This requirement is not needed for the protection of the franchise and is commercially unfair and impracticable. Notice of intention to terminate for breach of contract should generally afford the dealer an adequate opportunity to cure the breach and avoid termination, as our Chevron dealer contracts provide.

But the 90 days prior notice is unrealistically long in many situations other than those two recognized in the bill. Consider for instance the case of a dealer engaged in fraudulent and deceptive sales practices against the motoring public. In this example, there is normally ample evidence of repeated illegal practices such as the deliberate damaging of tires and/or fan belts. Prompt termination was necessary in another situation, we recently found, as a result of a fire caused by the dealer's improper use of a welding torch in violation of city ordinances and contrary to our instructions against the practice. Obviously to permit such situations to continue for a minimum of 90 days would be to the detriment of consumers and good dealers alike.

In addition to the kind of illegal conduct by the dealer, there are numerous other situations in which 90 days prior notice would be wholly unrealistic. For example: (a) The Dealer's death or mental or physical incapacity to operate the station and (b) refusal by the dealer to pay debts owed to his supplier or the dealer's bankruptcy or insolvency.

Any of those cases would prevent us from regaining possession of our investment for 90 days and would to that extent arbitrarily deprive us of our property and would require enormous efforts by a new dealer to rebuild the business that has been needlessly impaired by prolonged neglect or idleness.

9. Section 45.50.810 (c)

This section deals with the causes for termination and provides that no refiner or distributor may terminate, cancel, or fail to renew a dealer lease without good cause which is defined as including: "The failure of a franchisee to comply with the lawful material provisions of a franchise between distributor or refiner and the franchisee/dealer..."

What provisions in dealer agreements would meet those criteria is a speculative matter at best; and different courts or juries may be expected to have conflicting views of the same contractual provisions. Thus, a particular term or condition in the lease or supply contract may or may not be enforceable based upon the interpretation of a judge or jury without experience in such commerce. Moreover, this bill would give a judge or jury no instructive guidance for making the required determinations. We understand that some service station dealers are supplied petroleum products pursuant only to oral agreements; others, like our Chevron dealers, are supplied under quite detailed written agreements designed to clarify the continuing business relationship for the benefit of both parties. However, in addition to the fundamental obligations to sell, to buy and

to pay for products, there are other commercially important provisions such as those relating to the maintenance of a very expensive station. Are these to be deemed non-material by a judge or jury unfamiliar with service station business practices?

And, while the bill provides for some specific situations to be construed as good cause for termination, cancellation or non-renewal, it fails to recognize many others, such as:

- a dealer's death or mental or physical incapacity to operate the station;
- refusal by the dealer to pay debts owed to his supplier;
- adulteration, commingling, mislabeling or misbranding gasoline;
- trademark violation;
- repeated consumer complaints concerning the dealers; and
- the supplier's decision to materially alter the facilities to meet changing consumer needs.

Furthermore, it is unclear whether the requirement to give the franchisee a reasonable opportunity to cure a default is applicable only where the breach is curable, such as the failure to pay for goods delivered. Surely, for example, where a dealer is convicted for fraudulent or deceptive sales practices, or becomes bankrupt or abandons the station, the default is essentially non-curable.

Moreover, subpart (4) would, in effect, require that the terms of our agreements be essentially the same as those offered other dealers in similar retail outlets.

Surely, there is no sound basis for requiring every franchise agreement to be the same as that offered to every franchise dealer. The term "similar" retail outlets does not cure this deficiency since the word "similar" is undefined and like other terms in the bill would be subject to varying and conflicting interpretations.

Rental terms vary from dealer to dealer quite properly; there are differing types and sizes of service stations and differing locations. Also, when we lease station sites from property owners, they require differing ground rents. In addition, there are differences in the costs incurred in supplying products to various dealers.

In closing, I would restate that in recent years our average investment for a new service station has been approximately \$500,000. This figure is probably typical of the recent expenditures made by similar suppliers in this industry. While we cannot speak for others, we seriously doubt that we could continue making these kinds of investments not knowing what our contracts would mean, and, in addition, be subject to the

other restrictive conditions set forth in this bill. It is difficult to foresee who would make such investments or who would maintain the current level of availability for these services which the public has come to expect.

Nowhere else can a dealer obtain a half million dollar income producing business investment with such minimal risk. Nowhere else does the consumer enjoy the level of assurance of product quality, service skills, competitive pricing, and image achievable through our system as it presently operates. Legislation which removes the incentives for the investments required to construct service stations today will prove to be counter productive working against the common goals of both the consumer and the dealer.

I hope the views I have expressed will be helpful to you. I respectfully urge you to consider them and to reject this bill. If you have any questions, I would be pleased to respond.

Original sponsor: Commerce Committee

Offered: 4/15/76
Referred: Judiciary

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 438

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to ^{lease} [franchising] agreements involving
7 gasoline refiners, distributors and dealers; and
8 providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. FINDINGS OF THE LEGISLATURE. The legislature finds and
11 declares that since the distribution and sales, through ^{lease} [franchise] agreements,
12 of gasoline in the state vitally affect the economy of the state, the public
13 interest, welfare, and transportation, it is necessary to define the rela-
14 tionships and responsibilities of the parties to certain agreements pertain-
15 ing to franchising.

16 * Sec. 2. AS 45.50 is amended by adding new sections to read:

17 ARTICLE 5. ALASKA GASOLINE PRODUCTS FRANCHISE ACT.

18 Sec. 45.50.800. DISCLOSURES TO BE MADE BY DISTRIBUTORS AND RE-
19 FINERS BEFORE CONCLUSION OF AGREEMENT. Before entry into a franchise
20 agreement, a refiner or distributor shall disclose to the dealer facts
21 which would reasonably be considered material to the dealer's decision
22 to enter into the franchise. These facts ^{ARE} shall include, but not be
23 limited to,

24 (1) ownership of property of the retail outlet;

25 (2) if the real property is not owned by a refiner or dis-
26 tributor, then the nature of the relationship between the real property
27 owner and the refiner or distributor and the length of the underlying
28 lease (if applicable);

29 (3) the last known addresses of dealers operating the retail

1 outlet for the last five years;

2 (4) the gasoline gallonage history, if any, of the station
3 for the last five years;

4 (5) any sales goals or quotas the refiners or distributors
5 intend to apply to the station;

6 (6) the nearest gasoline outlet owned, controlled or operated
7 by the refiner or distributor and any plans the distributor or refiner
8 has to open new retail outlets within the trade area of the retail
9 outlet; and

10 (7) any plans the refiner or distributor has for the future
11 of the subject retail outlet.

12 Sec. 45.50.810. VIOLATIONS. (a) No person shall, directly or
13 indirectly, through offices, employees or agents,

14 (1) require the franchisee-dealer at the time of entering
15 into the ^{lease} franchise agreement to ~~assent to release, assignment, novation,~~
16 ~~waiver or estoppel which would~~ relieve any person from liability imposed
17 by secs. 800 - 850 of this chapter;

18 (2) require the dealer to agree to waive his right to a jury
19 trial or any right of counterclaim he may have;

20 (3) restrict or inhibit directly or indirectly the right of
21 free association for any lawful purpose of the franchisee-dealer;

22 (4) except as to the initial inventory of the franchise,
23 require a dealer to purchase or otherwise lease goods or services of a
24 refiner or distributor or from an approved source of supply unless and
25 to the extent that the refiner or distributor satisfies the burden of
26 proving that such restricted purchasing agreements are reasonably neces-
27 sary for lawful purposes justified on business grounds and do not sub-
28 stantially affect competition; in determining whether a requirement to
29 purchase is lawful, the court shall be guided by the decisions of the

1 courts of the United States in interpreting and applying the antitrust
2 laws and the Federal Trade Commission Act of the United States;

3 (5) impose unreasonable standards of performance on the
4 dealer;

5 (6) require a dealer to participate financially in the use of
6 any premium coupon or giveaway or rebate in the operation of the busi-
7 ness; however, a distributor may require the dealer to distribute
8 premiums, coupons or give-aways to customers which are provided to the
9 dealer at the expense of the refiner or distributor or when the pro-
10 motion is self-liquidating; or

11 (7) fail to deal with the dealer in good faith.

12 (b) No refiner or distributor may, directly or indirectly, through
13 any officer, agent or employee, terminate, cancel or fail to renew a
14 dealer franchise without first giving written notice setting out all of
15 the reasons for the termination or cancellation or intent not to renew
16 to the franchisee-dealer at least 45 days in advance of the termination,
17 cancellation or failure to renew except

18 (1) when the alleged grounds are voluntary abandonment by the
19 franchisee-dealer of the franchisee relationship, then the above notice
20 may be given five days in advance of the termination, cancellation or
21 failure to renew;

22 (2) when the alleged grounds are the conviction of the
23 franchisee in a court of competent jurisdiction of a felony.

24 (c) ^{(3) Par amend} No refiner or distributor may terminate, cancel or fail to
25 renew a dealer franchise without good cause. Good cause shall include
26 without limitation:

27 (1) the failure of a franchisee to comply with the lawful
28 material provisions of a franchise between the distributor or refiner
29 and the franchisee-dealer and to cure each default after being given

Tom Manale

- 1. Right of sale
- 2. Right of survivorship

Robson Patman Act

written notice and a reasonable opportunity to cure the default;

(2) an adjudication that the franchisee-dealer is a bankrupt or insolvent or if he makes an assignment for the benefit of creditors or a similar disposition of assets of franchise business or voluntarily abandons the franchise business or is convicted of or pleads guilty or no contest to a charge of violating any law relating to any franchise business;

(3) the good faith business decision of the franchiser that he no longer requires a retail outlet at that location for the marketing of gasoline; and

(4) the dealer's failure to sign the new agreement if at the time of renewal of the franchise the distributor or refiner and the franchisee-dealer cannot agree upon new terms and the terms offered by the refiner or distributor do not violate any other laws of the State of Alaska or of the United States and the terms are essentially the same as those offered to other franchisee-dealers in similar retail outlets and do not discriminate against the subject franchisee-dealer.

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(d) No refiner or distributor may engage in price discrimination between dealers unless that discrimination is based upon quantity purchased or transportation costs. ⁽²⁾ ^{(3) capital or personal investment of the dealer.}

Sec. 45.50.820. OBLIGATION OF DISTRIBUTOR TO REPURCHASE UPON TERMINATION, ETC., OF AGREEMENT. If the refiner or distributor has good cause to terminate, cancel or fail to renew under sec. 810(c)(1) ⁽²⁾ ⁽³⁾ of this chapter, he shall compensate the ~~franchisee~~ dealer for the fair market value of the franchise, excluding goodwill. Refiners or distributors terminating, cancelling, or failing to renew under sec. 810(c) ⁽³⁾

[or] (4) of this chapter shall compensate the ~~franchisee~~ dealer for the fair market value of the franchise, ^{including goodwill} Valuation shall include the fair market value of the franchisee's inventory supplies, equipment and ^{other than goodwill}

Columbus distributor

1 furnishings purchased from the refiner or distributor exclusive of
2 personalized materials which have no value to the refiner or distributor
3 and inventory supplies, equipment and furnishings not reasonably re-
4 quired in the conduct of the franchise business. Compensation shall be
5 made within 60 days from the date of termination unless it is necessary
6 that a lawsuit be filed under sec. 830 of this chapter or the dealer
7 fails to comply with the bulk sales provisions of AS 45.05.510 et seq.
8 The refiner or distributor may offset against accounts owed by the
9 franchisee-dealer under this section any amount owed by the franchisee-
10 dealer to the refiner or distributor.

11 Sec. 45.50.830. COURT TO DETERMINE FAIR MARKET VALUE WHEN PARTIES
12 CANNOT AGREE. If under sec. 820 of this chapter the distributor or
13 refiner has good cause and the distributor or refiner and the dealer
14 cannot agree on the fair market value of the franchise, then either
15 party may initiate an action in the superior court where the franchise
16 retail outlet exists. ~~If~~ If the amount awarded to the franchisee by the
17 jury or the court is 10 per cent lower than the final offer, if any,
18 made by the refiner or distributor before the filing of the lawsuit,
19 reasonable attorney fees and the appraiser fees shall be awarded to the
20 refiner or distributor.

21 Sec. 45.50.840. DEFINITIONS. In secs. 800 - 830 of this chapter,
22 unless context otherwise requires,

23 (1) "refiner" is a company, corporation or individual who
24 owns or controls, or controls through a substantially owned subsidiary,
25 partnership, or joint venture, a refinery used for the production of
26 gasoline, diesel or other motor vehicle fuels;

27 (2) "distributor" means any person or corporation other than
28 a refiner engaged in the sale, assignment, or distribution of gasoline,
29 to four or more dealer-operated retail outlets;

1 (3) "gasoline" means all products commonly or commercially
2 known or sold as gasoline;

3 (4) "dealer" means a person ^{primarily} engaged in the sale of gasoline ^{to the motoring public}
4 through a retail outlet ~~owned or~~ ^{from the refiner or distributor} leased by the person and operated by
5 the person;

6 (5) "franchise" means an oral or written contract or agree-
7 ment or series of agreements, either express or implied, in which the
8 dealer is required directly or indirectly to purchase 50 per cent or
9 more of his supply of gasoline from a distributor or refiner and in
10 which the dealer is granted authority to occupy premises owned, leased
11 or in any way controlled, directly or indirectly, by the refiner or
12 distributor.

