

PUBLIC HEARING

before

SENATE LABOR, INDUSTRY,
AND PROFESSIONS COMMITTEE

on

ASSEMBLY BILL 941 ACS

(Imposes a maximum annual permissible increase
on total dollar amount collected by motor
dealership franchisors from their franchisees
with respect to any lease or dealer agreement
entered into between them.)

Held:
December 1, 1980
City Hall
Linden, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Eugene J. Bedell (Chairman)
Senator John T. Gregorio

ALSO:

Patricia E. Turner, Research Associate
Office of Legislative Services
Aide, Senate Labor, Industry, and Professions Committee

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ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 941

STATE OF NEW JERSEY

ADOPTED MAY 19, 1980

A SUPPLEMENT to the "Franchise Practices Act," approved December 21, 1971 (P. L. 1971, c. 356; C. 56:10-1 et seq.).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Whenever a franchisee's profit margin on a franchise product
2 or service which he sells is controlled or the price of any franchise
3 product or service which a franchisee sells is controlled pursuant to
4 the "Emergency Petroleum Allocation Act of 1973" (Pub. L. 93-159)
5 or any other Federal law concerning petroleum products which so
6 limits a franchisee's profit margin or the price of such a franchise
7 product or service which a franchisee sells, there is hereby estab-
8 lished a rebuttable presumption of unconscionability with respect
9 to any rental rate on the lease for personal or real property in
10 excess of the established amount enumerated in this act entered
11 into by a franchisor and franchisee whose profit margin is so con-
12 trolled or who sells a franchise product or service which is so con-
13 trolled. Such presumption may be rebutted by a franchisor by the
14 presentation of evidence of the existence of facts and circumstances
15 sufficient to justify and validate a lease which would otherwise
16 appear to be unconscionable under the provisions of this act. A
17 rebuttable presumption of unconscionability shall arise if any such
18 lease provides for the payment by the franchisee to the franchisor,
19 directly or indirectly, through any officer, agent or employee, over
20 the course of any consecutive 12-month period commencing March
21 1, 1980, of any fee, charge or other payment for rent in an amount
22 or at a rate in excess of 15% more than the amount or at the rate
23 paid by that franchisee over the course of the immediately preced-
24 ing consecutive 12-month period.

1 2. This act shall take effect immediately and shall be applicable
2 to all such leases entered into on or after March 1, 1980.

SENATOR EUGENE J. BEDELL (Chairman): This is a public hearing on Assembly Bill 941. We have a list of people who have indicated their desire to speak. Anyone who is not on that list who wishes to speak, please come up here during the course of the hearing and have your name placed on the list by our staff assistant, Pat Turner, who is sitting at my immediate right.

I would also ask those who are going to speak, if you have position papers or prepared remarks, to submit them to us so that we can have them reproduced for the other members of the Committee who will not be with us today. Since there may well be quite a number of people who wish to testify, I would hope those of you who are speaking first will show some consideration for those who are to follow. We have a crowded room. Let's try to give information that is germane to this particular piece of legislation and not be repetitive. Let's really get down to the nitty-gritty of the bill and get some action on it.

To my left is Senator John Gregorio who is a ranking member of the Committee. He also is the mayor of Linden and has graciously permitted us to use the facility here today.

With that, I will call the first person on the list, Mr. James E. Benton, New Jersey Petroleum Council.

MR. BENTON: I would be glad to speak first, but Assemblyman Riley is here and he is the sponsor of the bill. I defer to him.

SENATOR BEDELL: I am very sorry. Assemblyman, if you will, sir, please come forward. It is your piece of legislation.

A S S E M B L Y M A N D E N N I S L. R I L E Y: Thank you, Senator.

I hope to be very short since at your last hearing I did submit written testimony.

I wanted to answer several questions that were raised at that time. I think that may be the easiest way to do it. Since that hearing, I have learned what I believe were several inaccuracies that I want to relate to the members of the Committee.

First, in regard to the Petroleum Marketing Practices Act, I reviewed it extensively, having been the sponsor and also being an attorney, trying to determine whether a preemption exists. I came to the same conclusion all of us did in the Assembly Committee that there is no preemption. As a matter of fact, Section 106 is the only part that really would go to preemption. I would ask that it be read by the oil companies who suggested preemption. I suspect if they read it, they may not say that any longer. Quite frankly, it would be somewhat like saying eviction for cause would preempt municipal rent control. Obviously, as a mayor, Senator Gregorio would know that is not correct.

As to the second item that was brought up, rent stabilization is really what we are talking about here in New Jersey rather than rent control. We are talking in this bill about rent stabilization, the same as we have talked about rent stabilization in residential units here in the State of New Jersey. They brought up New York City. This is not New York City rent control and never was intended to be - and I don't believe it ever will be.

With regard to two other things that were brought up, they said that the effect would be a decreasing supply - I question whether that is true or accurate - and they indicated it may increase prices. I think it will have directly the opposite effect. In fact, I have several statistics on this that I am going to give you in a few minutes.

The last thing was: Why one industry? I would suggest to you that it seems to me that it would take gall for this industry even to ask that. As an example, we have heard that there is no relationship between the various companies, many of them, coincidentally, raising their rates, and that this is a local situation where New Jersey's rents have been too low and they haven't been raised in quite awhile.

Yesterday, as I was having breakfast, I read the paper and I read an interesting article. The headline was, "Oil Firms Pressure Stations." I quote from the article. "Cash Only. Phillips has raised my rent over 400 percent per month. I have switched to another major brand and I will let you and the courts decide. Thank you. Sidney Goldstein.

"Sidney Goldstein, for 14 years the proprietor of a Phillips 66 service station in Miami, is a very angry man - as can be deduced from the latest protest sign taped to the front window of his station.

"He has a lot of company.

"Throughout. . . many parts of the nation, service-station operators insist that they are being forced out of business by profit-hungry oil companies that publicly support conservation but privately demand that their outlets sell an ever-increasing amount of fuel."

I will only read part of this.

"They're trying to eliminate the independent dealer and they're doing very well at it,' Goldstein says.

"Statistics show a 29 percent decline in the number of service stations . . ." in the state "and a 33 percent decline in the United States since 1972. And the dealers say the trend has accelerated this year as they find themselves caught in a classic double squeeze.

"Major oil companies, trying to maximize profits as the oil industry undergoes profound change, are imposing huge rent increases on the dealers who lease their stations. At the same time, the companies are pressuring those dealers to lower their prices (and their profit margins) so they will move more gasoline.

"But while the dealers say their profits dwindle, oil-company earnings remain strong. Exxon Corp., the world's largest oil company, earned \$4.31 billion during the first nine months of this year, an increase of 47.1 percent over the same period last year.

"Several oil companies confirm that they are trying to weed out 'unattractive' (unprofitable) stations, . . .

"The full-service stations, the old service stations that you like to go to, are on the way out. . . .

"Now, while officially endorsing conservation, they concede that they are 'encouraging' dealers to lengthen their hours, drop their prices and even revive free car washes and other inducements in an effort to reduce record inventories of gasoline.

"We have a lot of product and we are not moving it," - this is said by Gulf Oil - "It's a buyer's market - not like before. . . All the companies are encouraging their dealers to move more product.' . . .

"You are on kind of the horns of a dilemma when you raise that issue," says R. P. Vigneault, Exxon's wholesale fuels sales manager. 'You can be espousing, officially and sincerely, conservation as a necessity while saying, 'Hey, in the meantime, why don't you get the sale rather than the guy down the street?'

. . .

"In the past, major oil companies made most of their money from the production and refining of the oil that they controlled from wellhead to gas tank.

"When the firms could take large profit write-ups on each step of production, they didn't care very much about the actual marketing of gasoline and other fuels. The idea simply was to encourage driving and maintain as many outlets as possible so the companies could constantly boost production and refining capacity.

"But as the firms lost control of crude-oil supply price to foreign nations, and as Americans began conserving fuel, profit margins started slipping on refinery operations.

"So, the companies took a closer look at those corner service stations they had leased to independent businessmen for relatively small sums. And they discovered that those neighborhood stations could be turned into profit centers.

. . . .

"Phillips officials confirm the figures provided by Goldstein, but say there are other factors involved - factors that they will not divulge. . . 'It's a private affair between us and Mr. Goldstein.'"

. . . .

"The current glut of oil and refined products only intensifies the conflict. Mostly because of prices that have doubled over the last 18 months, Americans have been conserving fuel at record rates, and the oil-companies' storage tanks are filled to the brim.

"At the end of last month, gasoline inventories were estimated by the American Petroleum Institute, an industry lobbying and information group, at 248.8 million gallons, a 14 percent increase over the same date in 1979 and about 17 million barrels above normal.

"Thus, dealers say it is not coincidental that stations are staying open until midnight. The companies, which during last year's fuel shortage agreed to allow stations to slice their hours, now are returning to strict interpretation of their contracts with dealers." Strains similar to what we heard a month or two months ago.

"Several months ago, Exxon officials sent many local dealers a letter insisting that they return to 18-hour days."

Quoting from the letter, "'Notice is hereby given of our cancellation of this (previous) agreement (to reduce operating hours) and the original provisions of your service-station lease are back in effect. . . .'

"In addition, dealers say company salesmen are pressuring them to reduce their margins - the profit they earn on each gallon of gasoline.

. . . .

"Company spokesmen, however, deny that any pressure tactics are used."

This is again from Exxon, "'What they are calling pressures are probably such things as just good old-fashioned business counselling. . . . We might say: 'Hey, friend, we want you to be a prosperous dealer and here's what you can do.'"

Also, in this article, is an outline of the stations. In the United States, in 1970, there were 223,000 stations. In 1980, there are 152,000. The article goes on to describe many of the problems with regard to what we are going to have in this state and other states, obviously, if this happens. If the increases continue, we are not going to have the places to repair our vehicles. We are going to have strictly gas stations.

This article that I have been reading from is not from the Philadelphia Inquirer or the New York Star Ledger. This is from yesterday morning's Miami Herald.

We are facing a sham. The testimony that was given the last time is a sham. It is not a local problem, a local situation. I would venture to guess - and I think it is awfully coincidental - that exactly the same situation is occurring in Southern Florida that is occurring here, in some cases, with even a higher percentage of increases. I didn't hear about Phillips 66 here, but obviously they are doing in Southern Florida, Gulf and Exxon, the same thing. We are facing a situation where the coincidences are massive. The ones that are going to lose are going to be the people of this State and the people, obviously of other states.

I think that action should be taken. I ask you, Senators, that action be taken as quickly as possible to enact this legislation into law. I think we have to take a step to fight back. They are, obviously, doing everything to increase their profits. I think it is about time that the consumers have a chance to have their profits increased. I will leave a copy of this paper, Senators. (Applause.)

SENATOR BEDELL: Thank you very much.

I will not call Mr. Benton.

J A M E S E. B E N T O N: Good morning, Mr. Chairman and members of the Committee.

My name is James Benton. I am the Associate Director of the New Jersey Petroleum Council. I am here before you today to testify in opposition to Assembly Bill 941.

As stated on previous occasions, the New Jersey Petroleum Council is strongly opposed to this legislation. The bill proposes to regulate any fee or any payment between a franchisor and a franchisee in one select business category, that of retail marketing in the petroleum industry. The bill flies in the face of the administration's announced attitude of attempting to improve New Jersey's business climate and its desire to let the free market operate. What New Jersey and the energy industry do not need is another state attempt at control or further encroachment of state government into the business sector.

The petroleum industry is opposed to the passage of any form of rent control legislation for the following itemized specific reasons:

Rent controls in general have proved self-defeating and unworkable;

Rent controls, applied to service stations, are discriminatory and extend a competitive advantage to a minority segment of the retail motor fuel market, to the disadvantage of the majority of retailers and third-party investors in service station properties;

Ultimately, rent controls will adversely affect consumers who will pay higher prices and be faced with a reduced supply of fuel and services;

Service station dealers, who already enjoy extraordinary protection under the Federal Petroleum Marketing Practices Act, do not need rent controls;

This type of proposed rent legislation raises certain practical and equitable problems in addition to those associated with rent controls generally.

We will explain each of these items for the committee and our general reasons for opposing this legislation. However, at this point, permit me to clarify

the intent of our statement. Service station rent control legislation can be addressed by trade associations, such as ourselves, in only a very general way. Most of the data required to support industry positions is proprietary in nature and not available to trade association representatives. The rental practices of individual companies, data on service station ownership by companies, jobbers and third parties, information on dealer margins and estimated earnings, investment by companies in properties, average rates of return, etc., are important to the industry's case, but, for antitrust reasons must be put into the record by witnesses representing their individual companies.

Each of our member companies and close to five thousand retail outlets in New Jersey will be seriously impacted by this measure. Its proposed statutory intrusion into established business agreements will affect good long-standing working relationships between those companies and those retail outlets.

To say as this bill does in its statement that such legislation will ameliorate energy costs is grossly misleading, particularly when viewed against the present role of the Federal Department of Energy in regulating gasoline prices and at the same time prescribing comfortable retail dealer margins.

Anyone believing that this bill would lower motor fuels costs to the consumer is unfortunately mistaken. How would it do so unless the Legislature is also prepared to say at that same time that the retailer who benefits must also limit his increases under federally-protected margins?

The sponsor of this bill appears to have the idea that today's service station dealers are suffering a serious economic disadvantage because of rentals charged by their distributors -- an idea which is just not factual. We urge this committee to look more carefully into the present economic circumstances of New Jersey dealers to determine whether they really need this special protection or in all cases really want it. It should be pointed out that allowable dealer margins, as stated by the Federal Department of Energy, have been adjusted upward sharply in the past months, with the adjustment based on an inflation factor intended to cover such matters as rental increases. Today's gasoline retailers need not be further subsidized from a rental standpoint. The allowable mark-up currently stands at 16.8 cents per gallon and the next scheduled increase is January 1.

Rent controls present an extreme example of government intervention in the marketplace. Except for periods of emergency, as an example, World War II, during which they have been imposed on a short-term basis, they have proved to be self-defeating and unworkable. Controls on residential rents in New York City have resulted in blocks of abandoned apartment buildings, whose owners, denied adequate rentals, have neglected maintenance until the buildings were uninhabitable. In Washington, D.C., rent controls have led to widespread conversions of rental housing to other uses -- condominiums, hotels and commercial uses -- with the result that the supply of apartments is constantly shrinking. The jurisdictions which have adopted controls on residential rentals have justified their action on the ground that shelter is an essential human need which should be insured to low-income citizens at low cost. No such justification has been advanced for controls on commercial rents, however, and even the jurisdictions which impose "ceilings" on apartment rents do not extend them to business properties. Proponents of service station rent control usually fail to point out that many instances of rental increases reflect a process of adjustment from abnormally low levels at which previous rents were set.

Service station rent control legislation, as it is drafted, is designed to benefit only those retail service station dealers who are lessees of major companies. Such dealers constitute only a minority of the motor fuel retailers in most states. The majority of retailers lease their stations from a jobber or a third party or own the premises outright and they are offered no protection by this legislation. According to data from the Federal Department of Energy and borne out by our own New Jersey Petroleum Council statistics, roughly 40 percent of the service stations are leased from petroleum suppliers. The other 60 percent are either owned by the dealers themselves or leased from a third party.

Since those dealers who are not covered compete in the market with those who lease from refiners, they are competitively disadvantaged by rent controls which shelter the refiner's lessees from the impact of the true costs of occupancy of the service station. The dealer who leases from someone other than a refiner could have his rent increased at a rate greater than the dealer who leases from a refiner, while the dealer who owns his own station has no protection against rising property taxes, maintenance costs and other overhead association with ownership.

Another group who would feel the discriminatory impact of service station rent controls consists of local property owners who lease the land occupied by service stations to the oil companies. Many of these stations which the companies lease to the dealers are not owned in fee by the companies but held under lease from third parties. In situations where the company cannot cover its own rental cost, there would exist a significant incentive for the company to not renew its underlying lease and close the station. In every case, a ceiling on the rent which the company is allowed to charge for the property would affect the amount it is willing to pay in rent to the underlying leaseholder, thus indirectly lessening the rental value to the property owner, who is not actually covered by the rent control law.

In general, what A 941 proposes to do in a dangerous and misguided way is to deny commercial property owners and investors a reasonable return on investment. It effectively destroys the incentives for the continued upgrading and modernization of these retail facilities in New Jersey.

Most importantly, rent controls adversely affect consumers. To the extent that rent controls prevent the supplying company from generating an adequate return on its investment in the property through rents, the company will be forced to increase prices to recover costs which it cannot recover through timely, adequate increases in rent. Consumers, by paying higher prices, will be forced to subsidize the lessee dealer's privilege of occupying his business premises at an uneconomic rent.

