

(H.B. 842)

**(No. 74)**

(Approved August 25, 2005)

## **AN ACT**

To amend subsection (i) of Section 1 and add a subsection (k); amend Sections 4, 4a, 8 and 9 of Act No. 3 of March 21, 1978, as amended, in order to declare that Puerto Rico constitutes a single market zone so as to prevent discriminatory practices affecting the gasoline and/or special fuel by guaranteeing the stability, accessibility and uniformity of their price; prohibit the oil refiner, the oil producer and/or the wholesaler-distributor from interfering in the fixing of the retail sales price of the gasoline; and to provide penalties.

### **STATEMENT OF MOTIVES**

The gasoline industry is very important for the economic development of Puerto Rico. This has been acknowledged as such by the Legislature by declaring the gasoline industry in all its facets as one of great public interest.

Pursuant to the above, the Legislature has approved several laws to regulate said industry and prevent possible predatory practices by the wholesale companies that distribute gasoline. One of these laws is Act No. 3 of March 21, 1978, which, among others, operationally detaches gas service stations from wholesaler-distributors through its Section 4a. "No oil refiner or producer or wholesaler-distributor shall directly operate a gasoline retail sales service station through an agreement, arrangement, contract or corporate operational plan with any retailer and/or natural or juridical person, or otherwise, that will impede his/her complete detachment from the

operations thereof.” The practice of wholesaler-distributors of fixing prices and maximum profit margins to their retailers violates the operational detachment demanded by the law. Furthermore, Section 4 of that Act established that “...every petroleum producer or refiner or wholesaler-distributor of petroleum products that supplies gasoline and/or special fuel to service stations for the retail sale of these products, shall be obliged to provide to all retailers that sell gasoline and/or special fuel whom they supply, uniform discounts, deductions, reduction or lowering of prices that it grants directly or indirectly, for the purpose of providing an advantage to the retailer in the competitive marketing of these products.” Subsection (i) of the Section of that same Act defines the term “uniform” in the sense that “...in the fixing or adjudicating of a rent, sale, distribution or concession, the terms will be applied in the same manner for persons within the same class or category, under the same circumstances, for a service of the same nature or cost...” However the law comes up short in failing to define the meaning of “under the same circumstances” or establishing the parameters that must be considered to create or delimit the classes and categories. On the other hand, both Sections 8 and 9 require amendments to clarify which sections of the law may be deemed as violations of fair competition and establishing which shall be subject to the penalties of the law.

The Legislature has acquired knowledge of the practice of the gasoline wholesale companies of dividing the Island of Puerto Rico into different market zones. On the basis of this they grant discounts in the price of the gasoline and in the rents, among others. This has created inequality among gasoline retailers, many of whom have found themselves in such precarious economic conditions that their only way out has been to file for bankruptcy. The practice mentioned above has been described by some as a

subterfuge to dodge the public policy about the stability of the gasoline industry. Should said practice continue, said industry may be destabilized and thus affect the consumer and the economic development of Puerto Rico. For this reason it is necessary that the Legislature halt the practice of the gasoline wholesale companies of dividing the Island of Puerto Rico into different market zones by declaring Puerto Rico to be a single market zone.

***BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:***

Section 1.-Subsection (i) of Section 1 is hereby amended and a subsection (k) added to Section 1 of Act No. 3 of March 21, 1978, as amended, to read as follows:

“Section 1.-Definitions

For the purposes of this subchapter, the following terms and phrases shall have the meaning expressed below:

- (i) Uniform or uniformly: Shall mean that in the fixing, adjudicating, offering and/or granting of prices, discounts, rents and/or concessions, these shall be equal for all retailers within the same category for a service of equal nature or cost. Uniformity shall not be required when the specific situation is such that the oil producer, refiner or wholesaler-distributor is obligated to match an offer made by a competitor of its same operational level to one of its customers.
- (j) . . .
- (k) Category: Shall mean that all retailers under the banner of the same trademark constitute one same category and that all independent retailers constitute another category. A retailer under a particular banner is one that has entered into an exclusivity contract with a wholesaler-distributor and sells

gasoline under the trademark of that distributor at a bannered or trademarked gasoline service station. The independent retailer is one that buys gasoline from a wholesaler-distributor, from an independent distributor or from any supplier and that does not have an exclusivity contract with a wholesaler-distributor, and thus does not sell the gasoline under the trademark of a wholesaler-distributor.”

Section 2.-Section 4 of Act No. 3 of March 21, 1978, as amended, is hereby amended to read as follows:

“Section 4.-Obligation of Producer, etc. – Uniform Prices

Every petroleum producer or refiner or wholesaler-distributor of petroleum products that supplies gasoline and/or special fuel to service stations for the retail sale of these products, shall be obliged to provide to all retailers that sell gasoline and/or special fuel whom they supply, uniform discounts, deductions, reduction or lowering of prices that it grants directly or indirectly.

For the purposes of this Section, Puerto Rico is hereby declared to be a single market or market zone.

Section 3.-Section 4a of Act No. 3 of March 21, 1978, as amended, is hereby amended to read as follows:

“Section 4a.-Detachment of Operations

No petroleum refiner or producer or wholesaler-distributor may, through an agreement, arrangement, contract or corporate operation plan with any retailer and/or natural or juridical person, or in any other manner, directly operate a gasoline retail sales service station so as to impede its complete operational detachment. No petroleum refiner or producer or wholesaler-distributor may, through an agreement, arrangement, contract or

corporate operation plan with any retailer and/or natural or juridical person, or in any other manner, directly impose, require, fix or limit the profit margin and/or retail sales price of gasoline and/or special fuel at a retail sales service station.”

Section 4.-Section 8 of Act No. 3 of March 21, 1978, as amended, is hereby amended to read as follows:

“Section 8.-Fair Competition Violations

Any violation of Sections 2, 2a, 4, 4a 5 and 5a shall constitute an unfair or fraudulent practice and shall be subject to the provisions of Act No. 77 of June 25, 1964, as amended.”

Section 5.-Section 9 of Act No. 3 of March 21, 1978, as amended, is hereby amended to read as follows:

“Section 9.-Penalties

The following offenses and penalties are hereby established:

- (a) Any natural or juridical person who incurs or conspires to incur a violation of the provisions of Sections 2, 4, 4a 5, 5a, 6, 7 and 8 of this Title, upon conviction thereof, shall be punished with a fine of not less than five thousand (5,000) dollars nor of more than twenty-five thousand (25,000) dollars. Every day that transpires after the date therein indicated without having complied with the provisions of the Sections indicated, shall constitute an independent and separate violation.
- (b) Any natural or juridical person who incurs or conspires to incur a violation of the provisions of Section 2a of this Title, upon conviction thereof, shall be punished with a fine of not less than five hundred (500) dollars nor of

more than five thousand (5,000) dollars or with a term of imprisonment of not less than three (3) months nor of more than six (6) months, or with both penalties at the discretion of the Court.”

Section 6.-This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 74 (H.B. 842) of the 1<sup>st</sup> Session of the 15<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to amend subsection (i) of Section 1 and add a subsection (k); amend Sections 4, 4a, 8 and 9 of Act No. 3 of March 21, 1978, as amended, in order to declare that Puerto Rico constitutes a single market zone so as to prevent discriminatory practices affecting the gasoline and/or special fuel by guaranteeing the stability, accessibility and uniformity of their price; prohibit the oil refiner, the oil producer and/or the wholesaler-distributor from interfering in the fixing of the retail sales price of the gasoline; and to provide penalties,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 17<sup>th</sup> of January of 2006.

Francisco J. Domenech  
Director