13 Sec. 45.50.850. SHORT TITLE. Sections 800 - 850 of this chapter
14 may be cited as the "Alaska Gasoline Products Franchise Act."

15 * Sec. 3. AS 45.50.471(b) is amended by adding a new paragraph to read:

16 (22) failing to comply with the terms of the Alaska Gasoline
17 Products Franchise Act (AS 45.50.800 - 45.50.850).

18 * Sec. 4. This Act takes effect July 1, 1976.
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AMENDMENT

4

OFFERED IN THE HOUSE:

By: _____

To: HCS HOUSE BILL No. _____

SENATE BILL No. 438

PAGE: 3

between
LINE: 11 & 12

ADD

Unless ^{otherwise} agreed upon by the parties
(8) require the dealer to keep his retail outlet open for

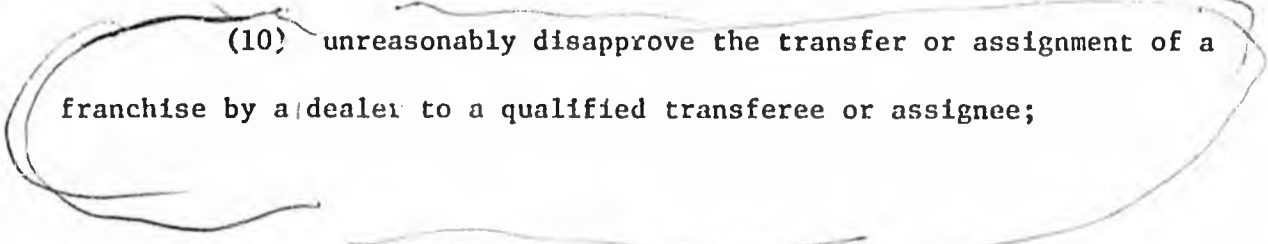
business more than 12 consecutive hours per day or more than six days a week, provided that this paragraph shall not be construed to prevent any retail outlet from being open when required to be open to conform to any state or federal law or regulation;

Adopted

require dealer to purchase or
(9) ~~sell~~, rent or offer to sell to a dealer any product or service for more than a fair and reasonable price;

Adopted

(10) unreasonably disapprove the transfer or assignment of a franchise by a dealer to a qualified transferee or assignee;



*for further provisions upon agreement
of dealer to bear some of loss*

AMENDMENT

4

OFFERED IN THE HOUSE:

By: _____

To: HCS HOUSE BILL No. _____

SENATE BILL No. 438

between

PAGE: 3

LINE: 11 & 12

ADD

OK

(8) require the dealer to keep his retail outlet open for business more than 12 consecutive hours per day or more than six days a week, provided that this paragraph shall not be construed to prevent any retail outlet from being open when required to be open to conform to any state or federal law or regulation;

OK

(9) ~~sell, rent or offer to sell to a dealer~~ any product or service for more than a fair and reasonable price;

May not require a dealer to purchase

(10) unreasonably disapprove the transfer or assignment of a franchise by a dealer to a qualified transferee or assignee;

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AMENDMENT

5

OFFERED IN THE HOUSE:

BY: _____

To: _____ HOUSE BILL No. _____

SENATE BILL No. HCS 458

PAGE: 5

LINE: 16 to 20

~~After the word "exists," delete lines 16 to line 20 and insert:~~

Reasonable attorney's fees and the appraiser's fees shall be awarded to the franchisee if the amount awarded to the franchisee by the jury or the court is ten per cent higher than the final offer, if any, made by the refiner or distributor prior to the filing of the lawsuit.

45.50.810 c

~~_____~~
~~_____~~

(c) No refiner or distributor shall terminate or cancel a dealer franchise prior to the expiration date thereof unless the dealer whose franchise is terminated failed to perform or comply with, or failed to act in good faith in performing or complying with, any of the terms or provisions of the franchise, except that a refiner or distributor shall be permitted to provide in the franchise for the termination thereof without cause during a reasonable trial period, not to exceed one (1) year, where the dealer involved has not been a dealer of the refiner or distributor for that period of time, at the premises described in the franchise.

**TWO PARTY DEALER
SUPPLY CONTRACT AND SIGN AND EQUIPMENT
RENTAL CONTRACT**

Dated _____, 19 _____

1. STANDARD OIL COMPANY OF CALIFORNIA, WESTERN OPERATIONS, INC. ("Seller") agrees to sell to _____

("Buyer") and Buyer agrees to buy from Seller such quantities of petroleum products and such quantities of the brands of tires, tubes and batteries (hereinafter sometimes referred to as "Seller's products") sold by Seller generally for resale in Buyer's locality as are necessary to serve customer demand for Seller's products at Buyer's premises for a term commencing _____, 19 _____, and ending _____, 19 _____.

2. Delivery shall be made on reasonable notice (preferably at least 48 hours) at _____

(the "premises") and shall be made in Seller's customary manner with equipment selected by Seller in full capacity loads. The price Buyer shall pay Seller for petroleum products hereunder shall be Seller's posted price to its buyers for resale generally at the time and place of delivery for the particular product, grade, quantity and type of delivery involved. The price Buyer shall pay Seller for tires, tubes and batteries shall be Seller's price to buyers for resale generally in Buyer's vicinity. Terms shall be net cash at time of delivery, except at Seller's option.

3. Buyer shall stock at the premises and continuously offer for sale such quantities of Seller's products as are necessary to serve customer demand for said products. Buyer agrees at all times to give the dispensing equipment, displays and advertisements for Seller's products and brands as prominent and convenient positions as those for any other product offered for sale on the premises. Buyer recognizes the high regard of the motoring public for service stations selling under Seller's trademarks and brands based upon the general cleanliness and the excellence of products and services dispensed at such service stations; and accordingly, Buyer agrees that he shall operate the premises as a first-class service station and shall not by act or omission disparage or diminish in any way the good reputation of said trademarks, brands, products or service stations. Buyer shall not engage in or permit any unlawful, fraudulent, or deceptive act or practice on the premises.

4. (a) The petroleum products covered by this agreement shall be sold by Buyer as the products of Seller and only under the trademarks or brands regularly used by Seller for such products and Buyer shall not, at any time, offer for sale under Seller's trademarks or brands, any product not authorized to be sold thereunder.

(b) Buyer shall so conduct his operations as to eliminate any likelihood of confusion between Seller's products and those of others, and as to eliminate any likelihood of substitution of the products of others for those of Seller. Buyer agrees to abide by such reasonable regulations to this end as Seller may from time to time establish by notice to Buyer. Buyer further agrees to comply with all applicable laws, ordinances and regulations of governmental authorities in resale of all products purchased hereunder.

(c) All signs advertising Seller's products and all signs in the colors used by Seller to identify its products or the places at which its products are sold and all of Seller's trademark rights therein are, and they shall continue to be, the property of Seller. No use shall be made of any such signs except in connection with products manufactured or handled by Seller, and Seller shall have the right, at all times during the life of this agreement and within a reasonable period thereafter, to remove or obliterate such signs. Buyer may not use other signs to advertise products purchased from Seller without Seller's written consent. It is agreed that any paint scheme applied by Seller to the premises to which deliveries are made hereunder may be that used to identify dealer outlets marketing Seller's petroleum products, and that Seller shall, at all times during the life of this agreement and within a reasonable period thereafter, have the right, but not the obligation, to repaint so much of the premises as it elects, in a color or colors selected by it. If Seller at any time removes or obliterates any signs or repaints any of the premises, Seller need not restore any pre-existing signs or paint scheme of the premises. Buyer agrees, during this agreement and thereafter, not to simulate in any way any trademarks or brands, signs or paint schemes identifying Seller's products or the places or outlets where they are sold or marketed.

5. (a) There shall be no obligation to deliver or to receive or use the products herein described when and while, and to the extent that, the receiving or using or manufacture or making deliveries in the customary manner are prevented or hindered by act of God, fire, riot, labor disturbances, accident, war or the acts of any government (whether foreign or domestic,

Federal, State, county or municipal) or other causes beyond the reasonable control of the party affected. In case of partial or total interruption or loss or shortage of transportation facilities or supplies, or shortage of products deliverable hereunder, Seller shall have the right to prorate delivery of available products among Buyer and other outlets and customers of Seller, contract or otherwise.

(b) Due to uncertainties in the supply/demand situation, Seller may not have sufficient supplies of one or more products from its then contemplated sources of supply to meet the full requirements of all of its customers, contract or otherwise. Whenever that situation exists and Seller's performance hereunder is not otherwise excused, Seller may reduce deliveries of such product(s) on any basis which in Seller's opinion is equitable, allowing for such priorities to such classes of customers as Seller deems appropriate. No such reduction need be made up. If any such reduction occurs, Buyer shall have the option to accept such reduction or to terminate this Agreement as to any or all products by 15 days' notice to Seller given at any time within 30 days after the notice of reduction.

6. (a) In the performance of this agreement Buyer is engaged in an independent business and nothing herein contained shall be construed as granting to Seller any right to control Buyer with respect to his conduct of said business. Seller has no right to exercise any control over any of Buyer's employees, all of whom are entirely under the control and direction of Buyer, who shall be responsible for their actions and omissions.

(b) Buyer shall, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in the state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Seller with satisfactory evidence of the maintenance of such insurance. Buyer accepts exclusive liability for all contributions and payroll taxes required under Federal Social Security Laws and State Unemployment Compensation Laws or other payments under any laws of similar character as to all persons employed by and working for him.

(c) Buyer agrees to indemnify, defend, and hold Seller, its agents and employees, harmless from and against all expense, liability and claims for damage to property (including Buyer's property) or injury to or death of persons (including Buyer) directly or indirectly resulting from anything occurring from any cause on or about or in connection with the maintenance or operation of Buyer's premises or anything located thereon.

(d) Buyer shall maintain at his own expense during the term hereof liability insurance, in respect of the premises and all activities on or about or in connection with said premises, of the types and in the minimum amounts described generally as follows:

(i) General public liability and property damage insurance (including explosion hazard) affording premises, products, completed operations, contractual and contingent liability (with respect to subcontractors) coverage of not less than \$300,000 combined single limit for injuries to or death of any person or persons and property damage for each occurrence.

(ii) Automobile comprehensive public liability and property damage insurance of not less than \$100,000 for injuries to or death of any one person and not less than \$300,000 for injuries to or death of more than one person resulting from any one occurrence and property damage of not less than \$25,000 for each occurrence.

(iii) Excess comprehensive general public liability and property damage insurance of not less than \$1,000,000 per occurrence affording the same coverage and on the same terms and subject to the same conditions as the insurance required under (i) and (ii) above.

(iv) Fire legal liability insurance of not less than \$50,000.

The insurance provided above (except fire legal liability insurance) shall include Standard Oil Company of California and its subsidiary or affiliated companies as named insureds, it being the intention of the parties that the insurance so effected shall protect both Buyer and Standard Oil Company of California (including its subsidiaries or affiliates) and be primary insurance for any and all losses in respect of the premises and all activities on or about or in connection with said premises during the term of this contract and any other contract between the parties or any extension or renewal thereof. Buyer shall furnish certificates satisfactory to Seller as evidence of such insurance. The insurance shall contain provisions that no cancellation or material changes in any policy shall become effective except upon thirty (30) days' notice to Seller. The insurance companies shall have no recourse against Standard Oil Company of California or Seller for payment of any premiums or assessments under any mutual form policy. Any and all deductibles in all of Buyer's insurance coverage shall be assumed by, be for the account of, and be at Buyer's sole risk.

7. Any tax, duty, toll, fee, impost, charge or other exaction, or the amount equivalent thereto, and any increase thereof now or hereafter imposed, levied or assessed by any governmental authority upon, measured by, incident to or as a result of the transaction herein provided for or the transportation, production, manufacture, use or ownership of the goods the subject matter of this agreement, shall, if collectible or payable by Seller, be paid by Buyer on demand by Seller. Any such payment shall be in addition to the prices otherwise herein provided for.

8. In case of any breach or default by Buyer hereunder, Seller may, in addition to its other remedies, give Buyer written notice of termination specifying the grounds therefor, and unless such breach or default shall be cured by Buyer within ten (10) days after such notice is given, this contract shall terminate at the expiration of such ten (10) days, provided, however, that Seller shall have the right to terminate this contract forthwith upon written notice to Buyer:

(i) If Buyer by act or omission breaches any provision of this contract which breach cannot be cured, or

(ii) in the event of any default or defaults hereunder by Buyer after notice of three previous defaults of any kind have been given hereunder, regardless of Buyer's curing of said previous defaults.

Waiver by Seller of any default or defaults hereunder by Buyer shall not be deemed to be a waiver of any other or continuing defaults hereunder. No termination of this contract shall relieve Buyer of responsibility for obligations incurred prior to termination.