Properties occupied by service stations are only part of the entire local supply of commercial sites, located at strategic roadside sites available for "drive-in" uses. Experience indicates that they are readily available to a great variety of non-petroleum uses, ranging from banks to fast-food restaurants, cleaning and dyeing establishments, beauty parlors, etc., all of which would be free from the constraints imposed by service station rent controls on an adequate return on investment. Oil companies constantly review their property investments and, in cases where the return is inadequate, may decide to divest the property for conversion to a more profitable use. The result is the closing of the service stations and the loss to the consumer of fuel and service formerly available. Under present U.S. Department of Energy regulations, the closing of a service station will decrease

the allocation of fuel available to the affected community and place it at a disadvantage in periods of shortage.

Service station dealers do not need the protection of rent controls. As a class, retail dealerships are experiencing all-time record dollar sales levels, substantially greater margins on motor fuel sales than have generally prevailed in the past and, in many cases, are achieving these results with shorter hours of operation and the reduced labor costs involved in gas-and-go operations.

The bill proposed would give unique, extraordinary legal protection to one group of businessmen who already have unusual and strong protections under other laws. The lessee service station dealer now has special protection under the New Jersey Franchise Practices Law, the strictest of its type in the nation. Moreover, the dealers enjoy a special legal protection against discriminatory or arbitrary rent increases imposed by their supplier-lessors. This is provided by the Federal Petroleum Marketing Practices Act which has been in effect since June, 1978. A dealer is protected under Department of Energy regulations which allow him substantial mark-ups, keyed to an inflation factor, and under all existing laws which govern commercial business relationships. And this additional protection would be given to one group of franchisees which does not even constitute a majority in its own segment of a business.

Service station dealers have availed themselves of the special legal protections extended exclusively to them under the Federal Petroleum Marketing Practices Act and have submitted rental increase disputes to the federal courts in a number of instances. As a result of this action, there is a growing body of legal opinion which is establishing ground rules for the guidance of parties in establishing equitable levels of rents for service station properties.

The vagueness of the standards in Assembly Bill 941 appears to invite litigation in almost every case where the lessor and the lessee fail to agree on the proper level of rent and may place an overwhelming burden on the courts.

Since this type of proposal is drafted to benefit only the minority of dealers who lease the business premises from a refiner, the majority who either own their own stations or lease from a third party and who must operate under the same restricted allocation, receive no comparable reduction in their costs of doing business. Moreover, petroleum product shortages affect not only service station dealers, but restaurants, motels, resorts and other businesses which depend on travel and tourism. Since the rent control legislation is designed to benefit only a narrow, privileged class, its benefits are denied to many others, including the general public, who may be affected as seriously, or more seriously, by gasoline allocation.

Before turning to some of the other representatives with me who can better address the shortcomings of this bill because of their expertise in retail marketing, I would again urge your committee to review this measure carefully and extensively. As the numbers of retail stations indicate, company-dealer arrangements vary greatly and a full understanding by this committee is essential before it is released.

Thank you very much, Mr. Chairman. I might also point out I have with me a copy of a magazine. It is the National Petroleum News, NPN. It is a service-station/petroleum industry trade magazine. It has quite an article in it - I won't read it to you - entitled "The New Dealer." It gives the profile of a service-station dealer and it is very much recommended reading. I will leave it with the committee.

SENATOR BEDELL: Thank you very much.

Francis Haviland, Gasoline Jobbers Division of the New Jersey Fuel Merchants Association.

F R A N C I S C. H A V I L A N D: Mr. Chairman, I am Francis C. Haviland, Executive Director of the Gasoline Jobbers Division of the Fuel Merchants Association of New Jersey. Our division consists of 75 active gasoline jobbers, servicing 1200 retail outlets and 5,000 commercial, industrial and municipal accounts. Jobberships are usually family-owned companies, relating closely to the need of the communities they service.

I am appreciative of the opportunity to present the jobbers' reaction to Assembly Bill 941. We believe, first of all, that the proposed legislation is discriminatory and punitive in that it singles out only motor fuel franchisors as being subject to its provisions. A-941 is proposed as a supplement to the Franchise Practices Act, Chapter 356, Laws of 1971. The Franchise Practices Act, as enacted, is applicable to all franchisor/franchisee relationships. We believe that if the proposed legislation is to be progressed, it be amended to include all franchisor/franchisee relationships so as to be in conformance with the existing provisions of the Franchise Practices Act.

We further question the legality of the proposed legislation and whether it would be upheld if challenged in a federal court. When mandatory petroleum allocation regulations were issued by FEO (now the DOE) on January 15, 1974, the regulations specifically indicated that where the supplier is also the lessor or landlord of the service station site, the rentals were frozen as of May 15, 1973. On January 5, 1976, the then FEA (now DOE) ended all regulation of service station rents retroactive to November 11, 1975 because of a Federal District Court decision that FEA had no jurisdiction or authority to freeze service station rentals, particularly when the supplier is the lessor.

Many service station properties in New Jersey are owned by real estate investors, not franchisors. The refiner marketers and jobbers, the franchisors, occupy these properties through long-term leaseholds. Many of these leases contain rent escalation clauses becoming effective periodically during the term of the lease or at time of renewal. Under the proposed legislation, there is no cap on what the owners can pass to the franchisor, but there would be a cap on what the franchisor could pass on to his franchisee. Investor owners, franchisor owners and independent service station property owners are all subject to periodic increases in real estate taxes and insurance premiums, as well as other property maintenance costs. Why not place a similar cap on tax increases by the municipalities and premium increases by the insurance carriers?

For many years, petroleum marketers have subsidized their investments in physical properties with earnings from the sale of refined products, resulting in very favorable rentals to franchisees. Since price and allocation controls were instituted at federal levels in 1974, petroleum marketers have been going through a maturing process. They now look for a return on their investment in physical properties, as well as favorable earnings from the sales of refined products. Gasoline volume has been replaced by dollar earnings as the yardstick of growth. That is why we are witnessing so many withdrawals by refiner marketers. No one refiner now markets in all continental 48 states.

I would like to comment on the implied consumer benefits to accrue from the enacting of A-941. Rental costs are not a factor in establishing pump prices today. The dealers maximum allowable selling price is calculated by adding to the

acquisition cost of product all applicable taxes and "fixed margin." The "fixed margin" was set by DOE on July 16, 1979, at \$.154 and on June 15, 1980, was escalated to \$.168 and is due for readjustment on December 15, 1980. Rental and other costs were excluded from selling price calculation July 16, 1979. I am sorry to say not many dealers are able to enjoy the \$.168 allowable margin because of competitive factors in the market place. With or without regulations, rent is not a viable factor in determining posted pump price. Competitive factors in the market place influenced pump price, not costs of rent or other operating expenses.

An anti-consumerism factor also lurks in A-941. If a franchisor cannot realize a reasonable return on his investment, he may elect to abandon the property, thus reducing competition in the area and affording remaining operators the opportunity to post higher prices.

In conclusion, we believe the proposed legislation is selective, discriminatory, punitive and not consumer oriented. We further believe that such proposed legislation at the State level opens a "Pandora's box." It may be compared to lighting a match and throwing it over your shoulder. What the extent of the ensuing conflagration will be, we don't know. Do you?

Thank you.

SENATOR BEDELL: Mr. James Morford, New Jersey State Chamber of Commerce.

J A M E S C. M O R F O R D: Mr. Chairman and Senator Gregorio, I am James C. Morford, Director of Governmental Relations for the New Jersey State Chamber of Commerce, which since 1911 has been the leading voice for the business community in our State. We wish to express our appreciation to the Committee for conducting this public hearing on Assembly Bill 941 - a very significant legislative proposal.

A-941 represents a major legislative intrusion into the private sector by proposing to establish State mandated and regulated rent control affecting the relationship between franchisor and franchisee in one segment of the economy. The Chamber views this as dangerous, precedent-setting legislation. While on the surface, the bill would, if enacted, establish rent control over only one sector of business - that of retail marketing of the sale of motor fuels - the gates would be open and the Legislature would surely face a flood of bills to establish rent controls over many other franchise relationships.

This private sector rent control bill stands in stark contrast to the Byrne administration's stated goal of promoting and improving New Jersey's business climate. Enactment of A-941 would send out another signal to the business community that New Jersey continues to be a hostile environment in which to do business.

The Chamber suggests, Mr. Chairman, that rent controls do not work and are, in fact, self-defeating. It is inappropriate for the State of New Jersey to legislate rent controls over any segment of commerce.

The only justification for the Legislature to mandate rent control on the private sector would be some clear and certain public benefit that would result from such an act.

We submit that there is no demonstrable public benefit that would result from enactment of A-941. Assertions that fuel costs would be lower for the consuming public cannot be substantiated.

That area of private business for which A-941 would establish rent control is already heavily regulated. In addition to all general law governing business, motor fuel dealers are protected by U.S. Department of Energy Regulations. They are protected by the Federal Petroleum Marketing Practices Act and they are

protected by a very strict New Jersey Franchise Practices Law. We suggest, Mr. Chairman, that the problems, if any, facing the dealers in this industry may result from what is already too much government interference and regulation rather than too little.

Mr. Chairman and members of the Committee, if there is one message that should be recognized from the recent election, it is that the public is calling for less government intervention in their lives and in the market place. A-941 is just one more example of the kind of government intrusion the public rejected on November 4. The New Jersey State Chamber of Commerce respectfully urges you to heed that message and reject A-941 as not in the public interest.

Thank you.

SENATOR BEDELL: Thank you.

Mr. Jerry Ferrara, Gasoline Retailers' Association.

J E R R Y M. F E R R A R A: Thank you, Mr. Chairman.

In the interest of time, I am going to be as brief as I can. Rather than produce a lot of dealers in this audience who would like to testify individually, we have attempted collectively to put some things together in order to address the factors.

The New Jersey Gasoline Retailers' Association, representing 3,000 service stations, urges passage of A-941 to prevent the economic strangulation of many of the 4800 gasoline retailers in New Jersey.

Increases for 1980 range from 25 to 70 percent and some rent increases over the course of a 3-year lease have been as high as 200 percent.

We have enclosed a copy of our survey on New Jersey service station rentals and attached some samplings. It should also be noted that these, in many cases, are minimum rents usually based on an arbitrarily selected minimum gallons of gasoline to be sold without any maximum cut-off for rent.

I would like to refer to the survey to get in the record the numbers as they came up. I have with me a collection of the surveys taken in this particular box.

A total of 1704 rent surveys were returned to us by dealers, showing the following statistics as to the average amount in percentage of rental increases since 1973: rent increase between May 1973 and May 1978, 67 percent --- I would like to refer to a comment made before that rents were frozen. The DOE did attempt to recognize that the problem of freezing prices engendered the problem of raising rents because rents started to increase, and they wanted originally them frozen back to the inception of the authority. In court cases, it was ruled, not that it was unconstitutional, but that the authority had never been vested in the Department of Energy, the old Federal Energy Administration, to freeze rents. With that, believe me, after 1975, rent increases came out in style. As you can see, the rent increases jumped 67 percent; and most of that started from '76 through '78. Rents increased between May 1978 and July 1979 an average of 33 percent; rent increases between May 1979 and July 1980, 30 percent; total rent increases between May 1973 and July 1980, 182 percent.

The trend from July 1980 through July 1981 indicates another 25 to 75 percent increase in the average rent, which would bring the average total increase still higher. Some current rent increases over the course of a three-year lease have been as high as 200 percent.

Samplings attached include some from a 1979 survey where the effect on a

per gallon cost is illustrated. I would suggest you look at these and the effects of rents on a per gallon basis, also how it relates to the dealer's margin of profit, etc. There are a whole series of them included in this presentation. I won't attempt to go from one to another. But I suggest a glance at them will show that rents, relating to cost per gallon, range from one penny a gallon up to over four cents and as high as five cents.

There has been a tendency in the testimony given to equate refiner net profit per gallon with the retail dealer's gross profit. To place margins in their proper perspective, we have attached a copy of a U.S. Department of Energy report on refiner/distributor margins which are currently in excess of 28 cents. This is not Jerry Ferrara's or the Gasoline Retailers' report. One is from a survey made in 1976 by the Department of Energy, surprisingly showing that if decontrols took place, that there wouldn't be any higher prices because at that time the dealer's margin was going down and the refiner's profit was going up. They wanted to prove that, if we decontrolled prices, because of the competition engendered by the dealers. You can see all prices on the street today, but, believe me, that isn't because wholesale prices have gone down. That margin is coming out of the dealer's pocket. A statement was made that the recent election indicated that the public's mandate was that you shouldn't get into this, that or the other thing. Increases have started since the election. Some companies have gone up as much as three cents a gallon. And I say to you that it will continue and the profit margin will be greater.

An updated comparison of refiner versus dealer margin was given several months ago by Secretary of Energy Duncan before a U.S. Senate Committee hearing.

While they may contend that because of higher dealer margins, they wanted a "piece of the pie" - they also want it both ways.

A look at the local market place will show deteriorated retail prices all at the dealer's expense, while wholesale prices are continuing to escalate. If you will look at that chart, starting in May 1979, the refiner margin was 19.8 versus a dealer margin of 11.9. This is comparing apples with apples. This is gross margin, not net. If you go down the line, it increased all during '79 and '80, until in May, 1980, it was 27.7 cents a gallon, while the 16.8 or, at that time, it would be 16.1 margin of the dealer dropped to 13.5. This is the same Department of Energy they are referring to. These are not my numbers. I would say the dealer margin is even less than that. The current estimated refiner profit margin as of July 1st, 1980, is 28 cents. If anybody among my colleagues in the audience here doubts this, I suggest they go down to the Department of Energy Office in Washington. They have a chart there. It was in color. It didn't come out too good in black and white. I took that. It was over a year ago when they were already showing 22 cents. It showed their profit climbing; that is, gross profit per gallon. When they get done testifying, they will tell you they only made 2 cents a gallon. Now, you let me testify that way on the dealer's profit and I will show you we made nothing.

It is important to remember that the above figures represent gross margins on both levels.

In testimony and press releases by the refiners, they usually resort to comparing their net profit - and there is some question there as to what they report - to a dealer's gross margin.

One refiner representative testified that 15-USC-2806 of the Federal Petroleum Marketing Practices Act preempted any type of state legislation such as

A-941. A review of the enclosed section of 15-USC-2806 discloses that even with the broadest interpretation of the language, there is no basis for this statement. They tried to throw a smoke screen before the Assembly hearing - and I believe the same attorney will testify later today; at least, I hope he will - and said that the State was preempted by this. I have had printed a copy of a section of the PMP where there is no preemption. I sat in on every single hearing on that bill. I knew about every "i" that was dotted and every "t" that was crossed. I nicknamed it the "Three C Bill," a carefully crafted compromise. Since then, I am not too proud of it because they have taken their carefully crafted compromise and tried to find a million loopholes. If it continues, I believe we will be back to the Congress regardless of any change in the Congress and be able to substantiate that there has to be some improvement in that carefully crafted compromise.

As far as anything to do with rent, I reread that whole Act, including the legislative report, at one o'clock this morning because I was beginning to think maybe I never read it before. But there is nothing in there that gives a basis to say that rents are frozen. Oh, yes, if you levy rents in a discriminatory fashion to cancel a man's franchise, maybe you have a right to go to court. One judge ruled no. One judge gave a temporary restraining order, saying, "Hey, you can't put the dealer out. Let's take a look at this." In the meantime, he didn't say that the dealer was right or wrong. You can play on that word "discriminatory." Did you ever try to go to the federal courts? When a guy gets finished, if he lasts to the time he gets to a hearing, what he will pay in legal costs, if he is still in business, will far surpass the rent increase that he is being beaten over the head with.

Subsequent to the passage, 63 to 4, by the Assembly of A-941, opponents of the measure indicated to many Senators that its passage would halt or hinder their remodeling of service stations due to the inability to increase rents.

I would like to refresh you gentlemen's memories, going back to June when the bill was to come up in the last session prior to the summer recess. Many of you were told that if you passed this bill, they would not remodel any stations if they couldn't get a rent increase. We refer you to lines 13 to 16 of the proposed legislation which addresses the question and puts the "proverbial lie" to the above assertions. The whole language of the bill was drafted by a lawyer unfortunately. It is legal language. Any greater amount than 15 percent will be a presumption of unconscionability. But when you start with line 13, it says, if they can prove any other reason, there is no question they would have a right to raise the rent. All it does is give us an even shot. It is not that it is not negotiable. We could attempt to have the court decide it. More importantly, because we are not anxious to go to court, we want the companies to take a second look before somebody arbitrarily picks a number out of the hat and puts it down.

A refreshing, if not a Freudian answer, typical of the attitude towards the question was given at a hearing on another issue before the Senate Energy Committee.

Senator Barry Park stated that in his profession as an attorney he had reviewed leases with some rather high increases in rents and inquired from those present how they were arrived at. The rather candid answer from a refiner representative was, "We are not any different from shopping center owners; the more business they do, the bigger piece of the pie we want."

We could agree to that if service station leases were the same as shopping

center leases. However, there isn't any comparison. Leases for retail outlets in shopping centers are usually long term with options for renewal and, in most instances, are based on an amount per square foot plus an override when the gross sales and/or profit reaches an agreed amount.

