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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





**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			<b>\$300,000 COMBINED SINGLE LIMIT</b>		
Fire Legal Liability					<b>\$50,000</b>
Comprehensive Automobile Public Liability and Property Damage Insurance			<b>\$100,000</b>	<b>\$300,000</b>	<b>\$25,000</b>

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 ✓

M E M O R A N D U M

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 \_\_\_\_\_

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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.

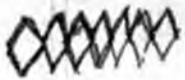
Please sign below to acknowledge receipt of the above information.

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 leasee's



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

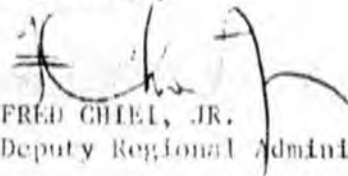
Mr. Russ Swank  
Topper's Oil Corporation  
6126 Old Seward Highway  
Anchorage, AK 99509

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 <sup>2</sup> - should be consistent for both  
8<sup>1</sup> - 12<sup>d</sup> - 17<sup>d</sup> 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) <sup>> + 4</sup> 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) <sup>(3) Walker Under time period mutual</sup> 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, <sup>personal investment</sup> 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) <sup>(3)</sup>  
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) <sup>(3)</sup>  
27 or (4) of this chapter shall compensate the franchisee-dealer for the  
28 fair market value of the franchise, <sup>including G.W.</sup> Valuation <sup>other than goodwill</sup> 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 <sup>primarily</sup> engaged in the <sup>retail</sup> sale of gasoline  
4 through a retail outlet [owned or] <sup>leased by the person or its agent</sup> 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.  
19  
20  
21  
22  
23  
24  
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) <sup>require</sup> ~~sell, rent or offer to sell~~ to a dealer <sup>construed - dealer should not be</sup> 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: McKinnon

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 <sup>4</sup>/<sub>5</sub> LINE <sup>19</sup>/<sub>3</sub>

*adopted  
both*

After "dealers" insert the following:

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

PAGE <sup>4</sup>/<sub>5</sub> LINE <sup>20</sup>/<sub>A</sub>

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

SB

4410

COMMITTEE REPORT

1/14/76

HOUSE

Mr. Speaker:

Date 1-14-76

The Committee on SUBSTANTIVE has had CSSE 400

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"

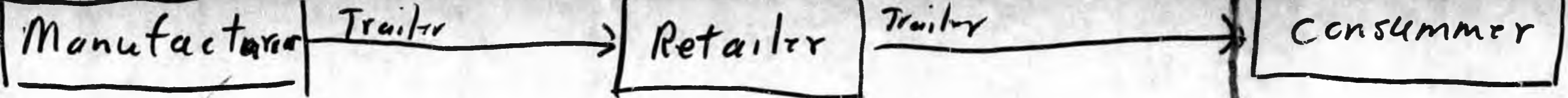
Members signing the Majority report:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Members NOT concurring in the Majority report:

\_\_\_\_\_ recommends:  
\_\_\_\_\_ recommends:  
\_\_\_\_\_ recommends:  
\_\_\_\_\_ recommends:  
\_\_\_\_\_ recommends:

\_\_\_\_\_ Chairman



normally bank gets security interest at this point

present wording of U.C.C. says get security interest here

period bank is presently unprotected if they comply with law

CS SB 440  
clears up language in U.C.C. and tells bank to file here

House Judiciary Committee  
February 11, 1976  
Page 2

CSSB 440 SECURITY INTERESTS

CSSB  
440

Rick Svobodny explained that this deals with the Uniform Commercial Code. As things stand now automobiles and mobile homes which are covered by certificate of title, do not require the dealer to file liens held by the bank on his inventory until it is sold. This would make it necessary for this information to be available before the article was sold. The filing must be done when the manufacturer sells the vehicles to the dealer, not when the dealer sells to the consumer.

Mr. Parr moved that CSSB 440 pass out of committee. No objection, it was done.