9. Buyer may not assign this contract, or any interest therein (by assignment or other arrangements having similar effect) without Seller's prior written consent. In case of Buyer's death, or if incapacity shall prevent his personal supervision of the performance of this contract, or if any insolvency, bankruptcy or receivership proceedings are instituted by or against Buyer, then this contract may be terminated by Seller upon Seller's giving written notice of such termination to Buyer, or his successor(s) in interest.

10. Seller authorizes Buyer to accept credit cards approved by Seller for purchases of the types of products and services which Seller may from time to time designate. Buyer agrees to honor such credit cards subject to terms and conditions established by Seller. Seller shall accept from Buyer authorized invoices or other evidences of debt issued on such credit cards for sales of products and services made by Buyer to cardholders provided, however, Seller reserves the right to charge back to Buyer, or to refuse to accept, any invoice pursuant to the terms and conditions established by Seller.

11. Seller has delivered to or installed for (or will deliver to or install for) Buyer the facilities specified in Exhibit A attached hereto and made a part hereof to be used by Buyer at the premises. Buyer shall pay Seller, in advance, as rental for the use of said facilities, the sum of _____

_____ dollars (\$ _____) per month (year) commencing _____, 19____

In connection with the use by Buyer of said facilities, Buyer agrees to be responsible for loss of or damages to said facilities and agrees not to remove any of said facilities from the premises. Title to said facilities and all trademark rights Seller may have in the same shall at all times remain in Seller, and Seller shall have the right to remove any or all of said facilities at any time without prior notice to Buyer thereof, refunding to Buyer any unearned prepaid rental.

12. This agreement supersedes and terminates all prior Supply Contracts between the parties covering the delivery of products to the above indicated address.

STANDARD OIL COMPANY OF CALIFORNIA,
WESTERN OPERATIONS, INC.

By _____

_____, Buyer _____, Seller

IDENTIFICATION SIGN(S) AND/OR EQUIPMENT
 (Attachment referred to in paragraph 11 of Form S-939-2)

				<u>Monthly Rent</u>
Chevron I.D. Signs:	_____ of Type _____	@ \$ _____	/mo.	\$ _____
	_____ of Type _____	@ \$ _____	/mo.	\$ _____
Fin Signs:	_____ of Type _____	@ \$ _____	/mo.	\$ _____
	_____ of Type _____	@ \$ _____	/mo.	\$ _____
Truck Stop Signs:	_____ of Type _____	@ \$ _____	/mo.	\$ _____
	_____ of Type _____	@ \$ _____	/mo.	\$ _____
Pump Block Lighter Boxes:	No. of _____	@ No Charge		\$ XXXX
Credit Card Imprinters:	No. of _____	@ \$.42	/mo.	\$ _____

TOTAL MONTHLY RENT _____

EXHIBIT A



**Standard Oil Company of California,
Western Operations, Inc.**

Liability Insurance Requirements

Dear _____:

The Chevron Dealers Supply Contract between us states:

6. (d) Buyer shall maintain at his own expense during the term hereof liability insurance, in respect of the premises and all activities on or about or in connection with said premises, of the types and in the minimum amounts described generally as follows:
- (i) General public liability and property damage insurance (including explosion hazard) affording premises, products, completed operations, contractual and contingent liability (with respect to subcontractors) coverage of not less than \$300,000 combined single limit for injuries to or death of any person or persons and property damage for each occurrence.
 - (ii) Automobile comprehensive public liability and property damage insurance of not less than \$100,000 for injuries to or death of any one person and not less than \$300,000 for injuries to or death of more than one person resulting from any one occurrence and property damage of not less than \$50,000 for each occurrence.
 - (iii) Excess comprehensive general public liability and property damage insurance of not less than \$1,000,000 per occurrence affording the same coverage and on the same terms and subject to the same conditions as the insurance required under (i) and (ii) above.
 - (iv) Fire legal liability insurance of not less than \$50,000.

The insurance provided above (except fire legal liability insurance) shall include Standard Oil Company of California and its subsidiary or affiliated companies as named insureds, it being the intention of the parties that the insurance so affected shall protect both Buyer and Standard Oil Company of California (including its subsidiaries or affiliates) and be primary insurance for any and all losses in respect of the premises and all activities on or about or in connection with said airport during the term of this agreement and any other agreement between the parties or any extension or renewal thereof. Buyer shall furnish certificates satisfactory to Seller as evidence of such insurance. The insurance shall contain provisions that no cancellation or material changes in any policy shall become effective except upon thirty (30) days' notice to Seller. The insurance companies shall have no recourse against Standard Oil Company of California or Seller for payment of any premiums or assessments under any mutual form policy. Any and all deductibles in all of Buyer's insurance coverage shall be assumed by, be for the account of, and be at Buyer's sole risk.

As a _____ Service Station, you have the option of complying with the above or of waiving this provision. If you elect to waive the required liability insurance, please sign the attached Liability Insurance Waiver. However, if you elect to meet the insurance requirements of your Supply Contract forward the attached Standard Oil Company Certificate of Insurance to your insurance company requesting that it be completed and returned to Standard Oil Company, P. O. Box 1580, Anchorage, Alaska, 99510, within 15 days from the effective date of your Supply Contract.

Excess comprehensive liability insurance (see 6(d)(iii) above) of not less than \$1,000,000 is required. Required coverage is available through Standard Oil Company at a minimum cost to you. If you do not elect to obtain the required excess insurance through Standard Oil Company, please have your chosen insurance company forward the necessary evidence of insurance to our office within 15 days from the effective date of your Supply Contract.

Your copy of the Supply Contract will be held in our office until such time as evidence of the required minimum excess and basic liability insurance is received. We hope you will arrange to meet this portion of your contract as soon as possible.

Please sign below to acknowledge receipt of the above information.

Very truly yours,

RECEIPT ACKNOWLEDGED: _____

Chevron Dealer

Date: _____



**Standard Oil Company of California,
Western Operations, Inc.**

SS No. _____

Date _____

LIABILITY INSURANCE

Dear _____ :

Your supply contract with Standard requires you to carry minimum insurance as described in paragraph 6(d). You have requested that we waive this provision.

We are agreeable to waive the requirements of paragraph 6(d), reserving the right to withdraw this waiver at any time upon written notice to you. Our waiver should not be deemed a waiver of your continuing obligation under paragraph 6(c) to indemnify and hold Standard harmless. Further, our waiver should not be construed to imply that insurance is unnecessary in your business. Experience clearly shows that all commercial businesses should carry adequate coverage at all times. Accordingly, we urge you to discuss your insurance needs with a qualified agent and secure proper coverage.

Please acknowledge receipt of this waiver in the space below and return a copy to this office.

Very truly yours,

STANDARD OIL COMPANY OF CALIFORNIA,
WESTERN OPERATIONS, INC.

By _____

RECEIVED:

Chevron Dealer

Certificate of Insurance

ISSUED TO

Standard Oil Company of California

DIVISION OFFICE ADDRESS

This is to certify that the following policy(ies) issued by the Company indicated below is (are) in full force and effect as of the date of this Certificate in amounts not less than stated below. Nothing in this Certificate or attachment hereto shall be construed to amend coverage under such policy(ies) beyond the limits, terms, conditions and exclusions contained therein.

INSURED DEALER	STATION NUMBER
INSURED PREMISES: STREET	CITY STATE ZIP

	POLICY NUMBER	EXPIRATION DATE	LIABILITY LIMITS		
			BODILY INJURY		PROP. DAMAGE
			EACH PERSON	EACH OCCURRENCE	EACH OCCURRENCE
General Public Liability and Property Damage insurance (including explosion hazard) affording premises, products, completed operations, contractual and contingent liability (with respect to sub-contractors) coverage			\$300,000 COMBINED SINGLE LIMIT		
Fire Legal Liability					\$50,000
Comprehensive Automobile Public Liability and Property Damage Insurance			\$100,000	\$300,000	\$25,000

It is hereby agreed that Standard Oil Company of California and its subsidiary or affiliated companies are additional insureds on the above policy(ies) (except for fire legal liability) and said policy(ies) shall be primary insurance for any and all losses in respect of the insured premises and all activities on or about or in connection with said premises. It is further agreed that no cancellation or material changes in any policy(ies) shall become effective except upon thirty (30) days written notice to Standard Oil Company of California at the address shown above. It is agreed that the company indicated below shall have no recourse against Standard Oil Company of California or its subsidiary or affiliated companies for payment of any premiums or assessments under any Mutual Form Policy.

Insurance Company _____

Date _____

By _____
(TITLE)

members
SB 438

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

MEMORANDUM

April 15, 1976

SUBJECT: Commerce Committee Substitute for Senate Bill 438 am
TO: Representative Bradley, Chairman,
House Commerce Committee
FROM: David T. Walker, Legislative Counsel

Attached is a committee substitute drafted in accordance with the committee's request. I would like to remind you of an amendment which should be made to the bill to avoid a conflict with controlling federal law (15 U.S.C. 513).

I have attached a copy of a memo to Representative Rudd, dated March 29, which explains the necessity for the amendment and supplies the needed language.

cc: Rep. Rudd
Rep. Gardiner ✓

MEMORANDUM

March 29, 1976

SUBJECT: Senate Bill 438 am
TO: Representative Lisa Rudd
FROM: David T. Walker, Staff Attorney *DTW*

I drafted § 45.50.810(d) of SB 433 at the request of Senate Commerce Committee. It was my intention to parallel the applicable federal law - in fact I represented to the committee that the language did that.

I have attached a copy of an amendment which should be made to the language of the bill. The added language would make it clear that the state law followed the controlling federal anti-trust provisions and would avoid needless litigation.

DTW:bh

Attachment

Amendment suggested to SB 436 am.

PAGE 5 LINE 3

After "dealers" insert the following:

"where the effect of the discrimination may be substantially to lessen competition"

PAGE 5 LINE 4

After "costs." insert the following:

"Nothing under this section shall prevent a refiner or distributor from offering a lower price or furnishing a service or facility to a dealer when the offer is made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by that competitor."

SB438 - John Sanders

SOCAL

42 dealer owned, 100 2 party ~~to~~ stations

62% of 3 party dwellers net excess 45,000

14% " " " " " 100,000

Page 2, line 22 - unnecessary because
of anti-trust laws

"reasonably necessary"

"justified on business grounds"

Actual phrase - in conformity with trademark laws.

Page 4, line 18

Robinson-Pattman Act - change (d)

Page 6, line 3

**THREE PARTY DEALER
SUPPLY CONTRACT**

SS No. _____

Dated _____, 19 _____

1. STANDARD OIL COMPANY OF CALIFORNIA, WESTERN OPERATIONS, INC. ("Seller") agrees to sell to _____

("Buyer") and Buyer agrees to buy from Seller such quantities of petroleum products and such quantities of the brands of tires, tubes and batteries (hereinafter sometimes referred to as "Seller's products") sold by Seller generally for resale in Buyer's locality as are necessary to serve customer demand for Seller's products at Buyer's premises for a term commencing _____, 19 _____, and ending _____, 19 _____.

2. Delivery shall be made on reasonable notice (preferably at least 48 hours) at _____

(the "premises") and shall be made in Seller's customary manner with equipment selected by Seller in full capacity loads. The price Buyer shall pay Seller for petroleum products hereunder shall be Seller's posted price to its buyers for resale generally at the time and place of delivery for the particular product, grade, quantity and type of delivery involved. The price Buyer shall pay Seller for tires, tubes and batteries shall be Seller's price to buyers for resale generally in Buyer's vicinity. Terms shall be net cash at time of delivery, except at Seller's option.

3. Buyer shall stock at the premises and continuously offer for sale such quantities of Seller's products as are necessary to serve customer demand for said products. Buyer agrees at all times to give the dispensing equipment, displays and advertisements for Seller's products and brands as prominent and convenient positions as those for any other product offered for sale on the premises. Buyer recognizes the high regard of the motoring public for service stations selling under Seller's trademarks and brands based upon the general cleanliness and the excellence of products and services dispensed at such service stations; and accordingly, Buyer agrees that he shall operate the premises as a first-class service station and shall not by act or omission disparage or diminish in any way the good reputation of said trademarks, brands, products or service stations.

Buyer shall not engage in or permit any unlawful, fraudulent, or deceptive act or practice on the premises.

4. (a) The petroleum products covered by this agreement shall be sold by Buyer as the products of Seller and only under the trademarks or brands regularly used by Seller for such products and Buyer shall not, at any time, offer for sale under Seller's trademarks or brands, any product not authorized to be sold thereunder.

(b) Buyer shall so conduct his operations as to eliminate any likelihood of confusion between Seller's products and those of others, and as to eliminate any likelihood of substitution of the products of others for those of Seller. Buyer agrees to abide by such reasonable regulations to this end as Seller may from time to time establish by notice to Buyer. Buyer further agrees to comply with all applicable laws, ordinances and regulations of governmental authorities in the sale or resale of all products supplied or purchased hereunder.