The store owner is free to purchase any variety, grade or amount of merchandise he desires from whomever he desires. That does not exist in our business. In fact, in negotiations in Washington on the so-called PMP Act that you hear referred to, on the question of shopping center leases, we were meeting with the top marketing people in the nation, with attorneys present, I made an offer to them that if they would write up our leases on five-year or longer term leases based on the shopping center concept, we would be happy to forget anything about a franchise act. As you can see, that was not accepted.

The question of legislating commercial rent controls is not at issue as the service station is in a captive industry. No other industry controls a product and its outlets from the raw stage (the wells) to the ultimate consumer. That should answer the question of the Chamber of Commerce as to your venturing into the field of commercial rents.

Because of the same problem, the New Jersey Legislature in 1971 was the first to pass a strong Franchise Protection Act which several others followed; and, in 1978, a weaker version was enacted into law by the U.S. Congress. In that particular Act, an attempt was made to make inherent preemption a factor because federal legislation inherently preempts anything else. An exclusion was made in that legislation to make it clear that it only preempted the area of termination and notification, not in any other areas. The states are free to legislate anything else. More importantly, it was put in there to protect this State so that we have the right to pass on our business to our family if one of us should die. Any other place in this country - there are only a few states that have that right - if a dealer dies, that is the end of his lease. We have the right to pass it on; we have the right to sell it. The language was specifically put in there. They were willing to put the words in, "New Jersey is an exemption." But I have been around too long to trust going into the federal courts with 49 states not having something and New Jersey having it and have some judge say, "Hey, this is unconstitutional." So the language was put into that Act. The Act isn't that strong. Rent was a question they were going to take up later. In fact, the DOE was to schedule hearings on whether we have the right to pass on rent or not.

The Committee has the dual responsibility to protect the viability and competition of the small businessman and, in doing so, see that some benefits reach the consumer.

Excessive service station rentals will result in higher prices on gasoline and on other services and repairs or the ultimate economic strangulation will be the demise of many small businesses. The marketplace will then be taken over by large direct, gas-only company operations with less availability of emergency services and repairs.

As the past six years have demonstrated, the refiner/producer creed is "profits are the name of the game" with the end result being "the consumer be damned." Passage of A-941 is one small step towards preventing it.

In previous testimony here, some reference was made to the fact they weren't renewing underlying leases. I say to you that this has nothing to do with the rent bill before us. But the companies are getting out of underlying leases, not because of higher rents but because they want to consolidate their operations.

If it were for any other reason than that, why do they when they pull out of an outlet attempt to restrict by deed restriction the right to use that piece of property for anything except a service station. We make offers to buy the piece of property and say, "It doesn't cost you any more to deliver a tanker of gasoline to that small operator than it will to one of your multi-pumpers, high-volume gasoline stations," and they still try to get around it. Some were pulling out tanks to make it difficult. Now, I have to half agree with pulling out tanks because they claim that they can be held unilaterally in the case of a leaking tank after they sold it. So, okay, I will buy that. We have been reasonable. We have sat and talked with them.

One individual was very anxious to come down here and he did make a statement to the newspapers that his company doesn't increase rents more than 20 percent. I sent the bulletin out to all the dealers. As of this date, I can say I would only hope they maintain the 20 percent.

Another thing, are there negotiations in this business? Let me put in the record - and it is in your folder - a letter. This is a dealer who was negotiating a higher rent. His rent went from \$975 per month, which it is currently, to a proposed \$1425 per month. He wrote the company and asked for some meaningful negotiation. The reply to his letter reads as follows. It is from the Texaco Oil Company. I will just read one paragraph. "As you have failed to accept our offer to renew your lease at said rental, we hereby give you written notice of the termination of your lease, effective November 30, 1980." Is that negotiation or cancelation? This is not just true of this company. This is the type letter you get.

I ran into an attorney - I believe his brother may be one of the candidates for office - a fellow by the name of McGlynn. He was representing a dealer. He said, "I never saw anything like it. I called up and wanted to discuss the rent." And he is an attorney. He said, "There are no negotiations. It is just take it or leave it." The dealer is not in a position to negotiate. The property is owned, in many instances, or lease controlled, by a major oil company. He has no choice as other businessmen have to move from one office building to another. Service stations are prime pieces of property. They are zoned. You just can't pick up that business and go down the street. One company told me when I wrote the --- Well, I was one of the authors of the original Franchise Act in New Jersey. It took me a year in private to write. I was scared like hell to ever make it public. He said to me, "Who the hell are you to tell us what to do with our \$200,000 piece of property?" He's right if it was an equitable deal. A dealer has to go in there, and starts from scratch. In some instances, the brand name is important. But we will show you in another instance what one station of a supplier who is not in the top four in the market with the right dealer in there, produces in business. What is it worth? Why do they object to our passing these on to our widows? In New Jersey, thankfully, that can happen.

I have an Esso dealer in the audience who attended a seminar. Most of these companies have these so-called advisory boards. Somebody mentioned the case of a widow being put out in Long Island and another one someplace else. He said, "It doesn't happen in New Jersey." Thankfully, that is because the Legislature saw to that.

Prior to long-term leases - and now we are beginning to see three-year leases - and prior to the New Jersey Franchise Act, how would you like to spend 20

years in the business and get a 10-day or, generously, a 90-day notice that you were through? So let's not talk about equitable burdens of proof. A judge called Judge Wisdom - and I didn't know how famous he was until some people told me he is one of the few that are quoted - he and a guy named Black - when you go to law school - said in one of the cases, the FTC versus Texaco, sometime back, that the burden is unequal when the supplier - and it could not only be the supplier, but the landlord and, in some instances in those days, the banker because he loaned the dealer the money --- There is no equity.

We will hear a lot of testimony. Say, on this Texaco deal; let's be honest about it. When a lease comes across my desk - and I probably see more leases than the average lawyer sees in three or four years of his practice - we take a look at the underlying costs. Today, the big cry is economic return. Well, you can't have it at both ends. They want economic return on their property and a profit on the gasoline gallonage at the same measure. We take a look at the underlying costs. In this Texaco case, 100 percent valuation as of 1977 came to 76 percent. Let's add a 10 percent inflationary factor and bring it up to date and give them a 12 percent return on their property, plus the taxes. We'll allow \$100 for maintenance a month. One guy was trying to convince me they got \$400 return. He isn't here today. I was really crying. Give them \$100 a month for maintenance for what maintenance they do. They don't maintain half the things they used to. Before, you got a hose, you got bolts, etc. You don't get that anymore. Give them all that - their annual cost, amortized and everything else - \$12,796. But they are going to collect \$17,000 on that piece of property. That is only a simple example.

We will show examples where the underlying costs - pity the poor landlord that they were worried. My good friend, Fran Hamilton said they can't get the rise in prices. I would like to have only a dollar for every underlying lease where that landlord is caught with a 15-year plus two 5-year option leases. I have a station in mind where the return the landlord is getting is \$400 a month and they are paying the taxes. The return they are getting from the dealer is \$2200 a month. Now, taxes didn't go up that high.

So when we talk about discriminating against the rest of the industry in the Franchise Act, you have the right under the Franchise Act to amend a section pertaining to a particular franchise. The Franchise Act was passed primarily because of the service station dealer and, at that time, the automobile dealer who was locked into some rather hard fast rules. So I would ask the Committee to consider that.

I would like in lieu of putting on other dealers, to come back at the end, if I may, to answer any questions that may arise, so you can have things in their true perspective and at least have both sides of the argument.

Thank you, gentlemen. (Applause.) (See page 1X for material submitted by Mr. Ferrara.)

SENATOR BEDELL: Thank you.

Mr. Ted Cline.

T E D C L I N E: Mr. Chairman, I don't have many words to say. I drove two hours to get here this morning. I am from Glassboro, New Jersey. I am an ARCO dealer. I am here in favor of this rent control bill. I think it is something that has to be done and that is reasonable.

Prior to our increase from Atlantic Richfield, which took effect

April 1st of this year, I was paying a flat rental of \$860 a month. Starting in April there was an addendum in the lease which stated, basically, that at any time in the future they could, due to circumstances, change a rent from a flat rental to 2 3/4 cents per gallon. Okay? I pump close to 200,000 gallons a month. That increased my rent from \$860 a month to over \$5,200 a month. I have been paying that for a long time now; since April.

I have heard some of these gentlemen talk about the 16¢ profit margin. That's a bunch of bull. I have been working on 6/10ths of a cent for the past -- I guess three months now. So, last Thursday I sat down and I said, "I'm not going to make it paying this rent." So, what I did is, I went up. I am now making 2.85¢ per gallon to hold my volume up and compete. We are very competitive in South Jersey. I don't know what the situation is here in North Jersey.

You know, they talk about prices going up if they put this rent control on. My prices are going up because I can't afford to pay the high rent. That is basically the whole thing.

So, if anybody in this room from any of the oil companies can state to me that it is reasonable that my rent go from \$800 a month to \$5,000 a month, I would like to hear their reasoning.

That is basically all I have to say. I just ask that you consider the facts that I gave you. I am not like a lot of dealers. A lot of dealers -- maybe their increase wasn't that high.

The key thing to keep in your mind when you are considering this is the \$800 to \$5,000 a month; that's what I'm paying. I sure wish you could do something about it. Thank you.

SENATOR BEDELL: This part of the documentation submitted to us by Mr. Ferrara, is this a questionnaire that you answered?

MR. CLINE: Yes.

SENATOR BEDELL: That is yours, is it not?

MR. CLINE: Yes, it is.

SENATOR BEDELL: Are those figures substantially correct?

MR. CLINE: Right now they are, yes.

SENATOR BEDELL: Would you read them into the record, please?

MR. CLINE: Yes. It says: Three bay station, base gallonage - which is 160,000 gallons - and the rent paid in June of '73. I was not there in June of '73; I took the station in September of 1978 and my rent then was \$860.

Question: "Do you have a three-year lease?"

Answer: "Yes, I do.

Question: If so, list the proposed rents in each of the three years.

Answer: June, '79, which was \$860 at the time; June '80, \$4,000; and June '81, and June '82, right on up \$4,000 a month.

The only reason this has dropped is they have come out with a new program where if a dealer does 100% of his base gallonage - and mine is 160,000 gallons - after that, he is rent free. So, in essence, instead of paying a shade over \$5,000, if I can get my base out, which I am trying to do - that is 6/10ths of a gallon - I will still be paying \$4,000 a month, which is still over a \$3,000 increase. And, like I said before, I just don't think that is reasonable. I can't stay in business that way, and my checking

account will prove it.

MR. FERRARA: If I may interrupt, I didn't even know he was coming.

MR. CLINE: I made it a point to get my name on this list because that is how strong I feel about it. You have heard from the people that have made their money; you are now hearing from a guy that is not making it.

SENATOR BEDELL: Mr. Cline, The legislators will have to, eventually, resolve this problem. I want to thank you for coming a long distance. The inconvenience you have caused yourself to get up here and get yourself on the record is commendable, sir. Thank you.

MR. CLINE: Thank you.

SENATOR BEDELL: Mr. Alfred W. Sitarski, Exxon Company.

A L F R E D W. S I T A R S K I: Good morning.

MR. FERRARA: Al, I don't hear any applause for you. (laughter)
Al happens to be a good friend of mine.

MR. SITARSKI: Good morning, Senator Bedell and Senator Gregorio. I might add I had the same problem in the Assembly. I had to follow Jerry Ferrara; that's a hard act to follow.

This morning we would like to just mention that I am here representing Exxon, and with me is Mr. Bernard Conner, a retail sales manager, who has the total responsibility for the State of New Jersey.

Just in the way of introductory comments - and I have copies of this for you and for the stenographer - I would like to say that I guess it is no secret that Exxon is very strongly opposed to this rent control bill, A-941. We opposed it in the lower house, and this summer we wrote to each State Senator, asking that the bill not be voted on and that it be given careful consideration in this Committee. We are grateful for the fact that you are doing this.

We would like to explain this morning how A-941 may very seriously and adversely impact upon our company's future commitment to New Jersey. And, by way of background - perhaps this is a little bit of a commercial, but we think it is important - we started doing business and growing in New Jersey over 100 years ago. A lot of our initial operation started right in this very community. We are incorporated in the State of New Jersey. We are a major employer and taxpayer in Union County, Hudson County, Morris County, Hunterdon County, Somerset County, and Gloucester County. But, more important, with our marketing improvement projects that are currently underway, we will touch virtually every community in this State. Mr. Connor will elaborate on this with specific examples that the Committee can take a look at.

Now, during the two major recessions that we have experienced during the 1970's, we were one of the few companies in this State who continued to expand with job-producing projects. Twenty percent of the service stations in the State of New Jersey sell products under the Exxon trademark, and we are proud of that. We have a fine, compatible relationship with the majority of our Exxon dealers.

Now, we will undoubtedly hear many emotional appeals for enactment of this rent control bill this morning, but in our testimony we will explain to you that these arguments in our case are not substantiated by the facts.

Mr. Connor would like very much to address the key issues that this legislation presents. First, it is the State's first entry into the

area of rent control of commercial property. It is not in the best consumer interest, and we think it is discriminatory legislation.

Now, with that, I would like Mr. Conner to come up and present our testimony, if he will please.

B E R N A R D L. C O N N E R: Mr. Chairman, Senator Gregorio, my name is Bernard Conner. I am Retail Sales Manager in Exxon's Northeastern Region. In that capacity, I have the responsibility for Exxon's retail operation in the State of New Jersey. I am here today to speak in opposition to Assembly Bill 941, a commercial rent control bill that would establish a legal framework for litigating any increase in service station rentals in excess of 15% per year.

It is a generally accepted principle that property owners have the inherent right to use their property in any legitimate manner. As a corollary to that principle, if property owners elect to lease their property, they have a right to negotiate rentals in the marketplace. This bill, however, infringes upon that right to negotiate by raising the threat of a lawsuit if the new rental exceeds an arbitrary maximum. Thus, this bill violates basic property rights, free market, and good business principles.

More specifically, Exxon is opposed to Assembly bill 941 because it is unnecessary; it is discriminatory, and it is anti-business and detrimental to the economy of the State.

Furthermore, passage of this legislation can be perceived as the first step to control commercial rents in New Jersey, and may discourage businesses that wish to locate or to expand in the State.

Assembly bill 941 is unnecessary. There are several indications that service station rentals are not excessive. First of all, the dealer turnover rate has been very low. During 1979, for example, Exxon's dealer turnover rate in the State of New Jersey was under 6%. Secondly, the value of the service station business has been increasing when measured by sales of the franchise right by outgoing dealers to incoming dealers. The average fee being paid to incumbent dealers for the right to operate the business - which excludes stock and property - is currently about \$50,000. Individual locations may go much higher. In fact, I know of one that is being sold for approximately \$400,000. Such premium prices would not be paid if rentals were at excessive levels or were adversely affecting the profit potential for incoming dealers.

The fact that rentals are not excessive may also be explained in this context. Service station rentals generally reflect the business value of the property and therefore are set at rates that dealers can afford to pay without reducing their income below attractive levels. A brief explanation of Exxon's rental policy may serve to clarify this viewpoint.

Most commercial rents are governed by a fair return on the investment property. The long-term goal of Exxon's service station rental activity is similar to that of other owners of commercial property: to obtain a reasonable return on current property values, plus a recovery of annual ad valorem property taxes and maintenance and repair expenses. Exxon's rental program permits flexibility within prescribed boundaries to moderate actual rental charges to recognize local market conditions and the current retail service station economy. Thus, each service station rental is

established on an individual basis, according to the conditions affecting that specific location. In establishing proposed rentals, Exxon considers the real property value as well as the business to be conducted on the property. Furthermore, Exxon negotiates all rentals with its lessee dealers. If a dealer presents bona fide evidence during these negotiations that the business or the property value will not support the proposed rental, Exxon will consider the evidence and attempt to negotiate a lower rental. If we are unable to agree on a new rental, our lease agreement provides that each party may secure an independent appraisal of the market value of the property, and that the market value shall be the average of two appraisals, one secured by us, providing the variation is not over 10%; if it is, in that case a third appraisal is averaged in. Our lease agreement further specifies the formula for determining the new rental, using a percentage of the market value of the property as determined by the appraisals, plus certain property ownership expenses.

Exxon has nothing to gain from setting rents which would be unreasonable and which would drive its dealers out of business. On the contrary, we strive to negotiate reasonable rents and to encourage the success of our dealers. Our company relies heavily upon dealers for the distribution of its automotive gasoline products, as evidenced by the fact that over 96% of its branded outlets in New Jersey are operated by independent businessmen.

Another indication that our rents are set at reasonable levels can be found in the relationship of our service station rents to the market value of our service station properties. In 1979, in the State of New Jersey, the rental income that Exxon collected on its service station facilities, less maintenance expenses and real property taxes amounted to less than 3.1%, before taxes, of the market value of these properties. This can hardly be deemed an excessive rental.

Finally, Assembly bill 941 is not necessary to protect dealers from rentals which are allegedly designed to force them out of business so that their suppliers can take over their stations for company operation. The Federal Petroleum Marketing Practices Act, passed in June of '78, already provides that protection. This Federal statute specifies grounds for non-renewal of a franchise, and excludes actions taken by the franchisor for the purpose of converting the leased marketing premises to operation by employees or agents of the franchisor.