HB 606 VACANCIES U.S. SENATORS

HB  
606

The members discussed the following amendments to CS HB 606:

Page 1, lines 27 - 29: Delete last sentence of subsection (c).

Page 2, line 6: Delete "not more than".

Mr. Cotten moved that the above amendments be adopted. No objection, so ordered.

Page 2, lines 11 - 17: Change to read:

Sec. 15.40.016. PLAN FILED WITH LIEUTENANT GOVERNOR.  
Each state party central committee shall maintain on file with the office of the lieutenant governor a plan which defines the "party districts" for the purposes of Sec. 15.40.010 and Sec. 15.40.015.

Mr. Gardiner moved that the above amendment to adopted. No objection, so ordered.

Mr. Parr moved that HB 606 pass out of committee in the form of CS HB 606 with the above amendments included. No objection, so ordered.

The meeting was adjourned at 8:35 p.m.

Original sponsor: Butrovich

Offered: 5/21/75  
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 440

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the perfection of security  
7 interests."

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

\* Section 1. AS 45.05.734(c)(2) is amended to read:

*UCC*

(2) of this state which provides for central filing of, or  
which requires indication on a certificate of title of, the security  
interests in the property, unless the property is inventory held for  
sale by a dealer, which has not been previously sold at retail and for  
which no certificate of title has been issued.

*Requires  
to be under  
Motor Vehicle Act*

*Retailers are filing*

*Man sell retail*

*retail sells to consumer*

*Under  
UCC*

*Motor  
Vehicle  
Act*

*UCC says use point B*

*Retailers under Motor Vehicle Act*

*Protects Consumer so he knows bank  
has a security interest*

Notify Bankers lobby

SB 440

What is art. 9 UCC. For

What does security interest due

Filing in central area AS 40.

Filing under Title act

Bill does

Helm Buf

LAW OFFICES OF  
**ELY, GUESS & RUDD**  
A PROFESSIONAL CORPORATION  
SUITE 400  
1018 WEST SIXTH AVENUE  
ANCHORAGE, ALASKA 99501  
CABLE ADDRESS: "NORTHACRE"  
TELEX [090] 25-292  
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JUNEAU OFFICE  
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JOSEPH A. McLEAN  
MICHAEL C. BRIGGS

ROBERT C. ELY  
W. J. GENE GUESS  
JOSEPH PUDD  
THEODORE E. FLEISCHER  
FRANCIS Z. SMITH, JR.  
HERBERT BERKOWITZ  
THOMAS E. NEACHAM  
DAVID H. BUNDY  
HARRIS SAXON  
R. CHARO W. GARNETT III  
WILLIAM J. DONOHUE

February 19, 1974

Mr. Robert E. Barnes  
President  
Alaska State Bank  
P. O. Box 240  
Anchorage, Alaska 99513

Re: Anchorage Trailer Sales, Inc.  
Our File No. 2525.1

Dear Bob:

We have been asked to consider certain legal questions arising out of the Bank's relationship with Anchorage Trailer Sales, Inc. We have been specifically requested to direct our attention to the Bank's security position with respect to the customer's mobile home inventory. The purpose of this letter is to set forth our conclusions in light of the facts provided to us.

We understand that historically a typical transaction proceeded roughly as follows: Anchorage Trailer Sales or a manufacturer selling to it requests that the Bank issue a letter committing the Bank to pay the manufacturer the wholesale price plus shipping for a given number of mobile homes. The Bank issues such a letter and, after arrival of the units in Alaska, pays the manufacturer. Anchorage Trailer Sales then executes a promissory note to the Bank for the amount so advanced, and, in addition, executes a "flooring note" which describes the units by serial number and sets forth the amount owed the Bank with respect to each unit.