(c) All signs advertising Seller's products and all signs in the colors used by Seller to identify its products or the places at which its products are sold and all of Seller's trademark rights therein are, and they shall continue to be, the property of Seller. No use shall be made of any such signs except in connection with products manufactured or handled by Seller, and Seller shall have the right, at all times during the life of this agreement and within a reasonable period thereafter, to remove or obliterate such signs. Buyer may not use other signs to advertise products purchased from Seller without Seller's written consent. It is agreed that any paint scheme applied by Seller to the premises to which deliveries are made hereunder may be that used to identify dealer outlets marketing Seller's petroleum products, and that Seller shall, at all times during the life of this agreement and within a reasonable period thereafter, have the right, but not the obligation, to repaint so much of the premises as it elects, in a color or colors selected by it. If Seller at any time removes or obliterates any signs or repaints any of the premises, Seller need not restore any pre-existing signs on or paint scheme of the premises. Buyer agrees, during this agreement and thereafter, not to simulate in any way any trademarks or brands, signs or paint schemes identifying Seller's products or the places or outlets where they are sold or marketed.

5. (a) There shall be no obligation to deliver or to receive or use the products herein described when and while, and to the extent that, the receiving or using or manufacture or making deliveries in the customary manner are prevented or hindered by act of God, fire, riot, labor disturbances, accident, war or the acts of any government (whether foreign or domestic,

**THREE PARTY DEALER
SUPPLY CONTRACT**

SS No. _____

Dated _____, 19 _____

1. STANDARD OIL COMPANY OF CALIFORNIA, WESTERN OPERATIONS, INC. ("Seller") agrees to sell to _____

("Buyer") and Buyer agrees to buy from Seller such quantities of petroleum products and such quantities of the brands of tires, tubes and batteries (hereinafter sometimes referred to as "Seller's products") sold by Seller generally for resale in Buyer's locality as are necessary to serve customer demand for Seller's products at Buyer's premises for a term commencing _____, 19 _____, and ending _____, 19 _____.

2. Delivery shall be made on reasonable notice (preferably at least 48 hours) at _____

(the "premises") and shall be made in Seller's customary manner with equipment selected by Seller in full capacity loads. The price Buyer shall pay Seller for petroleum products hereunder shall be Seller's posted price to its buyers for resale generally at the time and place of delivery for the particular product, grade, quantity and type of delivery involved. The price Buyer shall pay Seller for tires, tubes and batteries shall be Seller's price to buyers for resale generally in Buyer's vicinity. Terms shall be net cash at time of delivery, except at Seller's option.

3. Buyer shall stock at the premises and continuously offer for sale such quantities of Seller's products as are necessary to serve customer demand for said products. Buyer agrees at all times to give the dispensing equipment, displays and advertisements for Seller's products and brands as prominent and convenient positions as those for any other product offered for sale on the premises. Buyer recognizes the high regard of the motoring public for service stations selling under Seller's trademarks and brands based upon the general cleanliness and the excellence of products and services dispensed at such service stations; and accordingly, Buyer agrees that he shall operate the premises as a first-class service station and shall not by act or omission disparage or diminish in any way the good reputation of said trademarks, brands, products or service stations.

Buyer shall not engage in or permit any unlawful, fraudulent, or deceptive act or practice on the premises.

4. (a) The petroleum products covered by this agreement shall be sold by Buyer as the products of Seller and only under the trademarks or brands regularly used by Seller for such products and Buyer shall not, at any time, offer for sale under Seller's trademarks or brands, any product not authorized to be sold thereunder.

(b) Buyer shall so conduct his operations as to eliminate any likelihood of confusion between Seller's products and those of others, and as to eliminate any likelihood of substitution of the products of others for those of Seller. Buyer agrees to abide by such reasonable regulations to this end as Seller may from time to time establish by notice to Buyer. Buyer further agrees to comply with all applicable laws, ordinances and regulations of governmental authorities in the sale or resale of all products supplied or purchased hereunder.

(c) All signs advertising Seller's products and all signs in the colors used by Seller to identify its products or the places at which its products are sold and all of Seller's trademark rights therein are, and they shall continue to be, the property of Seller. No use shall be made of any such signs except in connection with products manufactured or handled by Seller, and Seller shall have the right, at all times during the life of this agreement and within a reasonable period thereafter, to remove or obliterate such signs. Buyer may not use other signs to advertise products purchased from Seller without Seller's written consent. It is agreed that any paint scheme applied by Seller to the premises to which deliveries are made hereunder may be that used to identify dealer outlets marketing Seller's petroleum products, and that Seller shall, at all times during the life of this agreement and within a reasonable period thereafter, have the right, but not the obligation, to repaint so much of the premises as it elects, in a color or colors selected by it. If Seller at any time removes or obliterates any signs or repaints any of the premises, Seller need not restore any pre-existing signs on or paint scheme of the premises. Buyer agrees, during this agreement and thereafter, not to simulate in any way any trademarks or brands, signs or paint schemes identifying Seller's products or the places or outlets where they are sold or marketed.

5. (a) There shall be no obligation to deliver or to receive or use the products herein described when and while, and to the extent that, the receiving or using or manufacture or making deliveries in the customary manner are prevented or hindered by act of God, fire, riot, labor disturbances, accident, war or the acts of any government (whether foreign or domestic,

Federal, State, county or municipal) or other causes beyond the reasonable control of the party affected. In case of partial or total interruption or loss or shortage of transportation facilities or supplies, or shortage of products deliverable hereunder, Seller shall have the right to prorate delivery of available products among Buyer and other outlets and customers of Seller, contract or otherwise.

(b) Due to uncertainties in the supply/demand situation, Seller may not have sufficient supplies of one or more products from its then contemplated sources of supply to meet the full requirements of all of its customers, contract or otherwise. Whenever that situation exists and Seller's performance hereunder is not otherwise excused, Seller may reduce deliveries of such product(s) on any basis which in Seller's opinion is equitable, allowing for such priorities to such classes of customers as Seller deems appropriate. No such reduction need be made up. If any such reduction occurs, Buyer shall have the option to accept such reduction or to terminate this Agreement as to any or all products by 15 days' notice to Seller given at any time within 30 days after the notice of reduction.

6. (a) In the performance of this agreement Buyer is engaged in an independent business and nothing herein contained shall be construed as granting to Seller any right to control Buyer with respect to his conduct of said business. Seller has no right to exercise any control over any of Buyer's employees, all of whom are entirely under the control and direction of Buyer, who shall be responsible for their actions and omissions.

(b) Buyer shall, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in the state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Seller with satisfactory evidence of the maintenance of such insurance. Buyer accepts exclusive liability for all contributions and payroll taxes required under Federal Social Security Laws and State Unemployment Compensation Laws or other payments under any laws of similar character as to all persons employed by and working for him.

(c) Buyer agrees to indemnify, defend, and hold Seller, its agents and employees, harmless from and against all expense, liability and claims for damage to property (including Buyer's property) or injury to or death of persons (including Buyer) directly or indirectly resulting from anything occurring from any cause on or about or in connection with the maintenance or operation of Buyer's premises or anything located thereon.

(d) Buyer shall maintain at his own expense during the term hereof liability insurance, in respect of the premises and all activities on or about or in connection with said premises, of the types and in the minimum amounts described generally as follows:

(i) General public liability and property damage insurance (including explosion hazard) affording premises, products, completed operations, contractual and contingent liability (with respect to subcontractors) coverage of not less than \$300,000 combined single limit for injuries to or death of any person or persons and property damage for each occurrence.

(ii) Automobile comprehensive public liability and property damage insurance of not less than \$100,000 for injuries to or death of any one person and not less than \$300,000 for injuries to or death of more than one person resulting from any one occurrence and property damage of not less than \$25,000 for each occurrence.

(iii) Excess comprehensive general public liability and property damage insurance of not less than \$1,000,000 per occurrence affording the same coverage and on the same terms and subject to the same conditions as the insurance required under (i) and (ii) above.

(iv) Fire legal liability insurance of not less than \$50,000.

The insurance provided above (except fire legal liability insurance) shall include Standard Oil Company of California and its subsidiary or affiliated companies as named insureds, it being the intention of the parties that the insurance so effected shall protect both Buyer and Standard Oil Company of California (including its subsidiaries or affiliates) and be primary insurance for any and all losses in respect of the premises and all activities on or about or in connection with said premises during the term of this contract and any other contract between the parties or any extension or renewal thereof. Buyer shall furnish certificates satisfactory to Seller as evidence of such insurance. The insurance shall contain provisions that no cancellation or material changes in any policy shall become effective except upon thirty (30) days' notice to Seller. The insurance companies shall have no recourse against Standard Oil Company of California or Seller for payment of any premiums or assessments under any mutual form policy. Any and all deductibles in all of Buyer's insurance coverage shall be assumed by, be for the account of, and be at Buyer's sole risk.

7. Any tax, duty, toll, fee, impost, charge or other exaction, or the amount equivalent thereto, and any increase thereof now or hereafter imposed, levied or assessed by any governmental authority upon, measured by, incident to or as a result of the transaction herein provided for or the transportation, production, manufacture, use or ownership of the goods the subject matter of this agreement, shall, if collectible or payable by Seller, be paid by Buyer on demand by Seller. Any such payment shall be in addition to the prices otherwise herein provided for.

8. (a) Buyer may terminate this contract at any time during the above specified term by giving Seller ninety (90) days' written notice of such termination.

(b) In case of any breach or default by Buyer hereunder, Seller may, in addition to its other remedies, give Buyer written notice of termination specifying the grounds therefor, and unless such breach or default shall be cured by Buyer within ten (10) days after such notice is given, this contract shall terminate at the expiration of such ten (10) days; provided, however, that Seller shall have the right to terminate this contract forthwith upon written notice to Buyer:

(i) if Buyer by act or omission breaches any provision of this contract which breach cannot be cured, or

(ii) in the event of any default or defaults hereunder by Buyer after notice of three previous defaults of any kind have been given hereunder, regardless of Buyer's curing of said previous defaults.

(c) Concurrently herewith, Buyer and Seller have entered into a Dealer Lease for the premises to be served hereunder. It is agreed that any breach or default in the performance of the terms and conditions of the said Dealer Lease shall constitute a breach of this contract, and the cancellation or termination of said Dealer Lease shall be effective to cancel or terminate this contract without additional notice hereunder.

(d) Waiver by Seller of any default or defaults hereunder by Buyer shall not be deemed to be a waiver of any other or continuing defaults hereunder. No termination of this contract shall relieve Buyer of responsibility for obligations incurred prior to termination.

9. This contract is personal to the Buyer, and Buyer may not assign the same, or any interest therein (either voluntarily or by operation of law) by assignment or other arrangements having similar effect. In case of Buyer's death or if incapacity shall prevent his personal supervision of the performance of this contract, or if any insolvency, bankruptcy or receivership proceedings are instituted by or against Buyer, then this contract shall automatically terminate.

10. Seller authorizes Buyer to accept credit cards approved by Seller for purchases of the types of products and services which Seller may from time to time designate. Buyer agrees to honor such credit cards subject to terms and conditions established by Seller. Seller shall accept from Buyer authorized invoices or other evidences of debt issued on such credit cards for sales of products and services made by Buyer to cardholders; provided, however Seller reserves the right to charge back to Buyer, or to refuse to accept, any invoice pursuant to the terms and conditions established by Seller.

11. This agreement supersedes and terminates all prior Supply Contracts between the parties covering the delivery of products to the above indicated address.

STANDARD OIL COMPANY OF CALIFORNIA,
WESTERN OPERATIONS, INC.

_____ By _____
_____, Buyer _____, Seller

DEALER LEASE

Dated _____, 19 ____

1. STANDARD OIL COMPANY OF CALIFORNIA, WESTERN OPERATIONS, INC. ("Standard"), leases to _____

("Dealer"), for the term commencing the _____ day of _____, 19____, and ending the _____ day of _____, 19____, the following described premises in the City of _____, County of _____, State of _____, to wit:

together with all buildings, improvements and equipment (except signs) located thereon as listed in Exhibit A attached hereto and made a part hereof, and together with any additions, replacements or substitutions thereto (hereinafter sometimes collectively called "premises").

2. OPERATION - USE OF PREMISES.

(a) Dealer agrees

- (1) to operate said premises effectively as a first-class service station for the promotion and sale of merchandise and services normally sold at a first-class service station as follows: gasoline; oils; tires; batteries; lubrication; tire and battery services; automotive accessories; and minor motor vehicle repairs; this being the purpose for which this lease has been made and the inducement to Standard to make this lease to Dealer;
- (2) to conduct all operations hereunder in strict compliance with all applicable laws, ordinances and regulations of governmental authorities including those attached hereto relating specifically to the premises (and no intoxicating beverages shall ever be consumed, sold or otherwise disposed of on the premises);
- (3) to operate and manage said service station personally on a full-time basis;
- (4) to keep the premises open for operation and fully illuminated at least from _____ a.m. to _____ p.m. each day, seven days a week; and
- (5) to keep said premises, including the rest rooms and all buildings, driveways, lawns, shrubs and equipment thereon, in good appearance and in a clean and orderly condition, and to provide at all times sufficient, qualified and neatly uniformed attendants.

Dealer shall not engage in sales or services of a type that would conflict with the operation of the premises as a first-class service station, or with the effective promotion of sales and services listed above. Dealer recognizes that failure to operate during the hours and in the manner specified above will not only impair Dealer's sales but will adversely affect the motoring public's patronage of other retail service stations supplied by Standard.