Assembly bill 941 is discriminatory and inequitable because it singles out one segment of commerce for what in effect constitutes a limitation of return on investment. It also discriminates within that segment, inasmuch as it applies only to franchisors or suppliers of petroleum products. Many service stations, however, are owned by dealers themselves, or by non-supplier investors. In our case, 45% of the Exxon-branded stations in New Jersey are owned by dealers or are leased by them from non-supplier third parties. These dealers are not covered by this legislation, and do not receive the benefits of its rent subsidies. Thus, these dealers are placed at a competitive disadvantage compared to dealers who lease from suppliers who are covered by this proposed legislation. Another inequity in the proposed bill is that it would not prohibit a third party owner from increasing the service station rent to a supplier, but may prevent the supplier from passing that

increase on to his tenant-dealer.

The imposition of commercial rent controls has always had a detrimental effect upon commercial property. Rent controls drive real estate investors out of the market and ultimately result in the decline of the properties affected. Such controls would be counter to the announced objective of the Byrne Administration, of improving the business climate in the State of New Jersey.

Commercial rent controls, such as those proposed in Assembly bill 941, would discourage the upgrading of properties since the return on such investments may be limited to unacceptable levels. For example, Exxon is currently modernizing many of its older facilities. Our estimated expenditures for this purpose in New Jersey will total between 30 and 50 million dollars over the next few years. Our modernization program reaches into every major community in the State, including Jersey City, Newark, and Trenton. This means that not only dealers, but consumers, contractors, laborers, and suppliers will benefit, as well as will the tax base. Enactment of Assembly Bill 941, however, may have a chilling effect on Exxon's modernization program in the State of New Jersey. This is so because the bill may require a supplier to go to court to rebut a presumption of unconscionable rent increases before being able to earn a fair return on the money invested in modernizing a service station.

At this point, with your permission, I would like to show you some before and after photographs of service stations in New Jersey that we have modernized.

The history of rent controls in other businesses has indicated that they don't work. Such controls are harmful not only to the lessee and the lessor, but also to the economy in general. A commercial rent control bill, if enacted, could result in fewer new and modernized service station facilities. This could cause a loss of investment dollars, a loss of construction jobs, and a loss of taxes that would be assessed on improved service station properties. Ultimately, it could result in a reduction of automotive services and products available to consumers in New Jersey. Most importantly, instead of improving the business climate in the State, the imposition of commercial rent controls, even on only one-half of one segment of the economy, will create an unfavorable business climate in New Jersey.

In summary, Exxon is opposed to this proposed legislation for three main reasons: First, it is not necessary since service station rentals generally reflect the business value of the property, and thus are set at rates that dealers can afford to pay without reducing their incomes below attractive levels.

Secondly, the bill is discriminatory against those who have invested in service station properties, including those service station dealers who own their own stations.

Thirdly, the proposed legislation would adversely affect both the economy and the consumer in the State of New Jersey and could establish the precedent for imposition of rent controls on other segments of commercial enterprise.

Gentlemen, we ask that you recommend against commercial rent control and against Assembly Bill 941. Thank you.

SENATOR BEDELL: You heard Mr. Ted Cline speak before you gave you testimony, and he indicated he had an increase of almost 400% in his rental cost. Is there anything you can think of other than the use of monies to renovate a station -- I am talking about increases that are necessary for taxes, insurance premiums, and so forth -- that could possibly account for a 400% increase over a seven-year period?

MR. CONNER: Mr. Chairman, I think to really analyze the numbers would require an analysis of the investment that the major supplier would have in that particular location, and why the lower rent was established to start off with -- whether it was a start-up rental, or whatever it may be. I really can't answer that question.

SENATOR BEDELL: I am not trying to put you on a spot, please believe me.

MR. CONNER: I understand that. Maybe looking at some averages might help. Mr. Ferrara had indicated that in 1979, according to his survey, I believe it represented a 33% increase in rental for the same period of time our average in the State of New Jersey was 7.44% increase. You must remember we had about 20% of the stations flying our flag then in the State of New Jersey.

SENATOR BEDELL: You say your average increase was 7.44%?

MR. CONNER: Yes, 7.44%.

SENATOR BEDELL: Can you tell me also what "express service" means on your stations?

MR. CONNER: Express service is supposed to mean virtually what it says: It is a "gas and go" attended service facility to the customer. There is a limited amount of service available, where the attendant will handle the pump nozzle and complete the transaction.

SENATOR BEDELL: There is no service to automobiles, such as mechanical work or anything else?

MR. CONNER: That's right.

SENATOR BEDELL: Because I noticed both examples. I think at least one that you have given us shows a full service station, and now since it is renovated it is an express station, which means full service is not available to the motorist at the station.

MR. CONNER: Yes, it is self-serve. Our modernization program that we have underway right now has 17 complete demolish and rebuilds -- oh, excuse me, it is 16 -- seven of them would be without bays and nine would be with bays.

SENATOR BEDELL: Thank you very much.

MR. CONNER: Yes, sir.

SENATOR GREGORIO: Mr. Chairman, it has been mentioned several times this morning that this would be the first venture into controlling commercial rents in that segment of the economy. Is there anyone here who can tell me in what other area the selling price is controlled?

MR. CONNER: I'm sorry, I don't understand your question.

SENATOR GREGORIO: I really don't like to go into this. I am against controls, basically, but the price that they can sell their product for is controlled, and if you can control that and not control their expenses, there is some inequity there.

MR. CONNER: I understand what you are saying. You need to remember that the maximum allowable margin now is, I believe, 16.8¢. I believe a survey would indicate that it is something less. Our survey indicates that it is somewhere around 15¢ or less right now.

SENATOR GREGORIO: Is that gross or net?

MR. CONNER: That is a gross margin to answer your question. One of the things that you do need to remember in considering that relationship is that there is no requirement, or there is no assurance, that the supplier's product will be sold through a leased location. In fact, if I recall, at the end of October there were 50 Exxon stations that were selling non-Exxon motor fuels. So, to insure a return on investment properties, it needs to come to a reasonable return on investment.

SENATOR GREGORIO: Your method of coming to a price on the lease seems to me to be fair. I would like to ask Mr. Ferrara if other companies use that same procedure?

MR. FERRARA: Well, I have to say that originally Exxon did not use it either. They did put that 12% thing in there. But, I kind of disagree with that 7.7. There was an understanding with Exxon - let's call it an understanding - that the rents would not increase more than 20%, and in the last year or so, the rents have pretty much averaged a 20% increase. I would guess that I have a good handful of Exxon dealers in here. If Mr. Conner would address them and show them where they average 7.3, it would amaze me.

Exxon did put that clause in. It was one of the first that did. They did come out with three year leases, except that originally the three year lease had the first year's rent locked in, and the other two were blank until there were some negotiations and conversations between myself and Mr. Conner in Houston. In New Jersey apparently until recently -- I thought they did it all over. We had them put in the three numbers. Now, I get a copy of the Exxon Extra, a bulletin sent to their dealers, which says, "we are now giving you three year leases." Now, I begin to wonder what happened to the rest of the country. We did manage to get three numbers in there. Their lease does provide for that 12%. The only hooker is the question, "Is it appraised as a service station business or its highest use?", and that is the area that we are not able to negotiate.

If it is addressed as a service station use, fine; that's an equitable adjustment. But, it is not quite that. They are not the worst of the companies, and they are not the best either. (laughter)

Bernie, I gave you half a compliment; what more do you want?

MR. CONNER: Jerry raised two points that if I may, Mr. Chairman, I would like to address. One was the magnitude of the increase in '79. I did do a profile study on the rents in New Jersey for 1979 in the areas of increases. We had 264 leases that increased between 0 and 5%; four between 5 and 10; fifty-seven between 10 and 15; one hundred and ninety that were 15 or greater, up to the 20 level.

In the areas of decreases, we had five that decreased between 0 and 5%; six from 5 to 10%; five from 10 to 15%; and twenty-five greater than 15%. So, we had five hundred and fifteen that increased, and forty-one that decreased. The average that we worked out came out to the 7.44.

MR. FERRARA: May I answer? I haven't got those numbers exactly because it is hard to tell a dealer when his increase is. Theirs have been averaging 20 or 25%. The last two I saw recently - which I shall be happy to discuss with Mr. Conner - seem to reflect that their philosophy is changing, but the question in mind is that they got their increases and they are able to get the increases. I can't find much fault with that, but then they should have no argument against this bill. This doesn't say they can't be generous and raise it 7.9; it just says you can't exceed 15%.

This particular company made a point out of the fact that they weren't going to do any remodeling. It was kind of an unfair challenge back in June because they have been remodeling. The stations do look good. But, if you do look, you will find there are more stations being converted to express locations, and Mr. Conner made a Freudian slip when he said "self serve stations."

MR. CONNER: If you have any other questions, I would be glad to answer them. The statistical numbers we have taken directly from the lease. I would be concerned if a dealer had a reduction in rental whether he would have responded to Mr. Ferrara's survey, or - as he wrote - if he considered a 5% increase unfair whether he would have responded to that survey or not.

SENATOR BEDELL: Thank you. We are going to declare a 15 minute recess at this time so everyone can stretch or have a cigarette, or whatever. I want to give the staff a chance to give their fingers a rest.

(Recess)

AFTER RECESS

SENATOR BEDELL: This hearing will again come to order. I going to take the next witness out of order because the gentleman has to leave by train very shortly. Mr. Eugene FitzMaurice and Jessica Korzenecki. They are representing Atlantic Richfield Company.

EUGENE FITZMAURICE: Thank you, Senator. Mrs. Korzenecki will not be testifying. She is here as an observer. I appreciate your taking me out of order, and I apologize if anyone else is inconvenienced.

I would like to truncate my address. I sent all of the members of the Committee a letter, and basically what I said is there. I think some of it should be repeated for the record.

I am always interested in hearing my testimony as reinterpreted by Mr. Ferrara several weeks later. Since I won't be here this afternoon for the second half of this twin bill, I will be very careful as to what I say, and I am sure the Committee will follow my understanding of what I said and his equally carefully.

First, Mr. Riley and Mr. Ferrara both said that there was no pre-emption. Section 2806 of the Petroleum Marketing Practices Act says that all contrary state laws are preempted on questions of termination and non-renewal. Section 2803 specifically gives, as a ground for termination, the failure to pay rent; and 2803 also gives as a ground for non-renewal the refusal, or the inability, of the two parties to agree to rental terms,

or any other important term of the franchise. Now, Mr. Ferrara says that is not correct. However, in my letter I have given you the names of three cases, and the citations, so that your staff attorney can review them. In the Munno case, the Pearman case, and the Kesselman case the rent programs for Amoco, Gulf, and Texaco, three separate companies, were decided by three separate judges in the Federal court in three different parts of the country. Each of those judges, and you have the citations for review, specifically held that they and they alone had the right to interpret rent practices under the Petroleum Marketing Practices Act.

Secondly, Mr. Riley said that Atlantic Richfield has claimed that our rent is regional to New Jersey and that is why we have had to increase it. To the contrary, as I specifically noted in my letter to you, and as I have testified before, our rent is applied uniformly throughout the United States. It is not unique to New Jersey.

Mr. Ferrara also said that a dealer cannot really litigate this type of question because his legal fees were such that no matter what he saved on the rent he would still wind up losing. The legislative history of the Petroleum Marketing Practices Act, which Jerry said he read this morning at 1 o'clock, specifically provides that a dealer is to be given all of his legal fees if he only reaches the level of a temporary restraining order. In other words, if he goes to court the day he gets a notice and doesn't like his petroleum company, and he says, "I am going to be put out of business by this", if he can just show the judge that he is entitled to a hearing, all of his legal fees - even if he loses - from that time forward are paid by the petroleum company. He is entitled to a full recovery. It is a form of pre-paid insurance plan, which I know Mr. Ferrara is familiar with because he was one of the authors of the bill in Washington, as he has told us today. So, the dealers are entitled to get their money back.

There was a question about dealers not being able to buy gasoline from other companies. Obviously, if we have an Arco station, we want an Arco dealer to sell our gasoline. The Landum Act, which is a Federal statute, provides that if he is selling another type of gasoline, he must deidentify the station so the consumer is not misled. In other words, if he buys gasoline from "X" company and he puts it through our pumps, he has to put a sign on the pumps that he is not selling Atlantic Richfield gasoline. That is not a ground for Atlantic Richfield to terminate his lease, or to refuse to renew his lease the next time around. It is a ground for us to be unhappy about the whole situation, but as long as he advises the consumer of what he is selling, he is protected in that case.

Finally, Mr. Cline gave some testimony. I don't know the specific numbers of his station, but perhaps I can answer your earlier question, Senator, and make one observation. Mr. Cline said, incorrectly - and I am sure it was not intentional - that Atlantic Richfield put an addendum in the leases on April 1, 1980. In fact, all of our leases, including Mr. Cline's, had the addendum from 1977 forward. Our lease, from '77 forward - and I believe he went in in 1978, and I will give him some of my time if I misstate any of this, of course - our lease required all dealers to pay 2.75¢ per gallon in rent, which is what Mr. Cline is paying at this time. We also gave our dealers an addendum which said that in light of the competitive

situation, in light of the difficult factors they were facing in the marketplace, they would only have to pay 1.75¢ rent per month, or a flat rent. And, 96% of our dealers, nationwide, took the lower rental option because it worked out better for them. It specifically said in there, however, that with 90 day's written notice, Arco could go back not to a new rent but to the rent the dealer had agreed to pay when he or she came into the station, in some cases as much as three or four years ago.

Last December we sent a notice to our dealers that beginning April 1st of this year their rent would go up not to a new rent but to the rent they agreed to pay when they came in, and that is the 2.75¢ Mr. Cline is paying now.

The whole purpose for the lower rent was to let the dealers increase their volume and improve their competitive situation. So, what we are talking about is not a new rent but rather a rent that was agreed to earlier.

Let me turn only to one other aspect, because I know there are a number of people here who have touched on various aspects of this bill, various questions, and you are going to hear it again. You have been very generous about time. This bill, as Mr. Riley was candid enough to tell you in late October, specifically is directed at Arco's rent, and it is retroactive to preempt our rent, which went into effect on April 1st. Now, in my letter, and I think it is worth noting for the record, the New Jersey courts have consistently found that this Legislature can make a law retroactive if it says so specifically, but only where substantial constitutional rights are not affected.

Section 10, Article 1 of the United States Constitution prohibits any state law which impairs the obligation of contract. The courts of New Jersey have applied this in rent control cases repeatedly. In the case of *Ingram v. the Borough of Fort Lee* - and I won't give the pages where these can be found because it is in the copies you already have, it was a residential rent control case - this State's Superior Court specifically held: "The right of a landlord to freely contract with a tenant falls within the protection accorded private property by the United States and New Jersey Constitutions." They relied on the U. S. Constitution, Amendment V, and the New Jersey Constitution, Article 1, Paragraph 1. The court went on to state that even if you specifically say you want a bill to be "retroactive", "Even with express retroactive indication, such legislation will not be given effect if express constitutional provisions are abridged." The provision is so strong in the New Jersey Courts in rent control cases that in the case of *Lutz v. Goldberg*, one landlord tried to impose a higher rent which both State and Federal agencies made him lower. A court then let him go back to the higher rent. They also ordered the New Jersey tenant to pay the difference for the months that that person enjoyed the lower rent, specifically holding that you cannot have retroactivity in a rent control situation.

I might note that for Atlantic Richfield Company, we have thousands of contracts in this State that have nothing to do with retail service stations. We have a port facility, numerous miles of pipeline, we sell chemicals and other substances, as do other companies. We have to be able to believe that our contracts are valid and will be upheld. We recognize the right of the Legislature and the obligation to be concerned about a vital segment

of our competitive economy. At the same time, we have a right to be concerned that we must be able to enter into contracts which are valid.

We have a contract with people to operate a dock facility in Newark. If those people, three years after the fact, decide they didn't like the dock facility and are able to have a bill introduced to the legislative process, then we can't rely on having docks in Newark, or pipelines in New Jersey, or the sale of chemicals or fertilizer or other products. I think that is the paramount legal question that comes first.

Whether or not the bill is preempted by the Federal PNPA -- we say that it is and some other people have held that it is not, and that, I think, the courts have ruled in our favor.

But, specifically - and I will allow other people to talk about the other issues - I think that the primary legal problem with this bill is that it attempts to be retroactive, impairing contracts, and both the New Jersey Courts and the United States Constitution have specifically held that this cannot be done.

If you have any questions, I would be happy to try and answer them.

SENATOR GREGORIO: I would like to get the preemption settled. Jerry, in a very nice calm way, let's see what you have to say.

MR. FERRARA: The last hearing Fitz brought in his boss from Las Angeles, and I thought there was going to be two on one today.

MR. FITZ MAURICE: Jerry, two of us would never bother you.