The manufacturer sends to the Bank the "Manufacturer's Certificate of Origin" with respect to each unit and that certificate is retained in the Bank's files. In addition, we are informed (although we have not reviewed the operative documents) that the Bank has sought to secure itself pursuant to the Uniform Commercial Code and to that end has taken a Security Agreement covering inventory and filed a financing statement. We under-

6-2660

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Mr. Robert E. Barnes  
Page 2  
February 19, 1974

stand that there is a conflicting financing statement filed prior to that of the Bank, but for the purposes of this letter we will disregard that prior filing, although, of course, steps must be taken to clarify the Bank's position with respect to that other creditor.

The Uniform Commercial Code of Alaska determines whether or not the Bank has the status of secured creditor with respect to the inventory of Anchorage Trailer Sales. The UCC (AS 45.05.734(c)) provides that filing with the Department of Administration in January of a financing statement does not perfect a security interest:

"in property subject to a statute . . . of this state which provides for central filing of, or which requires indication on a certificate of title of, the security interest in the property."

The UCC (AS 45.05.734(d)) goes on to state that:

"A security interest in property covered by [a certificate of title statute] can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate of a certificate of title by a public official."

Mobile homes in Alaska are deemed subject to the certificate of title provisions of the Alaska Motor Vehicle Act (AS 28.10). It does not appear customary in Alaska for motor vehicle dealers, including mobile home dealers, to have their inventory "titled" prior to the first retail sale. Generally the vehicle is first "titled" after it is sold to a retail purchaser.

Nevertheless, the UCC states explicitly that a security interest in property covered by a certificate of title statute "can be perfected only by . . . indication of the security interest on a certificate of title . . . ." There is no question that the drafters of the UCC had no intention of interfering with customary business practices. (It is equally clear, however, that if Anchorage Trailer Sales went bankrupt the Trustee in bankruptcy, who by law represents the interests of unsecured creditors, would attempt to take the position that Alaska State Bank, by failing to show its lien on certificates of title, does not have the status of a secured creditor.)

*Pro-secured  
creditor*

Mr. Robert E. Barnes

Page 3

February 19, 1974

We have found instances in other states in which a Trustee in Bankruptcy unsuccessfully urged that argument. It is possible, however, that a court in Alaska might reach a contrary conclusion and interpret the language of the UCC literally. The ambiguity of the law on this point has prompted a recommendation from the drafters of the UCC that it be amended to resolve this problem.

Until such an amendment becomes the law, however, it is our opinion that the Bank can eliminate the risk of being deemed unsecured only by both filing a financing statement in Juneau and also having itself shown as a lienholder on certificates of title. In that way, the Bank will have secured creditor status whichever way a court might rule.

If you have any questions concerning the above, please give me a call.

Very truly yours,

ELY, GUESS & RUDN

Herbert Berkowitz

HB/ec

cc: Mr. Ralph F. Whitmore, Jr.  
Mr. Alvin E. Fleetwood  
Mr. John Houlahan  
Mr. J. Martin Kinnunen

*Note - this should be possible*

S B

4 4 3

COMMITTEE REPORT

HOUSE

4/1/76

Mr. Speaker:

Date May 5, 1976

The Committee on JUDICIARY has had CSSB 443

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>Terry Gardiner</u>	<u>DO PASS</u>	<u>[Signature]</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Members NOT concurring in the Majority report:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

Terry Gardiner Chairman

Proposed  
# 1 Muller  
5/5

Original sponsor: Commerce Committee

1 IN THE SENATE BY THE COMMERCE COMMITTEE  
2 HOUSE CS FOR CS FOR SENATE BILL NO. 443  
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 disclosure requirements in takeover  
7 bids."

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

9 \* Section 1. AS 45 is amended by adding a new chapter to read:

10 CHAPTER 57. TAKEOVER BID DISCLOSURE ACT.

11 Sec. 45.57.010. PROVISIONS OF TAKEOVER BIDS. The following pro-  
12 visions apply to every takeover bid:

13 (1) The period of time within which securities may be ten-  
14 dered by an offeree under a takeover bid shall not be less than 21 days  
15 nor more than 35 days from the date copies of the takeover bid are first  
16 published or sent or given to offerees.