(b) Dealer shall not use the premises, or any part thereof, for the parking, storage, rental or sale of automotive vehicles, trailers, equipment, garden supplies, or other sales or services not normally offered at a first-class service station (normal sales and services being enumerated in paragraph 2.(a)(1) above) without Standard's prior written consent. Where given, such consent will be conditioned upon

- (1) the use of only such part of the premises for such purposes as may be specified by Standard, and
- (2) the payment by Dealer to Standard for such use an amount as provided in a "License - Non Service Station Use" which Dealer hereby agrees to enter into as a condition of such approval.

3. UNDERLYING ESTATES.

(a) Standard's interest in the premises is or may be a leasehold estate derived from a third party whose interest in the premises may or may not be of record. This lease is subordinate to all the terms and conditions of any lease now in effect, or hereafter entered into, with such third party evidencing such leasehold estate of Standard. This lease, at Standard's option, shall terminate if said lease with such third party is terminated in any manner or by either party thereto and Standard shall in no way be liable to Dealer for such termination, whether voluntary or involuntary. Dealer hereby agrees that he will not, by act or omission, breach any of the terms and conditions of Standard's lease with the third party of which Dealer has notice.

(b) In order that Standard may ascertain and verify the calculation of rents under the above-mentioned third party lease, if the rent thereunder is based on receipts from sales of products or services at the premises, Dealer agrees to keep accurate books and records of the quantity and dollar amount of all his sales of merchandise and services, and of his merchandise cost prices, and to make such books and records available to Standard for inspection during regular business hours. Dealer further agrees that, if requested by Standard, he will give Standard on or before the 10th day of each month a written statement of all business done at the premises during the preceding month in such form and detail as to substantiate the calculation of rents under the third party lease for the preceding month.

4. RENT.

Dealer shall pay Standard rent the sum of _____ Dollars
(\$ _____) per lease year, payable in installments at the rate of _____ cents
(_____¢) for each gallon of motor fuel delivered to the premises, but not less than _____
_____ Dollars (\$ _____) for any
quarter of such year (prorated for any period less than a full quarter). The rent shall be payable as it accrues at the time of each delivery. Balance of quarterly rent due, if any, shall be payable upon receipt of statement. At the end of each lease year, Standard shall refund to Dealer any excess rent collected during the year, excluding from such calculation all motor fuel delivered to Dealer and resold under state contracts with Standard.

5. DEFAULT.

In case of any default or breach of any covenant, condition or other provision of this lease by Dealer, Standard may, in addition to its other remedies, give Dealer written notice of termination specifying the grounds therefor; and unless such breach or default shall be cured by Dealer within 10 days after such notice is given, this lease shall terminate at the expiration of such 10 days; provided, however, that Standard shall have the right to terminate this lease forthwith upon written notice to Dealer:

(a) if the premises are closed for the operation of a service station for 60 consecutive hours (this provision being in addition to Dealer's obligations under paragraph 2, above);

(b) if Dealer by act or omission breaches any covenant, condition or other provision of this lease which breach cannot be cured; or

(c) in the event of any default by Dealer after notice of three previous defaults of any kind have been given hereunder, regardless of Dealer's curing of said previous defaults.

Waiver by Standard of any default or defaults hereunder by Dealer shall not be deemed to be a waiver of any other or continuing default hereunder.

No termination of this lease shall relieve Dealer of responsibility for obligations incurred prior to termination.

6. ASSIGNMENT – SUBLEASING.

This lease is personal to the Dealer, and Dealer may not assign said lease, or any interest therein, and may not let or sublet the premises, or any part thereof, or any right or privilege appurtenant thereto (by assignment, sublease or other arrangement having similar effect).

7. INCAPACITY – BANKRUPTCY.

In case of Dealer's death or if incapacity shall prevent his personal supervision of the performance of this lease, or if any insolvency, bankruptcy or receivership proceedings are instituted by or against Dealer, then this lease shall automatically terminate.

8. TERMINATION BY DEALER.

Dealer may terminate this lease at any time during the term hereof, upon giving Standard 90 days' written notice of such termination.

9. TERMINATION BY STANDARD – FIRST 18 MONTHS.

Standard may terminate this lease without cause upon 30 days' written notice of termination given at any time during the first eighteen full calendar months in which Dealer has been a tenant of the premises, whether or not all under this lease.

10. MAINTENANCE – UPKEEP – REPAIRS – REPLACEMENTS.

(a) By Dealer. Dealer acknowledges, by signing Exhibit "A" referred to in paragraph 1 of this lease, that he has thoroughly inspected the premises and all equipment, fixtures and facilities located thereon, and that the same are, at the date hereof, complete and in good order, condition and repair. Dealer agrees at his sole cost and expense properly to maintain, perform upkeep on, repair, and replace equipment, fixtures and facilities owned or supplied by Standard, as so indicated on said Exhibit "A," and according to guides prescribing proper care which Standard may from time to time provide to Dealer. Dealer shall maintain, repair and replace when necessary, all equipment, fixtures and other facilities owned or installed by Dealer.

(b) By Standard. Upon reasonable notice by Dealer to Standard, Standard agrees (except where occasioned by Dealer's negligence) to make all major repairs to or replacements of only the following listed facilities and equipment owned or supplied by Standard:

Air compressor; Air and water dispensers; Auto lift; Fire extinguishers; Gasoline pumps, tanks and lines; Lubricating oil tanks; Painting; Paving and driveways; Piping, Signs; Wiring; Roofs, walls, windows and foundations of buildings;

provided, however, that Dealer's sole remedy if Standard shall fail to make such repairs and replacements shall be the termination of this lease. Dealer hereby waives any provision of law according any other remedy.

(c) Dealer shall not make any additions, alterations, rearrangements or improvements to the premises, or any property thereon, or remove any such property therefrom, without Standard's prior written consent. Dealer shall not, without Standard's prior written consent, alter, remove, cover, add to or deface any paint or signs on the premises or on any property located thereon, or add additional point or signs to the premises or to any property located thereon. Such pumps, tanks, containers or receptacles as have been furnished to Dealer by Standard and are or may be marked as such, shall be used solely for the storing, handling or dispensing of products supplied by Standard. Standard will not unreasonably withhold consent to the required identification of, and installations to dispense, products Dealer desires to sell at the premises.

11. INDEMNITY.

Dealer agrees to indemnify, defend and hold Standard, its agents and employees, harmless from and against all expense, liability and claims for damage to property (including Dealer's property) or injury to or death of persons (including Dealer) directly or indirectly resulting from anything occurring from any cause on or about or in connection with the maintenance or operation of the premises, or anything located thereon.

12. SURRENDER.

(a) Upon termination of this lease, by expiration or otherwise upon demand by Standard, Dealer will peaceably and quietly surrender and yield up to Standard the premises and all appurtenances, fixtures and other equipment in as good order, condition and repair as the same are now or into which they may be put, reasonable use and wear thereof excepted.

(b) If without a written renewal of this lease, Dealer holds possession of the premises after its expiration, Dealer shall become a tenant from month to month only, upon the terms specified herein.

13. DESTRUCTION OR CONDEMNATION.

In the event the leased premises or a substantial portion thereof are destroyed or taken by eminent domain (the filing of an eminent domain action shall be deemed a taking), or should the operation of the premises as a service station be prevented by any law, ordinance or act of lawful authority, either party may terminate this lease upon 7 days' written notice to the other; provided, however, that Dealer shall have no right or interest in any damages or compensation awarded as the result of taking by eminent domain, which shall be the sole property of Standard.

14. SUPPLY CONTRACT.

Concurrently herewith Standard and Dealer have entered into a Three Party Dealer Supply Contract for the sale by Standard and purchase by Dealer of petroleum and allied service station products. Dealer, as a covenant of this lease, agrees that the breach of any of the terms or conditions of said Supply Contract shall constitute a breach of this lease, and that the cancellation or termination of said Supply Contract shall, at the option of Standard, cancel or terminate this lease.

15. DEALER'S EQUIPMENT.

Upon termination of this lease, neither Standard nor any incoming dealer shall have any obligation to purchase from Dealer any of Dealer's inventory, tools, equipment or supplies. Standard agrees, however, to credit Dealer's account for the reasonable value of resale merchandise in merchantable condition which Dealer has purchased from Standard, such credit not to exceed Dealer's cost; no credit shall be allowed for goodwill.

16. TAXES.

Dealer shall pay all taxes levied or assessed as the result of improvements or property owned by Dealer placed on said premises by Dealer, promptly and before the same shall become delinquent.

17. DEALER'S BUSINESS.

It is understood that Dealer is engaged in an independent business, and nothing herein shall be construed as reserving to Standard the right to control Dealer's business or operations or the manner in which the same shall be conducted, Dealer's obligation to Standard hereunder being the performance of the terms and conditions of this lease.

18. PRIOR LEASES.

This agreement supersedes and terminates all prior leases or subleases between the parties hereto covering the above-described premises.

19. NOTICE.

Any and all written notices to be given hereunder shall be addressed to Dealer at _____

_____ and to Standard at _____

STANDARD OIL COMPANY OF CALIFORNIA,
WESTERN OPERATIONS, INC.

By _____

_____, Dealer

4. RENT

Dealer agrees to pay Standard a rental for use of the premises as follows:

(a) Basic Rent - A basic rent during each year of this lease as follows:

	<u>1st Lease</u> <u>Year</u>	<u>2nd Lease</u> <u>Year</u>	<u>3rd Lease</u> <u>Year</u>	<u>4th Lease</u> <u>Year</u>	<u>5th Lease</u> <u>Year</u>
Basic Rent per Year	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

payable (1) in equal monthly installments or (2) in accordance with a schedule, as shown below:

(1) Payable in twelve (12) equal monthly installments in advance on the first day of each and every calendar month (prorated for any period less than a calendar month) during the term hereof as follows:

	<u>1st Lease</u> <u>Year</u>	<u>2nd Lease</u> <u>Year</u>	<u>3rd Lease</u> <u>Year</u>	<u>4th Lease</u> <u>Year</u>	<u>5th Lease</u> <u>Year</u>
Basic Rent per Month	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

(2) Payable in advance on the first day of each and every calendar month (prorated for any period less than a calendar month) during the term hereof in accordance with the following schedule:

<u>Month</u>	<u>1st Lease</u> <u>Year</u>	<u>2nd Lease</u> <u>Year</u>	<u>3rd Lease</u> <u>Year</u>	<u>4th Lease</u> <u>Year</u>	<u>5th Lease</u> <u>Year</u>
January	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
February	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
March	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
April	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
May	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
June	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

<u>Month</u>	<u>1st Lease Year</u>	<u>2nd Lease Year</u>	<u>3rd Lease Year</u>	<u>4th Lease Year</u>	<u>5th Lease Year</u>
July	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
August	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
September	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
October	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
November	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
December	_____	\$ _____	\$ _____	\$ _____	\$ _____

(b) Rental Surcharge - Standard shall have the right at its option to add a rental surcharge to the basic rent to be paid by Dealer during the term of this Lease by written notice to Dealer at any time prior to the effective date of such rental surcharge. Any rental surcharge to be added will be determined by Standard prior to the first day of each calendar year and shall be payable by Dealer as additional rent in equal monthly installments in advance at the time of the basic rental payments described above; PROVIDED, HOWEVER, that the rental surcharge imposed by Standard and payable by Dealer for any calendar year (prorated for any period less than a calendar year) shall not be more than ten percent (10%) of the total rent (basic rent plus rental surcharges) payable under this lease by Dealer during the preceding calendar year.

_____, 19____
Station No. _____

DEALER LEASE
MODIFICATION OF RENTAL

Dear Mr. _____:

Please refer to the Dealer Lease dated _____, as now operative between us, and more particularly to paragraph 4 thereof.

Under regulations issued by the Cost of Living Council on August 17, 1973, service station rentals may not exceed the rent charged for the station pursuant to contractual terms prevailing on May 15, 1973. Accordingly, it is hereby agreed that effective _____, and continuing thereafter until rescinded by Standard, paragraph 4 of your Dealer Lease is amended to read as it appeared in the Dealer Lease in effect on May 15, 1973, as follows:

"Lessee agrees to pay to Lessor a rental for use of the premises as follows:

(a) In advance on the first (1st) day of each and every calendar month during the term hereof, the sum of _____ Dollars (\$_____). Said rental shall be subject to adjustment as follows: If the average monthly gallons of gasoline delivered to the premises during the 12-month period immediately preceding each anniversary date shall represent an increase or decrease of five percent (5%) or more of the base gallonage, said rental shall be adjusted to equal the product of said average monthly deliveries of gallons of gasoline times _____ Cent(s) (____¢). 'Base gallonage' shall mean _____ gallons until such time as a rental adjustment is made and thereafter 'base gallonage' shall mean the average monthly gallons of gasoline delivered to the premises during the 12-month period immediately preceding the date of the latest rental adjustment. Adjustment, if any, shall be made as soon after each anniversary date as average monthly deliveries can be calculated and shall be retroactive to the anniversary date.