MR. FERRARA: No, I don't think so.

I published the preemption. You have a copy of that section on preemption. Fitz, you referred to a section -- would you give me that number again? You just gave it to them.

MR. FITZ MAURICE: 2806 is the preemption, Jerry.

MR. FERRARA: 2803?

MR. FITZ MAURICE: No, 2806 is preemption.

MR. FITZ MAURICE: Yes, but I am right; it is 2803.

MR. FITZ MAURICE: All right. I'm sorry, 2802 (3) A - "For purposes of this subsection, the following are grounds for non-renewal of a franchise relationship: A. The failure of the franchisor and the franchisee to agree to changes or additions to the provisions of the franchise if they are the result of determinations made by the franchisor in good faith in the normal course of business, and such failure is not the result of the franchisor's insistence upon such changes or additions for the purpose of preventing the renewal of the franchise relationship." In each of the three cases that I cited to you, and which are available from the Attorney General's Law Department, specifically a federal judge found that if the rent was applied uniformly in a trade area that it would not be held to be in bad faith, and it would not be held to be done for the purpose of putting a franchisee out of business.

Our rent is not uniform in a trade area; it is uniform nationwide, in each of the 31 states where we market. That is far more than the requirement of the federal courts.

Subparagraph (c), also of Section 2802 provides: "An event which is relevant to the franchise relationship, and as a result of which

termination of the franchise, or the non-renewal of the franchise relationship, is reasonable includes such events as," going over to the next page, subparagraph number 8, "a failure by the franchisee to pay the franchisor in a timely manner, when due, all sums to which the franchisor is legally entitled." Again, in those three cases, the dealer refused to pay the rent, claiming that it was improperly applied to him, and all three federal judges ruled in favor of the oil companies.

MR. FERRARA: Gentlemen, I introduced a letter which showed you what negotiations were all about. Cancellations, that's what the negotiations were. This thing doesn't say anything about rent. It said if you can't agree. But, there are no negotiations.

If he fails to pay a bill -- a fellow wrote a check for rent. He was 20 day's late and they sent him a cancellation notice.

MR. FITZ MAURICE: Who is "they"? Not Arco.

MR. FERRARA: When we are talking of the industry, all of you are not angels and all of you are not bad.

MR. FITZ MAURICE: I can't respond for that company, Jerry.

MR. FERRARA: There is nothing in that pact. Now, I am not an attorney. Rent wasn't even a subject. It wasn't even a subject of PNP. In fact, Senator Scoop Jackson wanted to pass a rent bill. It wasn't even a subject. Not paying timely debts or not agreeing -- but, how the hell can you agree?

You cite Munno v. Amoco, right?

MR. FITZ MAURICE: Yes.

MR. FERRARA: That was ruled against the dealer, and the ones you cite -- only because they refused to pay the rent. That was the subject of negotiations. He didn't have negotiations up to that time. What recourse has he to go to court? They ruled against him because he did not pay in timely fashion -- not whether the rent was discriminatory or not.

MR. FITZ MAURICE: No, no, that is not correct. They specifically held that a rent by itself is not discriminatory if it is applied uniformly in an area where they trade, such as a state, or in some cases one area -- like New York City would be a trade area as opposed to the whole State of New York. That by itself is the test that the federal courts have put down if the rent is applied uniformly to dealers.

Obviously, if we go to Mr. Cline and for some reason his district manager doesn't like - and I apologize for singling you out, but you happen to be here - Mr. Cline and we decide to charge him \$20 thousand a year, or \$50 thousand a year in rent, and he can't pay it, to put him out, and we charge the man two miles up the road \$1,000 a year because we like him, then obviously that is discriminatory and that should be stopped by the courts. That's the purpose of the act. But, where the rent is applied uniformly in a trade area, and we do that nationwide, the courts have said by definition it is fairly applied. It is a business situation and some people are not going to like the rent they are being asked to pay.

In the case of any of the Arco dealers the rent was uniform for many, many years before we activated the rental addendum on April 1st of this year. In '76, '77, '78 - when he came in - and '79, the rent was uniform.

MR. FERRARA: Can I make just two points? I know this isn't an

area for debate. Number one, these rent contracts have a minimum in them, and they arrived at the minimum in Arco's case by using a percentage of the gallonage. What was it 85%? That shows you how it was arrived at.

With this addendum, the dealer was encouraged to give his profits away, and I have dealers in here who will vouch for that, to increase his gallonage, and then, subsequent to that, we had the 85% adjustment for the minimum. So, the minimum is discriminatory in that it depends upon whether the dealer was competitive or not. And, assuming the fix is right, then in the testimony you heard before about different rents based on different areas he just said that was discriminatory. So then, let's pass a bill for that.

MR. FITZ MAURICE: No, that is not what I said, Jerry. As I said earlier, it is always interesting to hear you say what I said I said. (laughter)

MR. FERRARA: That's why I didn't want you to leave.

MR. FITZ MAURICE: In terms of different areas, if a company within a trade zone changed different rents to dealers who are only a couple of miles apart, where the basic costs are the same -- that's what the law was getting at and trying to protect against. We recognize that marketing people can make mistakes, or that they can have favorites, or that there are people they don't like. That is the purpose of the Petroleum Marketing Practices Act.

What the court is talking about when they say "uniform in a trade area" doesn't mean that a dealer in Newark necessarily pays the same rent as a dealer in Pheonix. If he is an Arco dealer, he does. Other companies may have it different. The courts only require it in a trade area. Now, I can't say what a trade area is for each company. Their own legal people have to advise them on that. But, we recognize that there is discrimination up and down the street, for whatever reason, and there ought to be protection for the dealers. That's why they passed that act, and that's why you have the act that you passed in the State of New Jersey earlier.

MR. FERRARA: I would like to read this: "A court has upheld a major oil company's effort to raise the rent of a Connecticut leasee dealer from 200% to 300% despite certain protections for marketers under the law." That is Munno v. Amoco.

There is nothing that says that the legislature cannot address a problem. So, the court recognizes the law. The case that featured the Franchise Act that was carried up to the Supreme Court was a case that was based previous to the passage of the Franchise Act, and the court held that the judge had the right to recognize what the public interest was when the legislature passed the Franchise Act. In the Munno case, the guy was being cancelled out before the passage of the act.

You know, if all the lawyers were right, there would be no court cases. Thankfully for the economy of the country, they are not all right. I think that this legislature has the right, and I will stand here and say, here is the legislative record of the PNP hearing, and there is nothing in here that referred to rents at all. They were not considered. And, the intent of PNP was to make things equitable. We will be back. Before the Franchise Act in New Jersey, I told Lee Majors at a Marketing hearing that unless they gave us something like a shopping center lease we would be back. And, if they keep putting holes in this bill, they may wind up

with something. That is a speech, by the way.

MR. FITZ MAURICE: Yes, I recognized that.

MR. FERRARA: I hope you recognize that.

But, seriously, he represents the legal point of view well, as it applies to Arco. I don't think that Fitz is entitled to represent the legal point of view, per se, of what the legislative intent may be in this act.

MR. FITZ MAURICE: Thank you, Jerry. I won't take up your time, Senators, but I obviously read the sections that I think are relevant. We do have legal advisors who can counsel with you, and there are attorneys on the committee as well, and I think that you can read the cases as well as Jerry and I can stand here and debate them for you.

SENATOR BEDELL: Thank you.

Our next witness will be Mr. William Moore. I believe Mr. Moore is from the Rossi Oil Company.

W I L L I A M M O O R E, III: That is right, Senator. My name is William Moore, III. I am President and owner of Rossi Oil Company, a gasoline jobber, selling Shell gasoline to thirty branded stations in Southern Jersey. I purchased Rossi Oil in 1976, and with other assets bought twelve of the thirty stations for an appraised cost of \$714,515. The total monthly rent was, and still is for those twelve stations, \$1665, or \$19,980 per year. Without the cost of taxes, utilities, or maintenance this is only a 2.8% return on my investment. And, if I subtract taxes from the rent, my return is less than 1%; it is at 0.6%.

I would just like to refer you to the chart that I passed around. By the way, I don't see any of my dealers here. They are happy with their rents. My average rent for a four-bay station I have is \$300. I have a two-bay station, and the rent is \$60. Most every station that I have has at least two bays. I have some three-bay out of those twelve, and they are all modern, Shell ranch type stations. The total taxes for those properties is \$15,000, and I only collected \$19,980 in the rent alone. Also, the average rent that Jerry was mentioning earlier was between 2¢ and 5¢ a gallon. My rent is less than a penny a gallon; it is 0.7¢ a gallon. So, you might know we are in area down there where prices are not as much maybe, but this is what Mr. Rossi had at the time I bought the stations, and these are still the same rentals that we have had.

My investments and costs may not be as large as the major oil companies, such as Exxon or Mobil, but Shell's average monthly rent is ten times my \$139 per month, and I am sure their average station is not worth ten times, or \$600,000 in New Jersey. You could buy most of their stations for around \$200,000.

I am glad all thirty of my gas stations had service bays. During last year when we had another shortage, the stations with the bays could survive because they lost their profit on the sale of gasoline. We didn't have any gasoline to sell. I believe the rent control bill will have no effect on the price of gasoline, since right now the station gas price is controlled by the Department of Energy and dictated by our competition, like this young man here, and competition from major oil company stations holding down prices.

I have a station near his in Clayton. He is \$1.19, and I heard him mention a little earlier maybe \$1.12 or \$1.13 for his regular. So, the competition is holding down the price, not the rent.

I am sure that the 15% rent cap would be an economic hardship for the 75 New Jersey gasoline jobbers, which Fran Haviland had mentioned, such as myself, since ten years ago the jobber covered his cost with his margin in selling gasoline, but today our margins are controlled by the Department of Energy, the same as the station dealers.

I appreciate your time, and thank you for listening to my testimony against Assembly Bill A-941. Do you want to ask any questions?

I came from further than Glassboro; I came from Vineland -- okay?
Jerry, okay?

MR. FERRARA: Fine.

MR. MOORE: I am for Jerry, but I am against this bill. (laughter)

MR. FERRARA: I think we can find out that you are for this bill.

SENATOR GREGORIO: Mr. Chairman, could I ask you through the Chair to have our attorneys investigate the problem of preemption and give us their opinion of that, and also I would like them to research the constitutionality of the retroactivity. If the bill is passed or if it is not passed, I would like to know the constitutionality of that before we go any further.

SENATOR BEDELL: Good point.

Mr. Mark Winder and Mr. William Ramsey.

M A R K W I N D E R: Chairman Bedell and Senator Gregorio, my name is Mark Winder. I am the Sales Manager for Shell in the Newark District, which means simply that I am responsible for all the marketing of oil products to the resellers or service station dealers in the State of New Jersey.

I have just just recently arrived in this assignment, having had a similar one in the Washington-Baltimore-Northern Virginia area.

Unfortunately, the District Manager, Bill Ramsey, is out of state on an important meeting and could not be here today to directly testify on this bill. Being new, I see some unusual circumstances, having to debate the Executive Director of the Dealers' Association; but that is fine if the facts all do get out.

I do see a lot of our independent Shell dealers here and independent businessmen, which I salute at this time for their efforts out there in trying to make a buck as well - and that is what it is all about.

Under question today is certainly the area of profits. Fortunately, many of us think that it is not a dirty word and that it is necessary to strive in this business and to advance in the area of energy and our energy problems.

I do not have a prepared statement to make. You have received, I am sure, a letter from Mr. Ramsey, which I would like to record for the record that it has been sent to each one of you, stating Shell's specific positions. It mentions in there some facts and figures as far as rentals are concerned.

All I would like to address myself to today is the economic issue, if you don't mind, not the legal or the other factors. I will try to make my comments as brief as possible.

We recently completed a dealer-rental analysis. And, by the way, we do have dealers in this audience today that were submitted rent proposals and they were negotiated downward. It is on a fixed figure, per se, as has been indicated somewhat.

As briefly as I can, in total rent paid to Shell - and this is from proprietary information that I want to go on the record - by 228 service stations in 1973, the total rent paid by the independent dealers, was \$3,281,000; in 1979, by 198 dealers or 30 less, the rental paid was \$2,798,000, or, on an average total service station, in 1973, \$1200 a month versus in 1979, \$1178 a month. Now, based on constant dollars, there has been about a 37 percent decrease in rentals paid; and, based upon the Department of Commerce Consumer Price Index increase of 57.3 percent, we can get into deflated dollars of approximately \$748 in 1979 versus \$1178 actual. I know this may be confusing, but I will have a report here to submit to you for the record.

The investment value in 1973 went from \$27,500,000 to \$33,128,000; or investment per station, from \$120,000 to \$167,000; for the taxes and maintenance, going from \$1.5 million to \$1.9 million; expenses going from \$6,800 to \$9,700 per month from '73 to '79. The return on investment went from 6.2 percent in 1973 down to 2.6 percent in 1979. This all was in the face of average dealer gasoline volume from \$75,000 to \$72,400.

There are a couple of other figures in here that you may be interested in. But what it does point out is that, while in many cases our dealers have seen a considerable increase in their monthly rental, I would like to propose to this Committee that in many cases this rental was not correct and improperly administered in the past to allow us to obtain a fair return on our invested capital. What is

at stake here really, without making any threats, is: Do we want to be in business in the State of New Jersey? We want to be in business for our stockholders so that we can get a return on invested capital. If we are prohibited from doing this, due to mismanagement in the past or whatever it may be, by these severe restrictions, then, of course, it is a question of: where do we want to market? That is something that should be considered not only by the Committee, but also, of course, by the Dealers' organization as well. And this would present severe questions to oil companies, such as ourselves, that do market and do wish to continue to market in this State, I might add.

I think that the important reason for the passage of any bill is to show need. While there certainly are individual circumstances where a dealer's income has been severely reduced for whatever reasons, I would say on a general basis from E. K. William, or any of the bookkeeping services we could possibly gather, the opposite is fact. Dealers' incomes have doubled and tripled in many cases. While it was mentioned by Exxon as far as goodwill being paid, in many instances we have seen it from sixty thousand to two hundred thousand and above as well. That is a resemblance and a symbol of the business value. And that is good. That is positive. That is healthy in the business and we salute those people that can build their investment up to that point and be able to take advantage of that.

In response to several of the comments - I had a lot of other things to talk about, but it would be redundant, due to the testimony of Exxon and others - Mr. Ferrara mentioned that there is no similarity to shopping center leases. That probably is true and perhaps that might be a good thing. Our rentals are flat rentals; they are not a gallonage rental. The dealer does have incentive to increase his business through good marketing practices. There are good reasons to increase his hours, which have decreased considerably, as you as a consumer know out there. He has a flat rental, as I mentioned, not on the basis of square footage that a shopping center does. He does not have a rental based on a percentage of the gross profits or net sales like many of the retail businesses have - and perhaps that is good.

As mentioned before, the PMP Act has given him almost exclusive right to that franchise as long as he does not have a criminal record in effect.

We do not see the demise of the dealer. We see the demise of the unprofitable service station and the dealer who does not perform good marketing practices. And there should be no protections for that type of activity.

One beautiful thing about this country that we have today in this private-enterprise, capitalistic system, or whatever it is, is that we do have the right to succeed or fail on the basis of our own abilities. And God help us to continue to always have that right.

I will not continue any further and will open myself to questions.

SENATOR BEDELL: I would like to attempt to get to something that I have been missing along the way here, talking about averages and what they might reflect. But there is a decided difference because if you pump into those averages those stations where there are modest increases as opposed to those who have perhaps in my mind exorbitant increases, you would get a lesser figure. We are concerned about those exorbitant increases.

I have before me part of a questionnaire I think Mr. Ferrara sent down. This one concerns a Shell dealer, Landing Service Center. Mr. Robert Simon is the owner. It is Landing, New Jersey, in Morris County. In May, 1973, the rent

paid was \$880; in May, 1978, \$1260; July, 1979, \$1500.50. So between May of '73 and May of '78, five years, we see about a 50 percent increase in the rent; and, in July, 1979, in six years, almost a 100 percent increase. In a case like this, what do you predicate the specific increase upon? How do you build up that figure?

MR. WINDER: We could almost be repetitive of what Exxon indicated in their testimony. It is based on the property value, appraised market value of that property as a service station site. It is based on taxes. There is a regular formula that we use to determine what the return on investment will be on that. We are targeting now for basically a 12 percent return seven years hence. We have that target figure that we shoot for to meet in that seven-year period: a 12 percent return on investment, which is the basic average in all industry. But we have the current land value, the improvement value, whatever it may be, the equipment, taxes, ground rental in the case of a ground rent. All those factors are incurred in there. We do have a formula for that that we go over at the dealer's request - and this has been of recent nature - and we do want to sit down with him and go through that entire process with him, how that has been arrived at.

SENATOR BEDELL: I am not singling Shell out. I could have taken any oil company.