17 (2) Securities deposited under a takeover bid may be with-  
18 drawn by an offeree or his attorney-in-fact by demand in writing on the  
19 offeror or the depository at any time within 21 days from the date  
20 copies of the takeover bid are first published or sent or given to  
21 offerees.

22 (3) When a takeover bid is made for less than all the shares  
23 or other units of a class and when a greater number of shares or other  
24 units is deposited under it than the offeror is bound or willing to take  
25 up and pay for, the shares or other units taken up by the offeror shall  
26 be taken up as nearly as may be pro rata, disregarding fractions,  
27 according to the number of shares or other units deposited.

28 (4) When an offeror varies the terms of a takeover bid before  
29 the expiration of it by increasing the consideration offered, the

1 offeror shall pay the increased consideration to each offeree whose  
2 securities are taken up even if they have been taken up and paid for  
3 before the variation of the takeover bid.

4 (5) When a takeover bid is sent by mail to offerees, it shall  
5 be accompanied by a copy of the statement filed with the department  
6 under sec. 20 of this chapter.

7 Sec. 45.57.020. DISCLOSURE. (a) No offeror may make a takeover  
8 bid unless at least 20 days before it he files with the department and  
9 with the registered agent of the offeree company a statement containing  
10 all the information required by (c) of this section and either

11 (1) within 10 days following the filing no hearing has been  
12 ordered by the department or requested by the offeree company; or

13 (2) a hearing has been ordered within that time and upon the  
14 hearing the department has adjudicated that the offeror proposed to make  
15 fair, full and effective disclosure to offerees of all information  
16 material to a decision to accept or reject the offer.

17 (b) A hearing shall begin within 20 days of the date of filing of  
18 the statement and adjudication shall be made within 30 days of the  
19 filing unless extended by the department for the convenience of the  
20 parties or protection of the offerees.

21 (c) The statement to be filed with the department under (a) of  
22 this section shall include the following information and the additional  
23 information that the department may require as necessary in the public  
24 interest or for the protection of offerees:

25 (1) the name, address and business experience of the offeror  
26 and each associate of the offeror;

27 (2) the terms and conditions of the takeover bid, which shall  
28 include the applicable provisions of sec. 10 of this chapter;

29 (3) the source and amount of the funds or other consideration

1 used or to be used in making the takeover bid, and if any part of those  
2 funds or consideration is represented or is to be represented by funds  
3 or other consideration borrowed or otherwise obtained for the purpose of  
4 making the bid, a description of the transaction and the names of the  
5 parties to it, except that if a source of funds is a loan made in the  
6 ordinary course of business by a bank or financial institution cus-  
7 tomarily engaged in the business of making loans, it will be sufficient  
8 to so state;

9 (4) plans or proposals that the offeror may have to liquidate  
10 the offeree company, to sell its assets to or merge it with any other  
11 person, or to make any other material change in its business or cor-  
12 porate structure;

13 (5) the number of shares or other units of securities of each  
14 class presently owned by the offeror and each associate of the offeror;

15 (6) information as to any contracts, arrangements, or under-  
16 standings with a person with respect to securities of the offeree  
17 company, including but not limited to transfer of any of the securities,  
18 joint ventures, loan or option arrangements, puts or calls, guaranties  
19 of loans, guaranties against loss or guaranties of profits, division of  
20 losses or profits, or the giving or withholding of proxies, naming the  
21 persons with whom those contracts, arrangements, or understandings have  
22 been entered into, and giving the details of them;

23 (7) complete information on the organization and operations  
24 of the offeror, including without limitation the year of organization,  
25 form of organization, jurisdiction in which it is organized, a descrip-  
26 tion of each class of the offeror's capital stock and of its long-term  
27 debt, financial statements for the current period and for the three most  
28 recent annual accounting periods, a brief description of the location  
29 and general character of the principal physical properties of the

1 offeror and its subsidiaries, a description of pending legal proceedings  
2 other than routine litigation to which the offeror or any of its sub-  
3 sidiaries is a party or of which any of their property is the subject, a  
4 brief description of the business done and projected by the offeror and  
5 its subsidiaries and the general development of that business over the  
6 past five years, the names of all directors and executive officers  
7 together with biographical summaries of each for the preceding five  
8 years to date, the approximate amount of any material interest, direct  
9 or indirect, of any of the directors or officers in a material trans-  
10 action during the past three years or in a proposed material transaction  
11 to which the offeror or any of its subsidiaries was or is to be a party,  
12 and complete information concerning all inducements to officers and  
13 directors of the offeree company which are not made available to all  
14 security holders.