(b) In addition to the rental provided for in (a), above, Lessee further agrees to pay Lessor at the time of delivery of gasoline to the premises _____ Cent(s) (____¢) per gallon of gasoline so delivered."

Standard reserves the right to withdraw this rental modification, in whole or in part, at any time upon written notice to you, and to reinstate the rental provision as it appears in paragraph 4 of your Dealer Lease.

Very truly yours,

STANDARD OIL COMPANY OF CALIFORNIA,
WESTERN OPERATIONS, INC.

By _____

THE PREMISES

Dealer acknowledges that he has thoroughly inspected, and acknowledges receipt of, one _____ bay service station complete with sales and rest rooms, _____ pump blocks, gasoline storage tanks, yard and yard lighting, signs, _____ credit card imprinters and special improvements (including but not limited to):

_____ Air Conditioner (evaporator/refrigerator)

_____ Hot Water Heater

_____ Complete Landscaping

_____ Vending Area

DEALER UPKEEP, MAINTENANCE, REPAIR AND REPLACEMENT RESPONSIBILITIES

Dealer agrees at all times to keep the premises, including the rest rooms and all buildings, driveways, lawns, shrubs and equipment, in good appearance and in a clean, orderly condition, and, at his expense, to perform upkeep on, maintain, repair and replace equipment, fixtures and facilities owned or supplied by Standard as set forth below:

1. Yard

- A. Sweep, keep free of litter and dirt.
- B. Inspect regularly and advise Standard of breaks or other failures in paving.

2. Landscaping

- A. Water, fertilize, weed, cut, remove litter from planters and landscaping.
- B. Repair and replace sprinkler heads.

3. Lighting

- A. Advise Standard immediately of any malfunction or of burned-out tubes or lamps.

4. Plumbing

- A. Clear yard catch basins, plugged toilets and urinals.
- B. Repair leaky faucets and traps.
- C. Drain water lines to prevent freezing. (Damages resulting from failure to drain lines, and expenses to correct will be borne by Dealer.)
- D. Arrange for cleaning of grease and sand traps.
- E. Advise Standard immediately of leaks in fixed air and water lines which cannot be repaired by tightening fittings.

5. Heating — Air-conditioning — Evaporative Coolers

- A. Replace filters and cooling pads as required.
- B. Clean Sumps.
- C. Adjust pump belt tension.
- D. Oil Motors (equipped with cups).
- E. Advise Standard of any malfunction.

6. Glasswork

- A. Clean windows regularly.
- B. Remove tape, extraneous advertising posters and decals.
- C. Replace rest room mirrors whenever cracked or broken.

- A. Perform regularly scheduled maintenance to keep floors clean, grease and oil-free.
 - B. Repair any damage resulting from the addition to, or removal of the Dealer's equipment.
- 8. Painting**
- A. Maintain appearance of painted surfaces by periodically cleaning and removing greasy hand-prints, graffiti, etc.
 - B. Minor touch-up using spray or canned paints in accordance with Standard's specifications.
- 9. Tanks**
- A. Check monthly for water (use water detector paste on gauge stick).
 - B. Check daily for inventory leakage.
 - C. Empty waste oil tank.
 - D. Lubricate fill caps including the "O" ring.
 - E. Check for proper product identification tags and advise Company promptly of missing or damaged tags.
- 10. Pumps and Dispensers**
- A. Oil electric motor (if equipped with oil cups) and linkage.
 - B. Periodically check pumps for accuracy, reporting out-of-tolerance conditions to Standard.
 - C. Maintain and replace gasoline pump hoses.
 - D. Maintain, repair and replace gasoline nozzles.
 - E. Maintain, repair and replace gasoline hose swivels.
 - F. Maintain, repair and replace air and water hoses, air gauges and hose bibs.
 - G. Replace spin-on pump filters with filters supplied by Standard once each year.
- 11. Compressor**
- A. Drain water daily.
 - B. Add or change oil as needed.
 - C. Regularly inspect and clean air inlet filter element.
 - D. Report malfunctions immediately to Standard.
- 12. Other Equipment**
- A. Maintain and repair oil cabinets and driveway bell signals.
 - B. Regularly check and maintain proper oil level in hoists.
 - C. Advise Standard when replacement required.
- 13. Rest Rooms**
- A. Clean and maintain rest room facilities and dump receptacles regularly.
 - B. Keep the restrooms properly supplied with paper products, soaps and disinfectants.
 - C. Replace dispensers and trash receptacles with items of equal quality and similar construction when required.
 - D. Advise Standard if major maintenance is required for facilities.
- 14. Miscellaneous**
- A. Maintain, repair and replace all locks and keys.
 - B. Lubricate overhead door tracks. Replace broken or frayed pull ropes.
 - C. Replace electrical fuses (household screw type only).
 - D. Maintain fire extinguishers in a serviceable condition at all times, ordering replacement extinguishers as needed.
 - E. Maintain, repair and replace cash boxes.



STANDARD OIL COMPANY OF CALIFORNIA,
WESTERN OPERATIONS, INC.

_____, 19__

STATION NO. _____

TWENTY-FOUR-HOUR INCENTIVE

Dear _____ :

Reference is made to the agreement(s) dated _____, 19__, between us respecting the service station premises located at _____, _____, _____. We understand that it is your desire to operate and to fully illuminate the service station premises for twenty-four hours per day on _____ each week during the months of _____. In order to assist you to operate and fully illuminate the service station premises for twenty-four hours per day on the foregoing days, we will pay you a "Twenty-Four-Hour Operation Incentive" when and so long as you satisfactorily operate and illuminate the service station premises for twenty-four hours per day on the day(s) during the months indicated above. This will be paid by check or credited to your account on or before the 20th of each month in an amount equal to one quarter of one cent (.25 cent) on _____ % of the total gallons of gasoline delivered by us to your service station during the preceding calendar month for the above months.

This agreement may be terminated by either party upon written notice to the other party.

Please acknowledge acceptance of and agreement to the terms contained herein by signing one copy of this letter in the space provided below and returning it to us.

Yours very truly,

STANDARD OIL COMPANY OF CALIFORNIA,
WESTERN OPERATIONS, INC.

By _____

DEALER

Date: _____, 19__



**Standard Oil Company of California,
Western Operations, Inc.**

**Bona Fide Service Station
Liability Insurance Requirements**

Dear _____ :

The Chevron Dealers Supply Contract between us states:

6. (d) Buyer shall maintain at his own expense during the term hereof liability insurance, in respect of the premises and all activities on or about or in connection with said premises, of the types and in the minimum amounts described generally as follows:
- (i) General public liability and property damage insurance (including explosion hazard) affording premises, products, completed operations, contractual and contingent liability (with respect to subcontractors) coverage of not less than \$300,000 combined single limit for injuries to or death of any person or persons and property damage for each occurrence.
 - (ii) Automobile comprehensive public liability and property damage insurance of not less than \$100,000 for injuries to or death of any one person and not less than \$300,000 for injuries to or death of more than one person resulting from any one occurrence and property damage of not less than \$50,000 for each occurrence.
 - (iii) Excess comprehensive general public liability and property damage insurance of not less than \$1,000,000 per occurrence affording the same coverage and on the same terms and subject to the same conditions as the insurance required under (i) and (ii) above.
 - (iv) Fire legal liability insurance of not less than \$50,000.

The insurance provided above (except fire legal liability insurance) shall include Standard Oil Company of California and its subsidiary or affiliated companies as named insureds, it being the intention of the parties that the insurance so affected shall protect both Buyer and Standard Oil Company of California (including its subsidiaries or affiliates) and be primary insurance for any and all losses in respect of the premises and all activities on or about or in connection with said airport during the term of this agreement and any other agreement between the parties or any extension or renewal thereof. Buyer shall furnish certificates satisfactory to Seller as evidence of such insurance. The insurance shall contain provisions that no cancellation or material changes in any policy shall become effective except upon thirty (30) days' notice to Seller. The insurance companies shall have no recourse against Standard Oil Company of California or Seller for payment of any premiums or assessments under any mutual form policy. Any and all deductibles in all of Buyer's insurance coverage shall be assumed by, be for the account of, and be at Buyer's sole risk.

Excess comprehensive liability insurance (see 6(d)(iii) above) of not less than \$1,000,000 is required. Required coverage is available through Standard Oil Company at a minimum cost to you. If you do not elect to obtain the required excess insurance through Standard Oil Company, please have your chosen insurance company forward the necessary evidence of insurance to our office within 15 days from the effective date of your Supply Contract.

Please forward the attached Standard Oil Company Certificate of Insurance to your insurance company requesting that it be completed and returned to our Division Office within 15 days from the effective date of your contract.

Your copy of the Supply Contract will be held in our office until such time as evidence of the required minimum excess and basic liability insurance is received. We hope you will arrange to meet this portion of your contract as soon as possible.

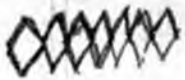
Please sign below to acknowledge receipt of the above information.

Very truly yours,

RECEIPT ACKNOWLEDGED:

Chevron Dealer

Date: _____



definitions distributor

4 leased from Tesoro of 17 employees run

buy gas on contract from Tesoro

30 days in Tesoro/Toppers contracts

Gene Wildes

this is a lease not a franchising

Sunders

How many dealers in favor of this bill

Have Quarterly dealer meetings

Solved check problem in this meeting

7 new leases renegotiated hours

- 820 - Must put assignability in the bill to make goodwill work

He is paying for other guy lose his lease
Result might be to lose good leasees



Mr. Bill Shreve

Union Oil in Ane

Adequate law to regulate dealers

Have right to approve new dealer coming in

Goodwill - hard to put dollar figure on
dealer will negotiate settlement on "old" merchandise

Make loans to leasee's for others

Union specifies hours

Texaco - Ralph Ehrlich

75 retail outlets

23 owned

Do not specify hours

Only one termination in 12 years

Tesoro - Toppers - Paul Choquette

have 21 stations - have training program - 4 leased; 17 employees

150 independent retail dealers - owns own facility

① [800] not needed - do dealers need

② (5) what does this mean

③ (d) would affect Topper as independent since
couldn't negotiate for better price

④ p. 4, 25

MR. CHAIRMAN, AND MEMBERS OF THE COMMERCE COMMITTEE:

MY NAME IS PAUL D. CHOQUETTE; I AM MANAGER OF TOPPERS OIL CORPORATION, ANCHORAGE, ALASKA AND I REPRESENT THIS COMPANY WITH THE FOLLOWING STATEMENT. TOPPERS OIL CORPORATION HAS TWENTY ONE RETAIL SERVICE STATIONS IN THE ANCHORAGE AREA. TOPPERS OIL CORPORATION WOULD LIKE TO GO ON RECORD AS OPPOSING SENATE BILL #438AM.

GENERALLY THE BILL COVERS MANY AREAS WHICH WE FEEL ARE VERY DETRIMENTAL TO OUR FREE ENTERPRISE SYSTEM. THERE ARE TOO MANY CONTROLS IN MANY AREAS NOW BY GOVERNMENT WHICH ARE REALLY NOT WARRANTED. THIS BILL IS ANOTHER EXAMPLE OF ATTEMPTING TO REGULATE FREE ENTERPRISE WITHOUT PROVEN JUSTIFICATION. WE, PERSONALLY HAVE NEVER HEARD ONE NEGATIVE COMMENT SHOWING THE NEED FOR SUCH A BILL. IN FACT, WE WERE UNAWARE SUCH A BILL EXISTED UNTIL AFTER IT PASSED THE SENATE. I WILL AGREE THAT THERE MAY HAVE BEEN SOME NOTICE OF HEARINGS, BUT CAN HONESTLY STATE WE WERE NOT AWARE OF THEM. HAD WE BEEN, I CAN ASSURE THIS COMMITTEE, WE WOULD HAVE STRONGLY OPPOSED THIS BILL AS WRITTEN.

BEFORE POINTING OUT OUR SPECIFIC OBJECTIONS, I WOULD LIKE TO MENTION SOME OF THE GENERAL CONCEPTS WHICH WE GENERALLY ARE OPPOSED TO, BUT AT THIS TIME DOES NOT NECESSARILY APPLY DIRECTLY TO OUR COMPANY.

1. WE DO NOT FEEL THAT ANY LEGISLATION IS HEALTHY WHEN IT REGULATES PRIVATE ENTERPRISE THAT HAS MADE HEAVY INVESTMENTS FOR THE BENEFIT OF THE PUBLIC AS LONG AS IT IS NOT DETRIMENTAL. ECONOMICS WILL AUTOMATICALLY BALANCE OUT PROBLEMS AND NEGOTIATIONS. TO LEGISLATE REGULATIONS TO ANY CORPORATION OF WHAT THEY MUST DO TO HIRE DEALERS IS VERY UNACCEPTABLE. NOTHING IS MENTIONED AS TO THE RESPONSIBILITIES AND REGULATIONS A DEALER MUST ABIDE BY TO PROPERLY MANAGE A STATION.

2. IT IS UNNECESSARY TO REGULATE THAT WHICH A DEALER WOULD NORMALLY REQUEST AND STUDY BEFORE CONSIDERING TAKING A STATION. NOBODY IS FORCING THE DEALER TO TAKE ANY STATION; HE MAKES HIS OWN FREE DECISION.