SENATOR GREGORIO: Mr. Chairman, I would like to say that it seems to me no one likes to pay an increase in rent. But I am sure it is a necessary evil. What we are trying to do is stop the individual cases where there is gouging and unconscionable increases. I have received a lot of mail on both sides of this question. Just yesterday, I got a mailgram. It says, "Today, I received a renewal lease from Shell Oil Company, indicating a 76 percent, first-year rental increase. Obviously, I urge your support of Bill 941." That, to me, sounds unconscionable - 76 percent.

SENATOR BEDELL: May I suggest that perhaps the person who wrote the mailgram might be in the audience.

T E D S H E R I D A N: I am Ted Sheridan. I run a Shell station in Chester. I sent that mailgram. That figure is correct.

MR. WINDER: It is unfortunate that Ted - I will call him "Ted" because I consider him a friend ---

SENATOR GREGORIO: Friends like you, nobody needs. (Laughter)

SENATOR BEDELL: How do you justify that? I know perhaps it is an isolated example.

SENATOR GREGORIO: Was there a big investment by the company? How did it come about?

MR. WINDER: I wish I had been aware of this. I wish I had received a copy of that mailgram and I would have brought for the record here the entire recapitulation of that rental proposal.

SENATOR BEDELL: Okay. That is what I was trying to get from you.

MR. WINDER: It could be all kinds of factors.

SENATOR BEDELL: Could your company give us the information in this particular case?

MR. WINDER: I am sure we could, yes. The situation may be in his particular instance of a very low rental at the present time. There has been a lot of mismanagement on the part of our company, to the point of being discriminatory,

which is an entirely whole other discussion.

SENATOR GREGORIO: You mean you might have gone in really too low to begin with and it is just an adjustment.

MR. WINDER: In the past history of that service station, yes. He might have gotten an introductory type rental that got caught in a freeze, or whatever the case may be. What we are targeting in that particular service station in Chester to do is to be an economical, viable unit for both Mr. Sheridan and for Shell Oil Company down the road. If it can't be, it is not going to be a good marriage for one or the other and we both suffer and so does the consumer. That is the whole purpose of that. But that rental is certainly available to discuss with us and negotiate, for him to sit down with us and talk about it, and for him to tell us what he feels and why.

SENATOR GREGORIO: Could you give us the reason for that type of increase?

MR. WINDER: Yes. We have not asked for Mr. Sheridan's profits that he has made in the service station with these other rentals, nor is it a matter of discussion in this particular case. But there are a lot of factors involved in how these rents are established.

MR. SHERIDAN: Mr. Chairman, if I could, I would just like to point out that the figures that Mr. Winder has given you as far as the average increase and the rate of return that they have received since 1933 --- I just have to point out that right now they are trying to make up for it in a great manner. I happen to be on an advisory board with the Shell Oil Company and am privy to discussions with other dealers as to what the rents are. Maybe in 1979 these increases weren't so great. But what is happening is happening right now, you see. I only know of one dealer that has received a 20 percent increase for the first year. All the others are much more than a 20 percent increase for the first year. Now, we were told by Mr. Ramsey - and it is public information - that the rents were probably going to increase to an aggregate of 20 percent the first year, 25 and 25, for the three-year lease. Now, I only know of one case where he stuck to that or the Shell Oil Company has stuck to that.

Many of these increases are in excess of 60 percent the first year. My rental for the succeeding two years is at 25 percent. But you know we are not talking 15 percent - we are talking about 25 percent on top of this 76 percent increase.

If I may, I would just like to point out that maybe there were some mistakes made. But I did have a three-year lease prior to this which I am living under now that showed 10 percent increases each year. So, it wasn't just a honeymoon-type thing. We did have increases over the last three years at the rate of 10 percent. All of a sudden now, it is a different ball game.

MR. WINDER: Unfortunately, I do not have the figures that Exxon had as far as the number of stations on which we have reduced our rentals in the past year. But I can assure you, gentlemen, we can provide those figures for you. While Mr. Sheridan might know only of those that are in the 60 percent factor, we have made some rentals that are even with or below what they were before, in an effort to level it out and again be on a return-on-investment basis.

I want to say this - and again I don't wish in any way to criticize profits - I think Mr. Sheridan has done pretty well in that service station. We would like to have that service station be a part of the Shell network down the

road. That was one of the considerations, based on the cost of that service station and not receiving the return on investment in that service station, that necessitated this kind of activity. I am sure Mr. Sheridan has done very nicely these past three years and, knowing his abilities, will do very nicely the next three and six and whatever it may be.

But to answer specifically, I would have to get all the details as to why that was.

SENATOR BEDELL: We won't put you on the spot at all.

I think I understood you correctly to say that Shell does negotiate these increases and that there is an area of negotiability.

MR. WINDER: There are some people in this room whose rents we have lowered on the basis of negotiation, yes.

SENATOR GREGORIO: But you haven't begun that with Mr. Sheridan?

MR. WINDER: No.

SENATOR BEDELL: Did you negotiate before the 70 percent increase was arrived at?

MR. SHERIDAN: No, I just received this on Tuesday of last week. When my salesman brought it up to me, he said, "Gee, I want you to have it because the hearing is today." It turned out that the hearing was postponed to this day, not last Tuesday. But I didn't receive this lease until ---

MR. FERRARA: What is the date on it?

MR. WINDER: He should have had that a week or so ago - a couple of weeks ago.

MR. SHERIDAN: I received this on the 25th.

SENATOR BEDELL: That was the date set for the hearing.

MR. SHERIDAN --- the day the hearing was supposed to be. This agreement is dated November 13th.

MR. WINDER: I have got a problem with my salesman.

MR. SHERIDAN: You know, from my knowledge, there may have been some reductions in rent. But Mr. Winder really is referring to reductions in the amount that they started out with. Shell does negotiate and they are very honorable about that. I don't know what is going to happen to me. I'd better be nice to some of these Exxon guys because I am about ready to negotiate this lease because I just received it. I hope it all works out.

MR. WINDER: It is an economic issue. I hope that everybody does understand this. And it certainly is in Mr. Sheridan's case as well.

SENATOR BEDELL: Jerry, do you wish to comment?

MR. FERRARA: I think if you will look through the things I have presented to you, you will see the negotiations in Shell's rents. In one case, we put up a hell of a battle. In fact, I talked to the vice president to get to this 20 percent. But when they started out with \$1500 and thousand dollar increases - you have a couple of leases in there that show a thousand dollar increase the first year - or \$1500 to \$2600 - then negotiated down to \$2500, and you have some others.

From the standpoint of negotiation, I believe that Mark is new in the area and so is Mr. Ramsey, by the way, and that they are embarking on a new tack that they didn't follow before. But the rent drops, Mark, --- you leave the impression that they are only 10 or 15 percent. Take a look at some of those leases. If you want, you can take a look. Those are negotiated rents.

MR. WINDER: With all due respect, Jerry and this Committee, I have not seen any evidence here that has been presented that any dealer with these new rentals has been economically hardshipped to the point of even wanting to get out of the business, let alone being forced out of the business.

Just last week, we made a dealer change. Again, I hate to bring this up; but I want to make sure that all areas of this --- These men out here for the most part are making darn good money and they have every right to make a darn good profit in their business. They are selling these businesses for \$60,000, \$80,000, \$100,000, \$200,000. I had one in Washington, D. C. just recently for \$400,000 - blue sky alone - that is ex-equipment - that is just goodwill for the business. As far as economic hardship is concerned, if there is such a case, then there is a definite concern over something like that. These men out here are our company. We do not have a salaried station in this State. We do not have it in the State of Maryland, by law, of course. But we have a total out of our entire network of less than 80 salaried service stations. Our company is these independent businessmen that you see in this room here right now. They represent us. They work long hours. They work cold, hot, and all the other days. But let's not have anybody here think that we have a bunch of impoverished people coming in here as we have impoverished oil companies pleading our cases, because we don't.

It is an economic issue. We have an obligation to our stockholders to protect them. We have an obligation to our property owners, our investors out there that lease these properties. We do not have the concerns or the protections that were mentioned before in any part of our agreement where this dealer has to buy from Shell. We have dealers out there with gasohol; with diesel from other sources; and, in many cases, gasoline from other sources. We do not have that protection. The protection we have for return on our property is with the rent process. That is why we feel that any passage of any bill setting maximum limits on this is detrimental to our reason for being in the marketplace, and the dealer's reason for being in the marketplace, which are both the same, and that is to make a fair return. And that is what we are pleading to you.

SENATOR GREGORIO: I think you made the best case for the companies so far.

SENATOR BEDELL: I think so too.

Thank you so much.

Mr. Ronald W. Wolsey and Max Porter, Amoco Oil Company.

MR. WOLSEY: Mr. Chairman, I am not testifying; Mr. Porter is testifying.

M A X P O R T E R: Thank you, Mr. Chairman. I am Max Porter, Manager of Capital Investment, Eastern Region of Amoco Oil Company.

I am not going to read all of this statement because some of it is redundant of some of the statements made by the other suppliers. However, I will read the parts that reflect the statistics relating to Amoco.

We have 309 direct delivered accounts in New Jersey, 156 of which would be adversely affected by the passage of A-941. Of these 156 accounts, only 46 are company owned where we own the land and the buildings. One hundred and ten, the remainder, or 70 percent, are owned by private, third-party individuals who lease them to Amoco Oil under various terms and conditions. These 110 have rent increase clauses in their lease with us or are subject to re-negotiation at frequent intervals. Private property owners expect to receive a fair market value rental on land and buildings they own and, in fact, insist upon it. The proposed bill will

limit our ability to recover this increased rent and adversely impact on the long-term viability of those service stations, and may preclude them from remaining in our system.

The proposed bill does not affect almost half, or 49 percent, of the service stations currently in our system. One hundred and fifty-three of the 309 direct accounts are owned by private individuals who have invested in or leased their own facilities. Amoco merely acts as their supplier of petroleum products. These dealers are faced with the same type of investments and rising costs as Amoco Oil or any private property owner. Thus the bill does not affect all dealers, only some dealers who lease their real estate and improvements from distributors of petroleum products.

In 1974, Amoco had 166 rent-paying direct accounts operating in New Jersey. Our total annual rent income from those accounts was \$1.5 million. In 1974, our average volume was 349 thousand gallons per year, per station. So the average rent income from these accounts was \$657 per month. By 1980, average volume per account had increased to 560,000 gallons. At the same time, the average rent income to Amoco increased only \$290 to \$950 per month, an average of less than 8 percent per year. In 1980, the average rent income to Amoco went to 2 cents per gallon, from 1.9 cents per gallon in 1974, an increase of only 1/10th of one cent in a six-year period.

During the last five years, Amoco rent increases have lagged appreciably behind volume increases. At the same time, other costs associated with the operation of our physical facilities - maintenance, taxes and depreciation - have also escalated at rates in excess of our rent increases.

The point is that during a time frame when rent increases under DOE regulations were not prohibited and dealers, in turn, could have passed those increases to the consumers, Amoco implemented only modest changes. This demonstrates that legislation may not be in the best interest of the dealer.

Now, I am going to skip down to the middle of the next page.

It is true that our company is now looking at future rent increases which will take into account the market value of our properties, much as what you heard from Shell and Exxon. But that is no different than other commercial property owners have been doing all along.

Prohibiting a fair market value rent return, as A-941 would do, will have several adverse effects on the New Jersey consumer. One is that real estate costs which cannot be recovered from rents would have to be passed through to the consumer in the form of higher gasoline prices. A second is that when service stations become unprofitable, they have to be removed from the system. Presently, fortunately, 5 percent or only 15 of our stations in the New Jersey area already fit that category.

Amoco's obligation to its shareholders is to earn an adequate return on their investment. This means that the present use of a piece of property is in competition with its market value for other potential uses, such as McDonald's restaurants, banks, cleaners, etc., and is not perpetually dedicated to service station use.

Let me remind the Committee that, in many instances, our service station dealers use our property for generating income in many ways other than just selling gasoline. A two-, three- or four-bay service station is not needed for the sale of gasoline, but it is needed by the dealers to generate income from the sale of motor oil, tires, batteries, automotive accessories, motor tuneups, state

inspections, etc., which are very profitable to the dealer. If we can't secure an adequate return from the dealer for facilities which enable him to generate income, why should we continue to invest or retain our investment in them?

Dealer expenses have increased - we all know that - but so have their margins and volume. Margins in New Jersey have increased from about 6 cents per gallon in January of 1979, on regular gasoline, to about 11 cents per gallon in October, 1980. That is a weighted margin, I believe.

I have stated previously and I want to re-emphasize that average dealer volume per station has increased substantially. Coupled with the aforementioned profit margin increase, the dealer markup on gasoline since January, 1979, to October, 1980, has gone from about \$35,000 to over \$61,000 annually, or has increase 76 percent in this short period of time. During the same period of time, the average rent for Amoco dealers has increased less than \$120 per month. Labor costs, utilities, and other operating expenses of the dealer have also increased during that time, as has every other businessman's. Rent increases on the part of Amoco are not really a contributing factor.

I would like to skip over to the last page.

Without anticipation of restrictive type legislation such as this, Amoco has increased its net investment in marketing facilities in the State of New Jersey by over one and a half million dollars during the last two years. As an aside, I shutter to think that Exxon is spending thirty to fifty million over the next few years. To the extent that New Jersey becomes increasingly inhospitable to service station investments, it will be the motoring public who pays the price in less competition and lower product availability.

Gentlemen, are there any questions?

(Complete written statement submitted by Mr. Porter, can be found beginning on page 22X.)

SENATOR GREGORIO: I don't have a question, but there is one paragraph that you left out that I have been thinking about. It is on page 3, the third paragraph. (reading) "Maximums tend to become floors. Prudent management will be inclined to increase the rent each year to at or near the maximum to avoid being caught short somewhere along the line." I was wondering, Jerry, if you are worried about that. It seems to me if I were a company, I might just go along with an annual 15 percent increase whether it was needed or not.

MR. FERRARA: Well, that could be a factor, except that considering what the rent increases are, 15 percent might be a little more equitable. I would like to have a bill that says, if they can justify the rent increases - that has been our whole point --- if they justify the increase in any amount, they be permitted to do it.

SENATOR GREGORIO: The bill now is different.

MR. FERRARA: The bill now says 15 percent. Delaware passed a bill that actually is a little broader than this, in that it just makes them have to justify the rent increases. That is a pretty broad bill. I don't know whether I want to spend that much time in courts. But I am willing to take that bill if they concede that that is what they want.

SENATOR BEDELL: Senator Gregorio expresses a problem we have in the Committee. We think we understand the breadth of the problem. We are not too sure whether this legislation is the best way to accomplish what might be accomplished.

We are a little bit uncomfortable with this legislation. I have the same feeling in my own mind. I don't know what the increases have been that everybody is paying. But it seems to me if you put 15 percent increase per annum in a bill, then what would stop any lessor to just raise it 15 percent a year whether it was required or not because that is a compounding factor too, 15 upon 15, upon 15?

MR. FERRARA: In all candor, the original bill did not stipulate an amount. The Assembly Committee decided that would be basically a reasonable figure. There was a lower figure in there.

MEMBER OF AUDIENCE: You are wrong, Jerry.

MR. FERRARA: I'm sorry. They tied it in with the price --- You're right. I concede.

Actually, the hearing in the Assembly got so damned confused, as this one is drifting all around about economic returns and still equating, as Mr. Porter did, the increase in margin to us to the rent increase, not the overall increase. I would be very happy to have a bill that was more general than the 15 percent. But looking at what we are looking at, we will take the 15 percent. The retro-activity has been a problem. And, of course, the delays in this bill here have worked to the benefit of my adversaries, as you well know. I made that point when, unfortunately, the thing got delayed. So, if we have to settle for 15 percent and not less, we will take that cap. I would like you to remember that there is nothing in this bill that prevents them from getting more. I like to keep reiterating that. I don't think it is lost on the Committee, but maybe it might be lost on some of my adversaries. There is nothing in this bill that prevents them from getting more if they improve, or if there is an equitable return. I will settle for the equities to start with if there ever was any reasonable negotiations. I will take the 15 percent if we have to take it - less, if we can get it. I am sure none of my colleagues on the other side of the room - we have a Mason and Dixon line here someplace - concede that.

SENATOR GREGORIO: There was another paragraph on page 5 that you passed over - the second paragraph. (Reading) "I am somewhat puzzled as to why legislation is being proposed to control service station rents. Does this mean that rents of super markets should be controlled or tied to the price of sugar, flour, butter and eggs?" But there is no price control on those products. If there were price controls on those products, maybe then we would have to look into the possibility of controlling rents in super markets.

MR. PORTER: Perhaps. We, of course, hope that price controls will not be on for long.

SENATOR GREGORIO: It would be a nice world if we didn't have to worry about these things.

SENATOR BEDELL: Thank you so much for your time.

Mr. William Hobokan, Ashland Oil, Incorporated.

W I L L I A M H O B O K A N: Senator Bedell and Mayor Gregorio, my name is William Hobokan. I am with Ashland Oil. Ashland Oil is an independent refiner-marketer. And, federally, this means that Ashland has to purchase at least 70 percent of the crude oil the refines.

