215TH NEW JERSEY LEGISLATURE
ASSEMBLY CONSUMER AFFAIRS COMMITTEE
HON. PAUL MORIARTY--CHAIR

TESTIMONY

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A-2729

SUPPORT

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COMMITTEE ROOM 13
TRENTON, NJ 08625

Testimony of Sal Risalvato
A-2729: SUPPORT

Chairman Moriarty, Vice-Chair Diegnan, and members of the committee, my name is Sal Risalvato, Executive Director of the New Jersey Gasoline-Convenience-Automotive Association. There are over 2,300 gasoline retail locations in New Jersey, most of which are independently owned and operated. NJGCA represents America's quintessential small businesses.

A-2729 is a pro-consumer, pro-small business bill that will outlaw the practice of zone pricing. Zone pricing is a discriminatory practice used by certain fuel distributors to try and game the motor fuel market at the expense of the independent retailer and motorists. Customers of gasoline at stations which are being subjected to zone pricing are consequently forced to pay more for gasoline.

There are a variety of business models in the motor fuel retail industry. Many businessmen, particularly since the passage of the Right of First Refusal in 2009, now own both the business and the land beneath it. There remain, however, a sizable number of "dealers" who own the business, but lease the land it's located on from their supplier, that is a major brand distributor, or in some instances a major oil company. A condition of owning the franchise on land owned by the supplier forces the franchisee to pay whatever the supplier says is the price of the day. This is known in the industry as "dealer tank wagon" (DTW). DTW is both arbitrary and discriminating.

When I owned an Exxon station thirty years ago, Exxon divided the state into 2 zones: North Jersey and South Jersey. The price difference between them was about a penny. At one point a few years ago, we believe Exxon had over 100 price zones with prices that varied by as much as 30 cents a gallon. A person who owned two locations a mile apart may have had to purchase gas from Exxon 20 cents a gallon more in one location than in the other. Several Exxon dealers even gained media notoriety because they were forced to pay Exxon DTW prices that were obscenely higher than Exxon stations in neighboring towns.

Because Exxon has divested all of its real estate and no longer owns the land or supplies these locations directly, they are no longer an offender. However, the mega distributors that now own the land and supply these locations have taken over where Exxon left off.

A few other well know major brands like Sunoco and LUKOIL are still offenders of zone pricing and discriminate in the arbitrary DTW that they charge their dealers.

Today these companies which implement zone pricing divide the state into invisible, secret zones and then charge different prices to retailers simply because they can get away with it.

We have collected data with evidence of gas stations selling the same brand, sometimes in the same geographic area that are charged as much as 30 - and in some cases 40 cents per gallon more for the exact same product from the exact same supplier.

Retailers are then forced to charge their customers higher prices, all so that these mega distributors can line their pockets. For most motorists, gasoline is a fundamental commodity in their life; they simply must buy gas in order to maintain their professional and family life, regardless of how much more it costs.

Please understand that we do not have a problem if a retailer is able to sign a contract with a particular supplier, and the formula that is used for the purchase of that location's gasoline supply varies from that of another location. The difference is that the dealer has the opportunity to negotiate for the price of the gasoline that is purchased from the supplier. A-2729 only affects those dealers who are forced to "take it or leave it", and are then forced to charge their customers much more for a gallon of gas.

It would be like McDonalds charging a wholesale price to the owner of one location 50 cents for a hamburger and the owner of another location on the other side of the road 80 cents for the same hamburger.

A-2729 eliminates a basic unfairness that is discriminatory. It eliminates discrimination against retailers that are forced to purchase gasoline from their supplier at a non-negotiated higher price, which then discriminates against the motorists who fill up their cars at these locations.

A-2729 strengthens the free market. The free market works and benefits the consumer because the forces of competition push down prices. Zone pricing schemes have prevented that from working as it should. Mega distributors are padding their pockets and forcing consumers to pay more at the pump simply because they can. Dealers that are charged prices much higher prices than their competitors and have no room to maneuver and are unable to compete.

NJGCA believes that every gas station should compete for customers in a free and fair marketplace, it is not right for certain businesses to be shackled with a severe handicap because they are supplied by a greedy distributor.

Most reputable distributors work on the same razor thin margins as retailers. Retailers usually have an average profit margin of 10 cents or less, while most distributors work on pennies. The offenders of zone pricing mark up the wholesale price of gasoline and at times have had margins of 30 - 40 cents. That is a windfall.

NJGCA does not begrudge these wholesale suppliers of making big profit margins, we only wish to end the practice that permits these huge profit margins when there is no opportunity to negotiate the wholesale price, and dealers are forced to pay whatever the supplier demands. When the price can't be negotiated, then we ask the price to at least be non-discriminatory and have some competition injected in to the arbitrary setting of wholesale prices.

Because most wholesale distributors are reputable and hard working small business owners like the gas stations that they supply, we are asking that A-2729 be amended to exempt suppliers that own or control 75 or less locations. These distributors have demonstrated that they are our friends, serve us reliably and do not take advantage of retailers. We encourage our members to make contracts with these reputable wholesale distributors whenever possible.

When supply contracts can be made using a formula based on rack prices, the marketplace is subject to competition. Rack prices are the prices that distributors pay at the "rack" where the delivery trucks are loaded. Rack prices are paid to the refiners who offer the brands that the distributors then sell to the retailers.

NJGCA is also offering an amendment to A-2729 that will ensure that wholesale prices that are charged by distributors can still vary when these prices have been negotiated fairly between the retailer and the distributor.

Offenders of zone pricing not only charge different prices (DTW) to their retail customers, but many times they charge grossly high prices. Again, this forces retailers to charge their customers much more. A-2729 will end this practice.

We are also asking that A-2729 be amended to allow wholesalers of gasoline to sell at different prices based on the cost of transportation. This is fair. The cost of transporting gasoline from Newark to Hackettstown is greater for the wholesaler than the cost of transporting fuel from Newark to Belleville, for example. It is fair for wholesalers to reflect any added cost of transportation in their price.

This legislation will effectively lower the price of gasoline at those gas stations that are forced to purchase their gasoline from a supplier that charges more for certain locations than for others. The competitive effect should be immediate and noticeable.

Thank you.