3. THE CONTROL OF ANY DEALER OPERATING A COMPANY'S FACILITY SHOULD BE THAT OF THE OWNER, NOT THE DEALER. WE PERSONALLY HAVE HAD A NUMBER OF MANAGERS WHO HAVE BEEN DETRIMENTAL IN MANY WAYS,

AND IF A BAD DEALER SOLD HIS FRANCHISE TO A QUESTIONABLE TRANSFEREE OR ASSIGNEE, ACCORDING TO THIS PROPOSED LEGISLATION,

4. SECTION 45.50.810 (7) (8)

COULD CAUSE CONSIDERABLE PROBLEMS REGARDING INTERPRETATION. THE OWNER OF ANY FACILITY MUST BE ASSURED THAT THE STATION IS OPERATED CORRECTLY AND SERVICE IS GIVEN TO THE PUBLIC.

MARKETING POLICIES AND CONDITIONS CHANGE QUITE OFTEN. AND NECESSARY STANDARDS IMPOSED BY THE REFINER OR DISTRIBUTOR COULD BE CONSIDERED AS UNREASONABLE ON THE PART OF THE DEALER WHICH WOULD DEFINITELY RESULT IN A LONG DRAWN OUT TRIAL. ETC., WHICH WOULD BE OF A DETRIMENT TO THE BUSINESS AND PUBLIC. BASICALLY IT MUST BE ACKNOWLEDGED THAT THE DISTRIBUTOR IS CONSTANTLY STRIVING FOR A SUCCESSFUL BUSINESS BOTH FOR HIMSELF AND THE DEALER. THE DISTRIBUTOR'S DECISIONS IN MOST ALL CASES ARE BASED UPON A SUPERIOR KNOWLEDGE AND ACCEPTABLE BUSINESS PRACTICES REGARDING THE INDUSTRY.

5. THROUGHOUT THE ENTIRE BILL THE TERMS OF FAIR AND REASONABLE ARE USED. THIS IN ITSELF HAS MANY INTERPRETATIONS AND WOULD NEED TO GO TO LITIGATION IN THE END, WHICH AGAIN WOULD BE OF A DETRIMENT TO THE FACILITY AND SERVICE TO THE PUBLIC.

6. SECTION 45.50.810 (6)

AS WRITTEN IS ENTIRELY UNACCEPTABLE. CERTAINLY A REFINER OR DISTRIBUTOR HAS A RIGHT TO DIRECT THE PURCHASES, PRODUCTS AND OR SERVICES OF ANY DEALER TO JUSTIFY A REASONABLE RETURN ON HIS INVESTMENT, AND INSURE PROPER SERVICE TO THE PUBLIC.

7. SECTION 45.50.820 (830)

OBLIGATES THE REFINER OR DISTRIBUTOR, IF HE FAILS TO RENEW, TO COMPENSATE TO THE DEALER THE FAIR MARKET VALUE OF THE FRANCHISE, INCLUDING GOODWILL, THIS PORTION OF SENATE BILL #438 IS NEITHER UNDERSTANDABLE NOR ACCEPTABLE.

FROM ALL INFORMATION I HAVE, WHEN ANY REFINER OR DISTRIBUTOR NEGOTIATES A LEASE ARRANGEMENT WITH A DEALER, THE DISTRIBUTOR DOES NOT CHARGE THE DEALER FOR ANY "GOODWILL" AND MOST OF THE GOODWILL DEVELOPED HAS BEEN DONE BY THE DISTRIBUTOR OR REFINER THRU HISTORY

OF ADVERTISING AND PUBLIC RELATIONS. HOW CAN A DEALER BE PAID EXTRA FOR DOING SERVICE WHICH IS WHAT HE IS EXPECTED TO DO AND IS HIS DUTY WHEN HE AGREES TO TAKE OVER A STATION.

SPECIFICALLY, TOPPERS OIL IS OPPOSED TO THE FOLLOWING PARTS OF THIS BILL. WE ARE CONSIDERED A RETAIL DEALER BY THE FEDERAL ENERGY ADMINISTRATION AND THE LARGEST INDEPENDENT RETAIL DEALER IN ALASKA.

1. UNDER SECTION 45.50.840 DEFINITIONS (2) WE WOULD BE CLASSIFIED AS A DISTRIBUTOR AS WE ARE ENGAGED IN THE SALE OF GASOLINE AT FOUR OR MORE RETAIL OUTLETS. THIS THEN WOULD MEAN THAT THE BILL IN ITS ENTIRETY WOULD APPLY TO US. IT WOULD BE IN CONFLICT WITH THE FEDERAL ENERGY ADMINISTRATION DETERMINATION THAT WE ARE ONLY IN THE RETAIL BUSINESS OF SELLING MOTOR GASOLINE (SEE ATTACHED MEMO DATED JULY 23, 1975.)

2. SECTION 45.50.810 (3)
THIS SECTION WOULD RESTRICT US FROM OPERATING OUR STATIONS SEVEN DAYS A WEEK. IT WOULD ALSO ONLY ALLOW US TO OPERATE TWELVE HOURS PER DAY. THIS SECTION WOULD BE VERY DETRIMENTAL NOT ONLY TO THE PUBLIC WE SERVE, BUT TO OUR OWN BUSINESS.

3. SECTION 45.50.810 (d)
UNDER THIS SECTION ONLY QUANTITY PURCHASE OR TRANSPORTATION COSTS WOULD DETERMINE PRICE DISCRIMINATION. WHAT ABOUT THE PRIVATE INDIVIDUAL WHO PURCHASES OR BUILDS FACILITIES ON HIS OWN AND THE REFINER OR DISTRIBUTOR HAS NO VESTED INTEREST OR COSTS IN THE STATION. THIS IS APPLICABLE TO TOPPERS OIL CORPORATION.

4. WE AS WELL AS THE MAJOR REFINERS AND DISTRIBUTORS HAVE HAD NUMEROUS MANAGERIAL PROBLEMS WITH RETAIL STATIONS. ONLY BY CONSTANT SUPERVISION AND THE ABILITY TO CHANGE MANAGERS OR DEALERS CAN THE QUALITY AND STANDARDS OF SERVICE BE MAINTAINED. INEFFICIENCY COST MONEY AND CREATES PROBLEMS AND IN THE END THE PUBLIC SUFFERS.

SUMMARY:

THERE MAY BE SOME PARTS OF THIS PROPOSED LEGISLATION THAT ARE ACCEPTABLE. BUT, THERE ARE TOO MANY AREAS THAT ARE OBJECTIONABLE AS

WRITTEN. WE RESPECT AND FULLY REQUEST THAT SENATE BILL #438AM, AS WRITTEN DIE IN COMMITTEE AND IF THIS COMMITTEE FEELS CERTAIN AREAS BE DEVELOPED, IT BE DONE SO IN AN ORDERLY MANNER - WITH PROPER IMPUT AND HONEST INFORMATION FROM EVERY SOURCE. IT WOULD INDEED BE A DISASTER TO PASS THIS BILL IN ITS PRESENT FORM.

TOPPERS OIL CORPORATION, INC.
6126 OLD SEWARD HIGHWAY
ANCHORAGE, ALASKA 99502

Russell Seward Pres.

FEDERAL ENERGY ADMINISTRATION
ANCHORAGE OFFICE
60 WEST FOURTH AVENUE
FEDERAL BUILDING, ROOM G11
ANCHORAGE, ALASKA 99501

July 23, 1975

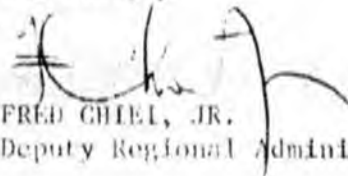
Mr. Russ Swank
Topper's Oil Corporation
6126 Old Seward Highway
Anchorage, AK 99509

Dear Mr. Swank:

The Federal Energy Administration just completed an audit of the operation of Topper's Oil Corporation and has made the following factual determinations:

1. Topper's Oil Corporation is in the retail business of selling motor gasoline.
2. All 20 station operators are employees of Topper's Oil Corporation; the only difference is the method of the payment of salaries.
3. Topper's Oil Corporation is entitled to the \$.03 non-product cost pass through only, and not the \$.01 non-product cost pass through that is attributed to a wholesale distributor operation.
4. The selling price adjustments made by the Federal Energy Administration are based on the above determination.

Sincerely,


FRED CHIEL, JR.
Deputy Regional Administrator

Lowell ~~to~~ Nelson

1. controlling of hours 6 days a week 12 hours a day
dealer is paid on gallons sold not considering expenses

① 1-5 year contracts

② dealership to heir survivorship

Rent subsidy in Anchorage but not Fairbanks
if you own your own property

Rhode Is land 20th state to pass this legislation

Bill intended to only deal with 3rd party dealers

Texaco

Notice 90 days ² - should be consistent for both
8¹ - 12^d - 17^d profit per gallon

42 stations

22 Union

23 Texaco

115 stations

72 in organization

Lowell Nelson - says not interested in selling
other brands of gas

45.50.810 c

(c) No refiner or distributor shall terminate or cancel a dealer franchise prior to the expiration date thereof unless the dealer whose franchise is terminated failed to perform or comply with, or failed to act in good faith in performing or complying with, any of the terms or provisions of the franchise, except that a refiner or distributor shall be permitted to provide in the franchise for the termination thereof without cause during a reasonable trial period, not to exceed one (1) year, where the dealer involved has not been a dealer of the refiner or distributor for that period of time at the premises described in the franchise.

2

45.80-810 (b)

(b) No refiner or distributor may terminate, cancel or fail to renew a franchise unless such refiner or distributor furnishes notification pursuant to this subsection to the other party to the franchise. Such notification shall be in writing addressed to such other party and sent by certified mail, deposited in the mail no less than 45 days prior to the date on which such franchise is to be terminated, cancelled or not renewed; provided, however, that if in light of the circumstances, it would not be reasonable to provide notice 45 days in advance of such termination, cancellation or failure to renew the refiner or distributor shall provide such notice less than 45 days as may be reasonable in the circumstances. Notification shall contain a statement of intention to terminate, cancel, or decline to renew such franchise, together with the reasons therefor, and the date on which such termination, cancellation or failure to renew shall take effect.

45 50 820

★

Section 45.50.820. REPURCHASE OF GOODS. In the event that the refiner or distributor terminates, cancels or fails to renew the franchise, such refiner or distributor shall make or cause to be made a good faith offer to repurchase from the dealer, his heirs, successors or assigns, at the current wholesale prices, any and all merchantable products and merchandise which are undamaged and unaltered from their original form, purchased by the dealer from the refiner or distributor; provided, that such refiner or distributor shall have the right to apply the proceeds against any existing indebtedness owed to him by the dealer; and, further provided that such repurchase obligation is conditioned upon there being no claims or liens by or on behalf of other parties, including creditors and governmental agencies, against such products and merchandise.

A M E N D M E N T

4

OFFERED IN THE HOUSE:

By: _____

To: HCS HOUSE BILL No. _____

SENATE BILL No. 438

PAGE: 3

between
LINE: 11 & 12

ADD

(8) require the dealer to keep his retail outlet open for business more than 12 consecutive hours per day or more than six days a week, provided that this paragraph shall not be construed to prevent any retail outlet from being open when required to be open to conform to any state or federal law or regulation;

(9) sell, rent or offer to sell to a dealer any product or service for more than a fair and reasonable price;

(10) unreasonably disapprove the transfer or assignment of a franchise by a dealer to a qualified transferee or assignee;

AMENDMENT

5

OFFERED IN THE HOUSE:

BY: _____

To: _____ HOUSE BILL No. _____

SENATE BILL No. HCS 438

PAGE: 5

LINE: 16 to 20

After the word "exists." delete lines 16 to line 20 and insert:

Reasonable attorney's fees and the appraiser's fees shall be awarded to the franchisee if the amount awarded to the franchisee by the jury or the or the court is ten per cent higher than the final offer, if any, made by the refiner or distributor prior to the filing of the lawsuit.

11

adopted

45.50.810 c

~~XXXXXXXXXX~~
~~XXXXXXXXXX~~

(c) [No refiner or distributor shall terminate or cancel a dealer franchise prior to the expiration date thereof unless the dealer whose franchise is terminated failed to perform or comply with, or failed to act in good faith in performing or complying with, any of the terms or provisions of the franchise, [except that] a refiner or distributor shall be permitted to provide in the franchise for the termination thereof without cause during a reasonable trial period, not to exceed one (1) year, [where the dealer involved has not been a dealer of the refiner or distributor for that period of time at ~~the premises described in the franchise.~~

P3224

5/17
Milton

Original sponsor: Commerce Committee

Offered: 4/15/76
Referred: Judiciary

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 438

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to franchising agreements involving
7 gasoline refiners, distributors and dealers; and
8 providing for an effective date."

*Dealer's day
in court*

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. FINDINGS OF THE LEGISLATURE. The legislature finds and
11 declares that since the distribution and sales, through franchise agreements,
12 of gasoline in the state vitally affect the economy of the state, the public
13 interest, welfare, and transportation, it is necessary to define the rela-
14 tionships and responsibilities of the parties to certain agreements pertain-
15 ing to franchising.