Ashland Oil has only 10 retail service stations in New Jersey, all of which are company owned and company operated. You would recognize them as either

Hi-Fi or By-Lo. These stations would not be affected directly by the passage of A-941.

However, we feel that by putting a ceiling on rent increases on those stations which are rented from an oil company, you are creating an inequitable situation to those independent retailers who own their own stations as well as the companies, like Ashland, who own and operate their stations.

Latest figures show that only 40 percent of the retail service stations are rented from oil companies. A-941 would put a cap on the rental of these stations, but 60 percent of the service stations, many of them owned by individuals, would be required to pay the rising costs of property ownership.

Further, in those stations which are owned by the oil companies and rented to the dealer, this 15 percent cap would curtail station improvement and expansion. Investment which could not be reasonably recouped would be deferred. This does not help the dealer or the consumer.

I urge you to study this legislation carefully before acting. This can best be done by asking yourself three questions:

1. Should the Legislature even be involved in rent control?
2. Should the Legislature select one business category, namely, the retail marketing in the petroleum industry, and attempt to control rents?
3. Will this legislation aid the consumer?

I believe that following your study the answers to all three questions will be no and I urge you to vote against A-941.

SENATOR BEDELL: Thank you, sir.

Jerry Dawkins, Mobil Oil Corporation.

D O N A L D L. E A S T M A N: I am here in place of Jerry Dawkins. My name is Don Eastman. I am a district sales manager. I am here on behalf of Mobil Oil. One thing fortunate about being last is that everything has already been said.

I would like you to take a copy of the prepared statement I have. I would also like to have it made a part of the record. The statement will be reviewed later on, I guess, at your convenience.

(Written statement submitted by Mr. Eastman can be found beginning on page 28X.)

On page 3, we have some statistics concerning 98 service station leases that we reviewed. In 1973, the average dealer was paying \$7,422 per year. In 1979, he was paying \$9,470, or an increase in a six-year period of 27.6 percent. During the same period of time, the consumer price index went up 66 percent, the dealer's volume went up 8.57 percent, and, more importantly the dealer's gross margin went up 267 percent.

What we are saying here - and, as I said, most things have been said - is that we are not begrudging the dealer his profits. There is no question about the dealers spending long hours and working hard, etc.

All we are asking is: Because of the profit structure that I have defined or because of the profit structure that has been defined several times during the presentations today, is the dealer so deserving as to receive special protective legislation?

As you saw there, in these 98 service stations, we have only gotten a 27.6 percent increase in the six-year period of time. I believe, Mayor, you asked about page 5 of the presentation before mine, and we talked about the fact that this may

be the psychological effect of a company that has not gotten a fair rental in the past - that it may elect to take the full 15 percent, regardless of whether the competitive situation that the dealer is facing will allow this. So, they arbitrarily would take the 15 percent because of their inability to take the 15 percent down the road to insure adequate return on investment.

So, really, the bottom line from our standpoint is that we feel the legislation is unnecessary. We feel this thing is really designed for a special interest group, but actually when you compare the changes, who owns the stations, who leases the stations, etc, that this very special interest group it is designed to protect could actually be hurt by this legislation. Therefore, we ask you to consider this point when you make your final decision concerning this hearing.

I will be happy to answer any questions you have or that my cross-examiner, Jerry, may have.

MR. FERRARA: I have here a copy - and I believe the Committee has a copy - of the new Mobil lease, wherein in this example, after it shows a 20 percent increase, you reserve the right unilaterally --- I will read it. "The landlord may on 60 days' prior written notice increase the rent for either the GPC," - I will explain that in a minute - "or the APC, or both, by not more than 20 percent, each, for any of the rental periods specified in paragraph A above, effective with the commencement of the rental period as specified therein. If a landlord shall exercise this option, the collection rate will be adjusted accordingly."

Now GPC and APC -- Mobil is a little unique. Correct me if I am wrong. They have a base gallonage rent, 1.6. They have established that pretty much nationally; at least, that's what it is in New Jersey.

MR. EASTMAN: It is nationally.

MR. FERRARA: But they have an APC rent, which is the Alternate Profit Center. That means, your bays - whatever you make there, they have a separate rent there. If, for instance, you put in u-haul or rental cars and they permit you to do it, they have a right unilaterally to raise the rent. The thing I am objecting to is that this is a new addition. In spite of our arguments --- That's why I say I will settle for 15 percent. In spite of our arguments, this particular lease shows a 20 percent increase to start with. Then, give the guy a three-year lease, but unilaterally reserve the right to raise it 20 percent. That was the way the Exxon lease was originally: one-year lease, two blanks. Here in New Jersey, we got three blanks filled in.

Don, this is new, is it not? It is not in last year's lease. This is a new copy.

MR. EASTMAN: I can't see what you are looking at.

MR. FERRARA: I will give you a copy. That is your lease.

MR. EASTMAN: First of all, the new rental that we have - there is an option in there, if we so elect, based upon the circumstances involved at the time of the anniversary date of the three-year lease, to increase the rental 20 percent; we are reserving the option to do so. You are absolutely correct. Again, it is not automatic. It doesn't automatically happen. We take into consideration all the things that are happening at the time of the anniversary.

MR. FERRARA: Without being presumptuous, what alternative does the dealer have? - None. You raise him 20 percent if you so decide and he gets out. He gets another one of these famous cancellation letters. I have one just

handed to me by a Sun Oil dealer - all form letters - like I read to you, with due respect to Texaco - they weren't the only ones. But this is new. Is this not new in your lease? This was not in last year's lease. I just got it.

MR. EASTMAN: That is correct, it wasn't.

MR. FERRARA: I have nothing else to add to it.

MR. EASTMAN: You have got me on the spot here; so let me get off.

MR. FERRARA: Personally, my adversaries are pretty nice guys. If I attack them, it is not personally.

MR. EASTMAN: We obviously update, just like everyone else does, the lease papers, retail contracts, etc. The majority of the dealers involved that are affected by this particular lease will be in 1983. Obviously, there are certain assumptions that we base three years hence - and they are assumptions when you talk about two to three years away. Consequently, if this thing is not right, then it goes back to some of the previous testimony you have heard. You know we are here and we are successful in many cases because of our dealers. Mobil has six company operations in the State of New Jersey out of the 451 accounts we have. We are not going to be stupid and be unrealistic in our rentals. The only reason we have this option is in the event things drastically change by 1983.

MR. FERRARA: The thing about all of you is that you always put the extreme in. You said 1983. That is the last year of this lease. This gives you the right to raise the rent starting from 1981, 1982, and 1983. You have that right every year.

MR. EASTMAN: We have 14 leases coming due under that piece of paper in 1981; 35, in 1982; and 154 in 1983. The reason I mentioned 1983 is because that is when the vast majority of our leases are coming due.

MR. FERRARA: Those numbers threw me because you have more stations than that in the State of New Jersey.

MR. EASTMAN: I will be glad to talk to you afterwards, but the numbers are right.

One last point - our corporation bases our rentals upon the gross profit potential of that particular unit. That is why we take into consideration some of the things that Jerry mentioned, some of the Alternate Profit Centers that are considered under that philosophy. That philosophy is 15 to 20 percent of the gross profit-generating abilities of that particular unit. That is a nationwide policy.

MR. FERRARA: I might point out that we are more fortunate in New Jersey because of negotiations. In these Alternate Profit Centers, for every bay you had, it had to be rule of thumb. If you had two bays --- They started out in California several years ago with \$300 per bay. Fortunately, in New Jersey, we didn't have the same thing. By negotiation, via telephone, because of the unsolicited advice they got from me, we have been able to hold that down a little bit in New Jersey. But I don't know whether it would be a fact if they had carte blanche and there was no ombudsman between, such as I may be, to act. On the West Coast, they start out at \$300 or \$400 a bay where here they are less.

MR. EASTMAN: The numbers I quoted you spelled out on page 3 of the formal statement you have include all rentals, including the gasoline rental and the APC rentals. Those were 4.6 percent in the period of time between 1973 and 1979 for those 98 locations.

MR. FERRARA: Let me just point out one thing so I won't have to bring it up later.

MR. LEONARD H. RUPPERT: Mr. Chairman, we are getting constantly cross-examined by Jerry.

SENATOR BEDELL: You are quite right to an extent. But we had intended to grant some liberties at the hearing today. There are a number of people who could testify today and Jerry is acting more or less as a spokesman for them rather than have everybody in the room speak. That is the reason we are giving him a little more latitude.

SENATOR GREGORIO: I really don't consider it a cross-examination. But it makes it a lot easier for us. When we get on one subject, we can hear both sides of it at the same time and we can absorb it a little better.

SENATOR BEDELL: You can take your shots at him too.

MR. FERRARA: In fairness, Len, I have been accused of coming on after everybody went home. I appreciate the latitude the Committee has extended and I am not trying to abuse it. I am not getting argumentative with them. I am presenting facts as I see them so that they can respond while they are here. The tendency has been to write letters.

SENATOR GREGORIO: They have the same right. If any dealers are speaking and they want to ask any questions, we reserve the same right to them.

SENATOR BEDELL: Are you finished?

Mr. Frederick Handy, Texaco, Inc.

F R E D E R I C K C. H A N D Y, I I I: Thank you, Mr. Chairman.

I do not have a prepared statement. The only thing I would like to do, since Jerry did mention my company in a letter, stating that we had a little trouble with negotiations, is bring a couple of points to the Committee's attention.

Number one, when you send a letter like that out, it is basically an answer to comply with the Petroleum Marketing Practices Act as a formal notice to the guy that we are opening up rental negotiations. If I may refer to that one station that you have the letter about, in that one station the figure was fourteen hundred and some odd dollars, I think, Jerry, from about nine something. That was a figure that was sent to him. That is what we gave him initially. Since that time - since he got that letter - we have negotiated and the actual rental increase is 15 percent over what he had been paying.

As to the three-year rentals - both of you mentioned something about 15 percent a year - that is exactly what we have done on that particular lease. That one lease is going 15 percent a year for the next three years. So that shows you that there is negotiation. It went from 9 to 14, which is a fairly large increase percentage-wise. But when we finally wrote the lease, it came out to 15 percent a year.

I wanted to bring out the fact that there is negotiation. What is said many times in a letter like that as you well know is to comply with the law and make sure the notice does go out. But I would never want it said that Texaco is not willing to negotiate on any of our rentals.

I would like to follow this up, if you leave the record open, with a letter stating Texaco's position.

SENATOR BEDELL: Fine.

MR. HANDY: Are there any questions?

MR. FERRARA: I just wanted to point out for the record that in answer to Len, he asked me for the dealer's name during the recess. I let him read the

letter. There is nothing hidden. And the fact that we have been guiding this dealer ---

MR. HANDY: Nothing is hidden, Jerry, because we wrote the letter.

MR. FERRARA: I am just trying to point out that we are giving him a chance to respond. He had an opportunity to go to the telephone and come back. I am very happy. I want to find out why the dealer didn't call me the other day because if this happened, it happened last week. I am very thankful to Texaco for the dealer.

SENATOR BEDELL: Any other questions?

MR. LANE PAUL: Sir, I have one question. My name is Lane Paul. I am an Arco dealer.

Why didn't you ask for the 15 percent initially? Why did you ask for \$1500 from a Texaco dealer?

MR. HANDY: I can't answer that. All I can tell you is that the rental that we feel is a fair return on investment was the higher rental. And, after negotiating and finding out what the retailer's problems were and explaining our own situation, we came up with a 15 percent increase.

SENATOR BEDELL: Thank you, Mr. Handy.

MR. HANDY: Thank you.

SENATOR BEDELL: Mrs. Jeanne Sieg.

J E A N N E S I E G: I am here because I want to say that the rent increases are unconscionable. You may think that a 100 percent increase is high. That is nothing because our rent went from \$440 a month to \$2,000 - and that is just this year. There is no negotiating with the oil company that we deal with.

SENATOR GREGORIO: May we know what company that is?

MS. SIEG: Arco. They tell you, "This is it. If you don't like it, move down the street."

We are not talking about an equalized situation. We are not talking about any improvement that have been made to the property or anything else. As a matter of fact, what they do is: they induce you to lease their properties and tell you that they are a reasonable company to deal with. Then they turn around when you have built your business and take your income away from you in the form of increases. You build the business so that you can support your family. Then the \$1500 a month we lived on goes back to the oil company. Therefore, you can't support your family.

SENATOR BEDELL: Is there anyone still present representing Atlantic-Richfield? I wondered whether this was an isolated example.

MS. SIEG: It is not.

SENATOR BEDELL: Or what the reasons might be.

MS. SIEG: They have decided to go nationwide to a flat 2 3/4 cents per gallon, regardless of location or anything else. They don't care if it is affordable or what prior promises they made to dealers to induce them to lease their locations. They just did it and that's it.

They have absolutely refused to negotiate in any way.

SENATOR GREGORIO: This increase was due to their decision to go to 2 3/4 cents a gallon? And what did they base it on before when you were paying the \$440?

MS. SIEG: That was the flat rental. We haven't been there very long.

We rented it in '78. In '77, I happen to know that the rental was \$430 per month. So they increased it to \$440 at that time. They put you in on a one-year trial lease to see if you will market their product. Then it was not even 30 days after we signed the 3-year lease that we received notice of the increase.

It is not very easy as a dealer to take these kinds of increases and say, "Well, what the heck, we can pay them a little bit more money," because you base your business planning and viability on the factors that are on hand. It was not even 30 days after we signed the new 3-year lease that we were informed that it was going to increase by \$1500 a month.

SENATOR GREGORIO: At the end of the three-year lease.

MS. SIEG: No, no. At the end of November, 1979, we signed a new 3-year lease. Before the end of December, '79, we received notice that the rent would increase after April 1st, 1980.

SENATOR GREGORIO: I don't understand that. Excuse my English, but if you signed a lease in November of '79, wouldn't ---

MS. SIEG: That was a flat rental.

SENATOR GREGORIO: At \$440 a month?

MS. SIEG: Yes.

SENATOR GREGORIO: So you signed a lease for three years at \$440 a month, is that right?

MS. SIEG: This is what they represented it to be, yes.

SENATOR GREGORIO: Then disregarding the lease that you had already signed which should take it up to '82, they increased it during the present lease?

MS. SIEG: What they did was, as of the end of 1979, they decided to eliminate all their rental addendums.

SENATOR GREGORIO: That doesn't sound legal to me.

MS. SIEG: They have the right to do it.

SENATOR GREGORIO: Jerry, can you explain that?

MR. FERRARA: Yes. I think Mr. FitzMaurice tried to, but he put it on one concept and she has put it on the other leg. What they did with the dealers is get them to sign 3-year leases. It sounds like I am accusing them of flimflamming, but it is not quite as broad as that.

MS. SIEG: You don't have to - I will.

MR. FERRARA: Then they gave them an addendum. They promised them - "Here, this is what your rent is." So, the original lease would have the higher rent in it for three years. They gave her an addendum at the lower rent.

MS. SIEG: And I asked them to negotiate the rent, despite the addendum and they absolutely flat-out refused.

MR. FERRARA: I am just trying to clear up how they get around getting this lower rent. They gave her an addendum and the rest is her story, what they told her and what it is all about. Legally, they have the three rents in there. Morally, it is her story.

SENATOR GREGORIO: You signed a lease at a certain rate, but there was an addendum in there saying that they could raise it if they want?

MS. SIEG: As a matter of fact, we were induced to go with that company due to the rent structure. We were induced to lease from them as opposed to another company, due to their rent structure and the fact that they encouraged dealers to build their business, so that they could get an income from it.

As a matter of fact, when we originally rented from them, there was no income in the business at all. Then you are faced with the situation a year and a half later where they are saying, "Fine, this is what we want now. If you don't like it, leave." We objected to the fact that the increase over our 3-year lease period amounts to about \$50 to \$60 thousand, which is what our family would live on during that period of time. But that no longer exists. I think that you would be upset.

SENATOR GREGORIO: You have no alternative to that? They tell you, if you don't pay the rent, that you have to go.

MS. SIEG: Get out. That's it. They will not negotiate it in any way, shape or form, because I have tried.

Now, we are talking about a company that controls the price of the product that we sell. They control the price to us. They control the price of the lease. In some ways, they do control the margins.

SENATOR GREGORIO: In the lease you signed, that figure was in there, but the addendum was at the lower rate.

MS. SIEG: Right.

SENATOR GREGORIO: They knew that there was a possibility of it going up to the higher rate.

MS. SIEG: They assured us that there was none. We tried to negotiate the other figure in the lease, but they would not.

SENATOR GREGORIO: What was the original rent before the \$440?

SENATOR BEDELL: --- on the regular contract, before the addendum brought it down?

MS. SIEG: I don't understand. Tell me what it is you want to know.

SENATOR BEDELL: I got from you that the \$440 resulted from an addendum to the original agreement, to bring it down to make it more lucrative for someone to come in and operate the station. What was the lease at that time before the addendum? It must have been \$2,000.

MR. FERRARA: No. The original lease going way back was the lower figure. When they got involved in this new procedure, they came out with all these new leases and they gave them an additional addendum at that time as an encouragement to sign the lease.