15 (d) The department may within 10 days of the filing order a hear-  
16 ing to determine whether fair, full and effective disclosure is pro-  
17 posed, if in the opinion of the department cause for a hearing exists.  
18 The offeree company may within 10 days of the filing request a hearing  
19 and the department shall upon receipt of the request order a hearing.

20 (e) All written soliciting material used by the offeror in con-  
21 nection with the takeover bid shall be filed with the department and the  
22 registered agent of the offeree company not later than three days before  
23 the time copies of the material are first published or sent or given to  
24 offerees.

25 (f) If, under an arrangement or understanding with the offeror,  
26 any persons are to be elected or designated as directors of the offeree  
27 company, otherwise than at a meeting of security holders, and the  
28 persons so elected or designated will constitute a majority of the  
29 directors of the offeree company, then, before the time that person

1 takes office as a director, the offeror shall file with the department,  
2 and transmit to all holders of record of securities of the offeree  
3 company who would be entitled to vote at a meeting for election of  
4 directors, information substantially equivalent to the information which  
5 would be required by sec. 14(a) or 14(c) of the Securities Exchange Act  
6 of 1934 to be transmitted if the person was a nominee for election as a  
7 director at a meeting of the security holders.

8 Sec. 45.57.030. RECOMMENDATIONS TO ACCEPT OR REJECT. A written  
9 solicitation or recommendation to offerees, other than by the offeror,  
10 to accept or reject a takeover bid shall be filed with the department  
11 not later than the time copies of the solicitation or recommendation are  
12 first published or sent or given to offerees.

13 Sec. 45.57.040. DECEPTIVE PRACTICES. It is unlawful for a person to  
14 make or omit or cause to be made or omitted, in a document filed or in a  
15 proceeding under this chapter a statement which is, at the time and in  
16 the light of the circumstances under which it is made, false or mislead-  
17 ing in a material respect. It is unlawful for a person to engage in a  
18 fraudulent, deceptive, or manipulative act or practice, in connection  
19 with a takeover bid, or a solicitation of offerees in opposition to or in  
20 favor of a takeover bid.

21 Sec. 45.57.050. INVESTIGATIONS AND SUBPOENAS. (a) The department  
22 in its discretion may

23 (1) make public or private investigations inside or outside  
24 this state as it considers necessary to determine whether a person has  
25 violated or is about to violate a provision of this chapter or an order  
26 under this chapter, [or to aid in the enforcement of this chapter or in  
27 the prescribing of forms under this chapter;]

28 (2) require or permit a person to file a statement in writing,  
29 under oath or otherwise as the department determines, as to all the

1 facts and circumstances concerning the matter to be investigated; and

2 (3) publish information concerning a violation of this  
3 chapter or an order under this chapter.

4 (b) For the purpose of an investigation or proceeding under this  
5 chapter, the department or an officer designated by it may administer  
6 oaths and affirmations, subpoena witnesses, compel their attendance,  
7 take evidence, and require the production of books, papers, correspon-  
8 dence, memoranda, agreements, or other documents or records which the  
9 department considers relevant or material to the inquiry.

10 Sec. 45.57.060. INJUNCTIONS. When it appears to the department  
11 that a person has engaged or is about to engage in an act or practice in  
12 violation of a provision of this chapter or an order under this chapter,  
13 it may bring an action in the superior court to enjoin the acts or  
14 practices and to enforce compliance with this chapter or order under  
15 this chapter. The court may not require the department to post a bond.