16 * Sec. 2. AS 45.50 is amended by adding new sections to read:

17 ARTICLE 5. ALASKA GASOLINE PRODUCTS FRANCHISE ACT.

18 Sec. 45.50.800. DISCLOSURES TO BE MADE BY DISTRIBUTORS AND RE-
19 FINERS BEFORE CONCLUSION OF AGREEMENT. Before entry into a franchise
20 agreement, a refiner or distributor shall disclose to the dealer facts
21 which would reasonably be considered material to the dealer's decision
22 to enter into the franchise. These facts shall include, but not be
23 limited to,

- 24 (1) ownership of property of the retail outlet;
- 25 (2) if the real property is not owned by a refiner or dis-
26 tributor, then the nature of the relationship between the real property
27 owner and the refiner or distributor and the length of the underlying
28 lease (if applicable);
- 29 (3) the last known addresses of dealers operating the retail

1 outlet for the last five years;

2 (4) the gasoline gallonage history, if any, of the station
3 for the last five years;

4 (5) any sales goals or quotas the refiners or distributors
5 intend to apply to the station;

6 (6) the nearest gasoline outlet owned, controlled or operated
7 by the refiner or distributor and any plans the distributor or refiner
8 has to open new retail outlets within the trade area of the retail
9 outlet; and

10 (7) any plans the refiner or distributor has for the future
11 of the subject retail outlet.

12 Sec. 45.50.810. VIOLATIONS. (a) No person shall, directly or
13 indirectly, through offices, employees or agents,

14 (1) require the franchisee-dealer at the time of entering
15 into the franchise agreement to [assent to release, assignment, novation,
16 waiver or estoppel which would] relieve any person from liability imposed
17 by secs. 800 - 850 of this chapter;

18 (2) require the dealer to agree to waive his right to a jury
19 trial or any right of counterclaim he may have;

20 (3) restrict or inhibit directly or indirectly the right of
21 free association for any lawful purpose of the franchisee-dealer;

22 (4) except as to the initial inventory of the franchise,
23 require a dealer to purchase or otherwise lease goods or services of a
24 refiner or distributor or from an approved source of supply unless and
25 to the extent that the refiner or distributor satisfies the burden of
26 proving that such restricted purchasing agreements are reasonably neces-
27 sary for lawful purposes justified on business grounds and do not sub-
28 stantially affect competition; in determining whether a requirement to
29 purchase is lawful, the court shall be guided by the decisions of the

1 courts of the United States in interpreting and applying the antitrust
2 laws and the Federal Trade Commission Act of the United States;

3 (5) impose unreasonable standards of performance on the
4 dealer;

5 (6) require a dealer to participate financially in the use of
6 any premium coupon or giveaway or rebate in the operation of the busi-
7 ness; however, a distributor may require the dealer to distribute
8 premiums, coupons or give-aways to customers which are provided to the
9 dealer at the expense of the refiner or distributor or when the pro-
10 motion is self-liquidating; or

11 (7) fail to deal with the dealer in good faith.

12 (b) ^{> + 41} No refiner or distributor may, directly or indirectly, through
13 any officer, agent or employee, terminate, cancel or fail to renew a
14 dealer franchise without first giving written notice setting out all of
15 the reasons for the termination or cancellation or intent not to renew
16 to the franchisee-dealer at least 45 days in advance of the termination,
17 cancellation or failure to renew except

18 (1) when the alleged grounds are voluntary abandonment by the
19 franchisee-dealer of the franchisee relationship, then the above notice
20 may be given five days in advance of the termination, cancellation or
21 failure to renew;

22 (2) when the alleged grounds are the conviction of the
23 franchisee in a court of competent jurisdiction of a felony.

24 (c) ^{(3) Walker Under Financial Mutual} No refiner or distributor may terminate, cancel or fail to
25 renew a dealer franchise without good cause. Good cause shall include
26 without limitation:

27 (1) the failure of a franchisee to comply with the lawful
28 material provisions of a franchise between the distributor or refiner
29 and the franchisee-dealer and to cure each default after being given

45 days as too long.

1 written notice and a reasonable opportunity to cure the default;

2 (2) an adjudication that the franchisee-dealer is a bankrupt
3 or insolvent or if he makes an assignment for the benefit of creditors
4 or a similar disposition of assets of franchise business or voluntarily
5 abandons the franchise business or is convicted of or pleads guilty or
6 no contest to a charge of violating any law relating to any franchise
7 business;

8 (3) the good faith business decision of the franchiser that
9 he no longer requires a retail outlet at that location for the marketing
10 of gasoline; and

11 (4) the dealer's failure to sign the new agreement if at the
12 time of renewal of the franchise the distributor or refiner and the
13 franchisee-dealer cannot agree upon new terms and the terms offered by
14 the refiner or distributor do not violate any other laws of the State of
15 Alaska or of the United States and the terms are essentially the same as
16 those offered to other franchisee-dealers in similar retail outlets and
17 do not discriminate against the subject franchisee-dealer.

18 (d) No refiner or distributor may engage in price discrimination
19 between dealers, unless that discrimination is based upon quantity
20 purchased, ^{personal investment} or transportation costs.

21 Sec. 45.50.820. OBLIGATION OF DISTRIBUTOR TO REPURCHASE UPON
22 TERMINATION, ETC., OF AGREEMENT. If the refiner or distributor has good
23 cause to terminate, cancel or fail to renew under sec. 810(c)(1) or (2) ⁽³⁾
24 of this chapter, he shall compensate the franchisee-dealer for the fair
25 market value of the franchise, excluding goodwill. Refiners or distri-
26 butors terminating, cancelling, or failing to renew under sec. 810(c) ⁽³⁾
27 or (4) of this chapter shall compensate the franchisee-dealer for the
28 fair market value of the franchise, ^{including G.W.} Valuation ^{other than goodwill} shall include the fair
29 market value of the franchisee's inventory supplies, equipment and

eliminate ability to compete

prohibits from lowering cost to dealer who owns his own station

X

1 furnishings purchased from the refiner or distributor exclusive of
2 personalized materials which have no value to the refiner or distributor
3 and inventory supplies, equipment and furnishings not reasonably re-
4 quired in the conduct of the franchise business. Compensation shall be
5 made within 60 days from the date of termination unless it is necessary
6 that a lawsuit be filed under sec. 830 of this chapter or the dealer
7 fails to comply with the bulk sales provisions of AS 45.05.510 et seq.
8 The refiner or distributor may offset against accounts owed by the
9 franchisee-dealer under this section any amount owed by the franchisee-
10 dealer to the refiner or distributor.

11 Sec. 45.50.830. COURT TO DETERMINE FAIR MARKET VALUE WHEN PARTIES
12 CANNOT AGREE. If under sec. 820 of this chapter the distributor or
13 refiner has good cause and the distributor or refiner and the dealer
14 cannot agree on the fair market value of the franchise, then either
15 party may initiate an action in the superior court where the franchise
16 retail outlet exists. ~~At~~ If the amount awarded to the franchisee by the
17 jury or the court is 10 per cent lower than the final offer, if any,
18 made by the refiner or distributor before the filing of the lawsuit,
19 reasonable attorney fees and the appraiser fees shall be awarded to the
20 refiner or distributor. ~~At~~

21 Sec. 45.50.840. DEFINITIONS. In secs. 800 - 830 of this chapter,
22 unless context otherwise requires,

23 (1) "refiner" is a company, corporation or individual who
24 owns or controls, or controls through a substantially owned subsidiary,
25 partnership, or joint venture, a refinery used for the production of
26 gasoline, diesel or other motor vehicle fuels;

27 (2) "distributor" means any person or corporation other than
28 a refiner engaged in the sale, assignment, or distribution of gasoline
29 to four or more dealer-operated retail outlets;

1 (3) "gasoline" means all products commonly or commercially
2 known or sold as gasoline;

3 (4) "dealer" means a person ^{primarily} engaged in the ^{retail} sale of gasoline
4 through a retail outlet [owned or] ^{leased by the person and operated by} the person and operated by
5 the person;

6 (5) "franchise" means an oral or written contract or agree-
7 ment or series of agreements, either express or implied, in which the
8 dealer is required directly or indirectly to purchase 50 per cent or
9 more of his supply of gasoline from a distributor or refiner and in
10 which the dealer is granted authority to occupy premises owned, leased
11 or in any way controlled, directly or indirectly, by the refiner or
12 distributor.

13 Sec. 45.50.850. SHORT TITLE. Sections 800 - 850 of this chapter
14 may be cited as the "Alaska Gasoline Products Franchise Act."

15 * Sec. 3. AS 45.50.471(b) is amended by adding a new paragraph to read:

16 (22) failing to comply with the terms of the Alaska Gasoline
17 Products Franchise Act (AS 45.50.800 - 45.50.850).

18 * Sec. 4. This Act takes effect July 1, 1976.
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25
26
27
28
29

*purchase of
refined
oil
with
agent*
*
*

#3

Failed

45 50 820

★



Section 45.50.820. REPURCHASE OF GOODS. In the event that the refiner or distributor terminates, cancels or fails to renew the franchise, such refiner or distributor shall make or cause to be made a good faith offer to repurchase from the dealer, his heirs, successors or assigns, at the current wholesale prices, any and all merchantable products and merchandise which are undamaged and unaltered from their original form, purchased by the dealer from the refiner or distributor; provided, that such refiner or distributor shall have the right to apply the proceeds against any existing indebtedness owed to him by the dealer; and, further provided that such repurchase obligation is conditioned upon there being no claims or liens by or on behalf of other parties, including creditors and governmental agencies, against such products and merchandise.

AMENDMENT

4

OFFERED IN THE HOUSE:

By: Collon

To: HCS HOUSE BILL No. _____

SENATE BILL No. 438

PAGE: 3

between
LINE: 11 & 12

ADD

* (8) require the dealer to keep his retail outlet open for business more than 12 consecutive hours per day or more than six days a week, provided that this paragraph shall not be construed to prevent any retail outlet from being open when required to be open to conform to any state or federal law or regulation;

* (9) ^{require} ~~sell, rent or offer to sell~~ to a dealer ^{construed - dealer should not be required to purchase or rent} any product or service for more than a fair and reasonable price;

(10) unreasonably disapprove the transfer or assignment of a franchise by a dealer to a qualified transferee or assignee;

#2

Adopted

45.80-810 (b)

(b) No refiner or distributor may terminate, cancel or fail to renew a franchise unless such refiner or distributor furnishes notification pursuant to this subsection to the other party to the franchise. Such notification shall be in writing addressed to such other party and sent by certified mail, deposited in the mail no less than 45 days prior to the date on which such franchise is to be terminated, cancelled or not renewed; provided, however, that if in light of the circumstances, it would not be reasonable to provide notice 45 days in advance of such termination, cancellation or failure to renew the refiner or distributor shall provide such notice less than 45 days as may be reasonable in the circumstances. Notification shall contain a statement of intention to terminate, cancel, or decline to renew such franchise, together with the reasons therefor, and the date on which such termination, cancellation or failure to renew shall take effect.

A M E N D M E N T

5
Adopted

OFFERED IN THE HOUSE:

By: McInnon

To: _____ HOUSE BILL No. _____

SENATE BILL No. HCS 438

PAGE: 5

LINE: 16 to 20

After the word "exists." ~~delete lines 16 to line 20 and~~ insert:

Reasonable attorney's fees and the appraiser's fees shall be awarded to the franchisee if the amount awarded to the franchisee by the jury ~~or the~~ or the court is ten per cent higher than the final offer, if any, made by the refiner or distributor prior to the filing of the lawsuit.

members
SB 438

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 15, 1976

SUBJECT: Commerce Committee Substitute for Senate Bill 438 am
TO: Representative Bradley, Chairman,
House Commerce Committee
FROM: David Walker, Legislative Counsel

Attached is a committee substitute drafted in accordance with the committee's request. I would like to remind you of an amendment which should be made to the bill to avoid a conflict with controlling federal law (15 U.S.C. 513).

I have attached a copy of a memo to Representative Rudd, dated March 29, which explains the necessity for the amendment and supplies the needed language.

cc: Rep. Rudd
Rep. Gardiner ✓

M E M O R A N D U M

March 29, 1976

SUBJECT: Senate Bill 438 am
TO: Representative Lisa Ruid
FROM: David T. Walker, Staff Attorney *DTW*

I drafted § 45.50.810(d) of SB 433 at the request of Senate Commerce Committee. It was my intention to parallel the applicable federal law - in fact I represented to the committee that the language did that.

I have attached a copy of an amendment which should be made to the language of the bill. The added language would make it clear that the state law followed the controlling federal anti-trust provisions and would avoid needless litigation.

DTW:bh

Attachment

Amendment suggested to SB 435 an.

PAGE ⁴/₅ LINE ¹⁹/₃

*adopted
both*

After "dealers" insert the following:

"where the effect of the discrimination may be substantially to lessen competition"

PAGE ⁴/₅ LINE ²⁰/₄

After "costs." insert the following:

"Nothing under this section shall prevent a refiner or distributor from offering a lower price or furnishing a service or facility to a dealer when the offer is made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by that competitor."

6-1876
Tom