16 Sec. 45.57.070. CRIMINAL PENALTIES. A person who wilfully vio-  
17 lates a provision of this chapter, upon conviction, is punishable by a  
18 fine of not more than \$5,000, or by imprisonment for not more than three  
19 years, or by both. However, no person may be imprisoned for the viola-  
20 tion of an order if he proves that he had no knowledge of the order. No  
21 indictment or information may be returned under this chapter more than  
22 five years after the alleged violation.

23 Sec. 45.57.080. CIVIL LIABILITIES. (a) An offeror who (1) makes  
24 a takeover bid which does not comply with the provisions of this chapter  
25 or (2) makes a takeover bid by means of a statement which is, at the  
26 time and in the light of the circumstances under which it is made, false  
27 or misleading in a material respect, and who does not sustain the burden  
28 of proof that he did not know, and in the exercise of reasonable care  
29 could not have known, of the untruth or omission, is liable to any

1 offeree whose shares are taken up under the takeover bid. An offeree  
2 may bring civil action (1) to recover the shares, together with all divi-  
3 dends received, costs and reasonable attorney fees, upon the tender of  
4 the consideration received from the offeror, or (2) for the substantial  
5 equivalent in damages if the offeror no longer owns the shares.

6 (b) Every person who materially participates or aids in a takeover  
7 bid made by an offeror liable under (a) of this section, or who  
8 directly or indirectly controls an offeror who is liable, is also liable  
9 jointly and severally with and to the same extent as the offeror unless  
10 the person who so participates, aids or controls, sustains the burden of  
11 proof that he did not know, and in the exercise of reasonable care could  
12 not have known, of the existence of the facts by reason of which the  
13 liability is alleged to exist. [There shall be contribution as in cases  
14 of contract among the several persons liable.]

15 [(c) A tender specified in this section may be made at any time  
16 before entry of judgment.]

17 (d) No person may bring action under this section unless brought  
18 within two years after the transaction upon which it is based. If a  
19 person liable under this section makes a written offer, before suit is  
20 brought, to return the shares taken up under the takeover bid, together  
21 with all dividends received, upon the tender of the consideration  
22 received from the offeror, or to pay damages if the offeror no longer  
23 owns the shares, no person may maintain a suit under this section unless  
24 he rejected the offer in writing within 30 days of its receipt.

25 (e) Any condition, stipulation or provision binding an offeree to  
26 waive compliance with a provision of this chapter or a regulation issued  
27 under it is void.

28 (f) The rights and remedies provided by this chapter shall be in  
29 addition to any and all other rights and remedies that may exist at law

*to this last  
sentence in  
conflict  
with 199  
should it  
be 5 yrs?*

*delete  
make sense?*

1 or in equity.

2 Sec. 45.57.090. CONSENT TO SERVICE OF PROCESS. A nonresident  
3 offeror, except a foreign corporation which has complied with AS 10.05.-  
4 597 - 10.05.696, who makes a takeover bid is considered to have ap-  
5 pointed the commissioner of commerce and economic development as his  
6 agent upon whom may be served, in any matter arising under this chapter,  
7 any process, notice, order or demand except one issued by the depart-  
8 ment. Service may be made on the commissioner or any of his staff at  
9 his office. He shall send it by registered or certified mail addressed  
10 to the offeror at his latest address on file and keep a record of it. A  
11 process, notice, order or demand issued by the department shall be  
12 served by being mailed by the commissioner or any of his staff by  
13 registered or certified mail addressed to the offeror at his latest  
14 address on file.

15 Sec. 45.57.100. REGULATIONS. The department may make and adopt  
16 regulations, and adopt forms, that are necessary or desirable to carry  
17 out the provisions of this chapter.

18 Sec. 45.57.110. DEFINITIONS. As used in this chapter, unless the  
19 context requires otherwise,

20 (1) "department" means the Department of Commerce and  
21 Economic Development;

22 (2) "exempt offer" means, with respect to any class of equity  
23 securities of the offeree company,

24 (A) an isolated offer to purchase equity securities from  
25 individual shareholders and not made to shareholders generally;

26 (B) an offer made by an issuer to purchase it wn  
27 equity securities or equity securities of a subsidiary at least  
28 two-thirds of the voting stock of which is owned beneficially by  
29 the issuer;

1 (C) an offer to purchase equity securities to be ef-  
2 fected by a registered broker-dealer on a stock exchange or in the  
3 over-the-counter market if the broker performs only the customary  
4 broker's function, and receives no more than the customary broker's  
5 commissions, and neither the principal nor the broker solicits or  
6 arranges for the solicitation of orders to sell equity securities  
7 of the offeree company;

8 (D) an offer to purchase equity securities made to all  
9 holders of the securities if the number of such holders does not  
10 exceed 100 at the time of the offer;

11 (E) an offer which the board of directors of the offeree  
12 company recommends to the security holders of the company if the  
13 terms of the offer, including any inducements to officers or  
14 directors which are not available to all security holders, have  
15 been furnished to security holders;

16 (3) "offeree" means a person, whether a security holder of  
17 record or a beneficial owner, to whom a takeover bid is made;

18 (4) "offeree company" means a corporation incorporated under  
19 the laws of Alaska or a corporation which has its principal office and  
20 substantial assets located in Alaska, whose equity securities are the  
21 subject of a takeover bid;

22 (5) "offeror" means a person who makes a takeover bid, and  
23 includes two or more persons

24 (A) whose takeover bids are made jointly or in concert,  
25 or

26 (B) who intend to exercise jointly or in concert any  
27 voting rights attaching to the equity securities for which a  
28 takeover bid is made;

29 (6) "offeror's presently owned equity securities" means, with

1 respect to any class of securities of an offeree company, the aggregate  
2 number of shares or other units which, on the date of a takeover bid,  
3 are beneficially owned or subject to a right of acquisition directly or  
4 indirectly by the offeror or an associate of the offeror;

5 (7) "associate of the offeror" means

6 (A) a corporation or other organization of which the  
7 offeror is an officer, director or partner, or is, directly or  
8 indirectly, the beneficial owner of 10 per cent or more of any  
9 class of equity securities;

10 (B) a person who is, directly or indirectly, the bene-  
11 ficial owner of 10 per cent or more of any class of equity securi-  
12 ties of the offeror;

13 (C) a trust or other estate in which the offeror has a  
14 substantial beneficial interest or as to which the offeror serves  
15 as trustee or in a similar fiduciary capacity;

16 (D) a relative or spouse of the offeror or a relative of  
17 the spouse, who has the same home as the offeror;

18 (E) a person directly or indirectly controlling, con-  
19 trolled by, or under common control with, the offeror;

20 (8) "takeover bid" means an offer, other than an exempt  
21 offer;

22 (9) "offer" means an offer made by any person directly or  
23 through an agent by advertisement or any other written or oral com-  
24 munication to offerees to purchase the number of shares or other units  
25 of any class of equity security of the offeree company that, together  
26 with the offeror's presently owned shares, will in the aggregate exceed  
27 five per cent of the outstanding shares of that class;

28 (10) "Securities Exchange Act of 1934" means the federal  
29 statutes of that name as in effect or subsequently amended.

1           Sec. 45.57.120. SHORT TITLE. This chapter may be cited as the  
2 Takeover Bid Disclosure Act.

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changes for  
HCS  
Milton  
5/5

Original sponsor: Commerce Committee

Offered: 3/24/76  
Referred: Rules

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 443

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 disclosure requirements in takeover  
7 bids."

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

9 \* Section 1. AS 45 is amended by adding a new chapter to read:

10 CHAPTER 57. TAKEOVER BID DISCLOSURE ACT.

11 Sec. 45.57.010. PROVISIONS OF TAKEOVER BIDS. The following pro-  
12 visions apply to every takeover bid:

13 (1) The period of time within which securities may be ten-  
14 dered by an offeree under a takeover bid shall not be less than 21 days  
15 nor more than 35 days from the date copies of the takeover bid are first  
16 published or sent or given to offerees.

17 (2) Securities deposited under a takeover bid may be with-  
18 drawn by an offeree or his attorney-in-fact by demand in writing on the  
19 offeror or the depository at any time within 21 days from the date  
20 copies of the takeover bid are first published or sent or given to  
21 offerees.

22 (3) When a takeover bid is made for less than all the shares  
23 or other units of a class and when a greater number of shares or other  
24 units is deposited under it than the offeror is bound or willing to take  
25 up and pay for, the shares or other units taken up by the offeror shall  
26 be taken up as nearly as may be pro rata, disregarding fractions,  
27 according to the number of shares or other units deposited.

28 (4) When an offeror varies the terms of a takeover bid before  
29 the expiration of it by increasing the consideration offered, the

1 offeror shall pay the increased consideration to each offeree whose  
2 securities are taken up even if they have been taken up and paid for  
3 before the variation of the takeover bid.

4 (5) When a takeover bid is sent by mail to offerees, it shall  
5 be accompanied by a copy of the statement filed with the department  
6 under sec. 20 of this chapter.

7 Sec. 45.57.020. DISCLOSURE. (a) No offeror may make a takeover  
8 bid unless at least 20 days before it he files with the department and  
9 with the registered agent of the offeree company a statement containing  
10 all the information required by (c) of this section and either

11 (1) within 10 days following the filing no hearing has been  
12 ordered by the department or requested by the offeree company; or

13 (2) a hearing has been ordered within that time and upon the  
14 hearing the department has adjudicated that the offeror proposed to make  
15 fair, full and effective disclosure to offerees of all information  
16 material to a decision to accept or reject the offer.

17 (b) A hearing shall begin within 20 days of the date of filing of  
18 the statement and adjudication shall be made within 30 days of the  
19 filing unless extended by the department for the convenience of the  
20 parties or protection of the offerees.

21 (c) The statement to be filed with the department under (a) of  
22 this section shall include the following information and the additional  
23 information that the department may require as necessary in the public  
24 interest or for the protection of offerees:

25 (1) the name, address and business experience of the offeror  
26 and each associate of the offeror;

27 (2) the terms and conditions of the takeover bid, which shall  
28 include the applicable provisions of sec. 10 of this chapter;

29 (3) the source and amount of the funds or other consideration

1 used or to be used in making the takeover bid, and if any part of those  
2 funds or consideration is represented or is to be represented by funds  
3 or other consideration borrowed or otherwise obtained for the purpose of  
4 making the bid, a description of the transaction and the name of the  
5 parties to it, except that if a source of funds is a loan made in the  
6 ordinary course of business by a bank or financial institution cus-  
7 tomarily engaged in the business of making loans, it will be sufficient  
8 to so state;

9 (4) plans or proposals that the offeror may have to liquidate  
10 the offeree company, to sell its assets to or merge it with any other  
11 person, or to make any other material change in its business or cor-  
12 porate structure;

13 (5) the number of shares or other units of securities of each  
14 class presently owned by the offeror and each associate of the offeror;

15 (6) information as to any contracts, arrangements, or under-  
16 standings with a person with respect to securities of the offeree  
17 company, including but not limited to transfer of any of the securities,  
18 joint ventures, loan or option arrangements, puts or calls, guaranties  
19 of loans, guaranties against loss or guaranties of profits, division of  
20 losses or profits, or the giving or withholding of proxies, naming the  
21 persons with whom those contracts, arrangements, or understandings have  
22 been entered into, and giving the details of them;

23 (7) complete information on the organization and operations  
24 of the offeror, including without limitation the year of organization,  
25 form of organization, jurisdiction in which it is organized, a descrip-  
26 tion of each class of the offeror's capital stock and of its long-term  
27 debt, financial statements for the current period and for the three most  
28 recent annual accounting periods, a brief description of the location  
29 and general character of the principal physical properties of the