SENATOR GREGORIO: But that was \$440.

MR. FERRARA: \$440.

SENATOR GREGORIO: But the higher figure must have been in there too.

MR. FERRARA: Yes.

SENATOR GREGORIO: So what would the higher figure have been?

MR. FERRARA: The higher figures are the numbers that are there. She asked me and I pulled it out of our surveys. It is based on 2 3/4 cents. You have to remember they use the gallonage figure. It is based on 2 3/4 cents.

SENATOR GREGORIO: Through 1980, twenty-one fifty-two.

MS. SIEG: That was per gallon and that is what we paid.

SENATOR GREGORIO: And through 1981, nineteen fifty-five.

MS. SIEG: All right, they have since given us a maximum figure. They have a minimum and a maximum. The minimum is \$440; the maximum is currently \$1955. Now, they can eliminate that maximum at any time they so choose. It is very simple. It is just a rip-off.

MR. FERRARA: In fairness to everybody, including ARCO who is not here,

let me go back and try to refresh your memory on my testimony and then later on you can consider Mr. FitzMaurice's. The impetus for this bill started in South Jersey when ARCO made this arbitrary decision to raise the rents. They had given all these dealers an addendum and encouraged them - and I am repeating my words previously - to become "competitive," so their gallonages increased. They took those numbers upon which they based this so-called regional formula. They took 85 percent - that's the number they gave to me - of what you did in the previous year as your minimum rent. The hooker is the minimum. They then kept that 2 3/4 going up into infinity, except recently they put another addendum in that your maximum would be, - what? - 100 percent of your allocation.

MS. SIEG: Yes.

MR. FERRARA: So, now, if you sell 100 percent of your allocation based on 1978, which was one of the years they took this number from ---

MS. SIEG: They took ours on '79 because we weren't there in '78 and they didn't want the lower figures to give them a lower rent.

MR. FERRARA: A lot of the examples you will see are ARCO. So, the 2 3/4 is their factor. You have to remember in all these gallonage rents, the real hooker in that is the minimum, who arrives at the minimum and on what basis the minimum was arrived at. If they give you a rolling minimum and you give your minimum at that rate, based on the last year's gallonage, today, with the market being way up, if we took our maximum margin, some of these dealers' figures would drop in half - hers, for instance, at the lower figure, being lower in price than everybody else, increased sales.

If ARCO or anybody else wants to base their minimum on the previous year's gallonage on a rolling gallonage, we will see a big difference in rent. ARCO has that 2 3/4 cents. But in all fairness to ARCO, the rents were inserted for 3 years. But she told you about the addendum, what she thought she heard.

MS. SIEG: It is not what I thought I heard, Jerry. I know, because we were considering three different leases and we only went with ARCO because of what they represented to us.

SENATOR GREGORIO: \$440?

MS. SIEG: Yes. As a matter of fact, Ted Cline is in our marketing area. He has been creamed with the rent increase also. There is not a location in South Jersey that is worth that kind of money. I am sure you are aware that values are fairly low in South Jersey.

SENATOR GREGORIO: Are you saying that if you have to pay the increase up to \$2,000, you really can't stay in business?

MS. SIEG: Very frankly, we have borrowed money within the past 60 days in order to stay afloat. If there is no change, we will be out of the service station business very shortly.

SENATOR GREGORIO: Won't that affect the company adversely?

MS. SIEG: They can always find people that believe it is the way to riches.

SENATOR GREGORIO: They go back to \$440 then?

MS. SIEG: I don't know what they will do from there. Frankly, if they advertised a station for rent in the newspaper at \$2,000 or \$1,900, they would not get any interested people. They don't do it that way.

SENATOR BEDELL: If Miss Korzenecki comes back - she represents Atlantic-Richfield - I would like to have her talk to you personally.

MS. SIEG: I would like to talk to her. I did talk to them. We are talking about a certain number of square footage. I can relate to commercial locations. I lease some warehouse space which is worth \$2 a square foot per month. So I lease 1500 square feet, which is worth \$300 a month. That is what my rent is. The square footage in the service station is not even 1500 square feet. We are talking about the same vicinity - and it is worth \$2000? They limit us. We cannot buy our product from anybody else. They control every aspect of it. We have absolutely no control whatsoever. If there is no control on rent, there is no way that you can stay in business.

SENATOR BEDELL: Thank you very, very much. (Applause)

Mr. Lane Paul.

L A N E P A U L: Senators, my name is Lane Paul. I am from Palmyra, New Jersey. I am an ARCO dealer also.

I am here today to give testimony to the fact that my rent has been increased over 400 percent. We originally took over the station in July '78 with rent of \$648. Today, we pay \$3,120. In my case, 2.6 cents was in the lease - not 2.75. When I questioned the District Manager when we were signing the lease, his answer to me was that they have to put that in the lease, but they never use it. When I went into this business, I came out of the florist business. And we sell flowers in our gas station as well. So we knew nothing about their business. He told me that they never enact that - they just have that in the lease for the West Coast. Well, in this case, it didn't work out.

I feel I was led into an unsuccessful location. The one I took over was closed for one year. The volume per year was about 50,000 gallons a year. Today, we do about 130,000 gallons. The reason we do it is not because ARCO has done anything. They didn't spend five cents on the building to improve it. They didn't paint it. They didn't do anything at all. We did it through hard work and I have five children and my wife who work there.

We are in business today because we borrowed about \$20,000 from within our family and we will have to pay that back eventually. I don't know how much longer we can last. We have been waiting and hoping for this bill to go through.

Also I would like to make a point on this retroactive date that you have discussed. I need that retroactive date to refinance my business. They took away the only income we had since April of this year. I think the money ARCO has collected in addition from me, over \$2400 a month, doesn't belong to ARCO. It belongs to me and I need it to pay my debts with it.

I also resent - and I added this this morning - as a citizen of New Jersey and the United States, the innuendos made by ARCO and Exxon this morning about future and new investments in New Jersey. I think it is a disgrace that they would say that publicly. That is all I have to say. (Applause)

SENATOR BEDELL: Thank you, Mr. Paul.

That completes our prepared list of witnesses. Is there anyone present who wishes to add anything to this hearing at this time?

R I C H A R D D ' A M A T O: My name is Richard D'Amato. I have a Shell Service Station in Essex County. I just want to make a short statement that will take about a minute or two.

About a year and a half ago, I sat in on a breakfast Shell meeting. James Gerhardt was District Manager at the time. He sat in front of approximately

50 or 60 dealers with a real cocky attitude and said that if dealers don't lower the price of gasoline, we will make it up in exorbitant rates. And that is almost a quote. About 50 or 60 dealers were sitting in the room when he said that.

MR. WINDER: May I respond to that? I am Mark Winder, once again, with Shell. I might say that Mr. Gerhardt is not with Shell at this particular time. I was not there at that meeting. I think it should be taken in the context for what it is. I understand there is litigation on that matter before the courts at this time. This is not Shell's stated policy in any way, shape or form. I can assure you of that, gentlemen.

SENATOR BEDELL: Thank you, Mr. Winder.

Anyone else?

C H E T L A D Y G A: My name is Chet Ladyga. I am a Gulf dealer. The Gulf people came down and they said, "You got yours; we want ours." I can't quote anybody specifically. But the rent has gone up substantially. I am making 16 cents a gallon. I am one of the few dealers who is. Most of them are working on 8 cents and less, and I mean way less. As to my gallonage, I was doing 30,000 a month. Now I am doing 16,000 a month. I can't see cutting my price in half, getting up to 30,000 and working twice as hard. So we are not gaining anything. They say, "You are getting more money." Sixteen cents looks great on paper. Go out to the pumps and try to get 16 cents out of the customer. It doesn't work when you have an oil-company operated station - Ashland, if they are still here - selling at 2 cents cheaper than I buy it for. And that is a fact. I am paying \$1.10 and that station posted it a couple of days ago at \$1.079. And I am paying \$1.10 for gas and have to tag on 16 cents to that. I am not alone. Everybody else has PB, Ashland, Kayo, Conico Oil. They have the same problem. Thank you.

SENATOR BEDELL: Thank you.

MR. FERRARA: Could I just answer a few points? I am not going to take too much time because you gave me the privilege of discussion with each representative of the oil companies.

We heard presentations here by the major oil companies that the dealer has the property to do with as he sees fit. He can put gasohol in it. He can put diesel in. He can put anything he wants in that station.

We had before the Senate - it passed the Senate and is now before the Assembly - a bill giving the dealer the right to put gasohol, just the right, and to put diesel in. So, in reply to that, we haven't got carte blanche. As I said before, give us the same rights as a shopping center and we will pay the same yield.

Then we constantly heard about unprofitable service stations. They want to get rid of them. They have a right to get rid of unprofitable service stations. This was said by several companies. We want the option from these companies to continue to supply us. And, with some real velvet-glove treatment, we are able to get some contracts. But the theory they use is to close down a station and get out. Now if they can sell these stations for big dollars for the higher income, God bless them. Let them do it. The fact that they are not indicates there is a pretty healthy profit in a gallon of gasoline to them. In the past, the unprofitable rents were subsidized in the dealer tank-wagon, the price they charged. They are arguing that point now so I am not even going to elaborate on it. But there was a time when you could rent the station for a lot less than what they pay.

Dealer income triples -- and he respected our rights to earn it. I want

to take a look at their profits. Bill Moore from the jobbers made a great point for us. He had no problem with this bill because if he can justify the rents in negotiations --- Anytime he comes to me and my dealer is squawking about a \$300 rent and I know the going rate, he is going to pay more. But he said he could never get the return and he questioned the value in the return that Shell got for rent. So you have really a party on the other side, which he isn't. In most instances, the jobber is in the same bag with us. We wrote the Franchise Act; they opposed it. After it was written, the attorneys sent me a brief and asked me to review it. I am not an attorney, by the way. But they asked me to review it where they used the Franchise Act as protection. But take note, this is a man who does business with them on the other side.

I am just trying to touch various things that were brought up. Market value on service station uses - Exxon says they vary. ARCO says they get a fixed rate. Mobil has the gallonage, APC, and admitted they wanted 20 - 25 percent of that return. In the old days, the rule of thumb was 25 percent of your business. That is what the rent would be determined on. That was taking everything into consideration.

The dealers who testified here this morning, by the way, were not by my choice. They came up here on their own. I did not know they planned to testify. But the Committee extended them the courtesy of permitting them to do that. So, I have an interest in this bill because of the Association I represent and I hold that the dealers, themselves, have their own.

Just to conclude, I think the Committee has to review this on the basis of not only the norms. We have good guys and we have bad guys. How do you protect the dealer from the ones who are arbitrary? That is what this bill addresses. It does not prohibit a legitimate increase. I would like to change the whole tenor of the bill ---

SENATOR BEDELL: We may well do that.

MR. FERRARA: ---- but because of the time factor, we are in a bind. These ARCO dealers - you heard two of them testify - have just been hanging in there. I hate to answer the phone when the call is from an ARCO dealer. And most of them are in the Burlington, Camden, Gloucester, Salem area. When you go north of Trenton, you don't find them too much.

I wish the Committee would address the fact that we have dealers hurting out there and hope you would weigh the testimony on the basis of the one who is being hurt. We write laws to protect those who are being injured. Maybe sometimes the majority are not being injured. In this case, I think the law is necessary for those who are being injured.

Thank you. You extended a lot of courtesy to me. I hope I didn't abuse it. But I wanted to get the story, as much as I could, on the record. (Applause.)

SENATOR BEDELL: Jim, we would like to give you equal treatment if you would like to sum up or highlight your position.

MR. BENTON: Senator, we have nothing to say at this time. Most of our presentation was contained in the testimony which was presented to you. But I just want to add that I am certain if Mr. FitzMaurice was here representing ARCO, he would be more than willing to make himself available to you. I am sure he will in the future, down the road. If you have any further questions, you can get to him either directly or through our Association. Thank you.

SENATOR BEDELL: Thank you, Jim.

That concludes the public hearing and thank you all for coming.

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*New Jersey Gasoline Retailer's Association
and
Allied Trades, Inc.*

JERRY M. FERRARA, Exec. Director

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MEMORANDUM ON A-941 ON RENT INCREASES FOR RETAIL GASOLINE STATIONS

The New Jersey Gasoline Retailer's Association, representing 3,000 service stations urge passage of A-941 to prevent the economic strangulation of many of the 4800 gasoline retailers in New Jersey.

Increases for 1980 range from 25 to 70% and some rent increases over the course of a 3 year lease have been as high as 200%.

We have enclosed a copy of our survey on New Jersey service station rentals and attached some samplings. It should also be noted that these, in many cases, are minimum rents usually based on an arbitrarily selected minimum gallons of gas to be sold without any maximum cut off for rent.

There has been a tendency in testimony given, to equate refiner net profit per gallon with the retail dealer's gross profit. To place margins in their proper perspective we have attached a copy of a U.S. Dept. of Energy report on refiner/distributor margins which are currently in excess of 28 cents.

One refiner representative testified that 15-USC-2806 of the Federal Petroleum Marketing Practices Act preempted any type state legislation such as A-941. A review of the enclosed section of 15-USC-2806 discloses that even with the broadest interpretation of the language there is no basis for his statement.

Subsequent to the passage 63 - 4 by the Assembly of A-941, opponents of the measure indicated to many Senators that its passage would halt or hinder their remodeling of service stations due to the inability to increase rents.

We refer you to lines 13-16 of the proposed legislation which addresses the question and puts the "proverbial lie" to the above assertions.

A refreshing, if not a Freudian answer, typical of the attitude towards the question was given at a hearing on another issue before the Senate Energy Committee.

Senator Barry Parker stated that in his profession as an attorney he had reviewed leases with some rather high increases in rents and inquired from those present how they were arrived at. The rather candid answer from a refiner representative was "We are not any different from shopping center owners; the more business they do, the bigger piece of the pie we want".

We could agree to that if service station leases were the same as shopping center leases. However, there isn't any comparison. Leases

for retail outlets in shopping centers are usually long term with options for renewal and in most instances are based on an amount per square ft. plus an override when the gross sales and/or profit reaches an agreed amount.

The store owner is free to purchase any variety, grade or amount of merchandise he desires from whomever he desires.

On the other hand a service station lease is short termed with 3 year terms only recently becoming common and the "landlord" is also the supplier of product with, as many courts have pointed out, a "vast disparity in bargaining power between the parties". Because of this, as many dealers and attorneys have found out there is little if any meaningful negotiations on rental or any other terms.

The question of legislating commercial rent controls is not at issue as the service station is in a captive industry. No other industry controls a product and its outlets from the raw stage (the wells) to the ultimate consumer.

Because of this, the New Jersey Legislature in 1971 was the first to pass a strong Franchise Protection Act which several others followed and in 1978 a weaker version was enacted into law by the U.S. Congress.

The committee has the dual responsibility to protect the viability and competition of the small businessman and in doing so, see that some benefits reach the consumer.

Excessive service station rentals will result in higher prices on gasoline and on other services and repairs or the ultimate economic strangulation will be the demise of many small businesses. The marketplace will then be "taken over" by large direct gas only company operations with less availability of emergency services and repairs.

As the past six years have demonstrated, the refiner/producer creed is "*Profits are the name of the game*" with the end result being "*the consumer be damned*". Passage of A-941 is one small step towards preventing it.

THE FOLLOWING EXCERPTS FROM THE NOVEMBER 1976 FEDERAL ENERGY AGENCY REPORT ON PROPOSING DECONTROL OF GASOLINE PRICING. PLEASE NOTE SIGNIFICANT INCREASE IN REFINER/DISTRIBUTOR PROFIT MARGIN.

- 40 -

1980 UPDATE

As indicated in Figure III-8, margins were relatively stable during the period 1968-1972, including the period of price controls. During the period 1972-1975, however, margins for all refined products increased by 47 percent, while the margins on motor gasoline increased, at a slower rate of 18 percent for 1972-1975. Following removal of the special products rule in March 1975 which had limited the amounts of costs allocable to motor gasoline, and the subsequent increase in gasoline prices, the refiner/distributor margin remained at a relatively high level through 1975 and reached 14.5 cents in August 1976.

An updated comparison of refiner vs dealer margin was given several months ago by Secretary of Energy Duncan before a U.S. Senate Committee hearing.

While they may contend that because of higher dealer margins, they wanted a "piece of the pie" they also want it both ways.

A look at the local market place will show deteriorated retail prices all at the dealer's expense, while wholesale prices are continuing to escalate.

3X

TABLE III-4

REFINER/DISTRIBUTOR MARGIN FOR MOTOR GASOLINE

Margins for refiner/distributors (in cents per gallon)

over the past eight years have been as follows:

<u>Year</u>	<u>Margin</u>	<u>Year</u>	<u>Margin</u>
1968	9.0	1976	
1969	9.4	Jan.	11.5
1970	9.8	Feb.	11.7
1971	9.5	Mar.	11.7
1972	9.2	Apr.	11.2
1973	9.7	May.	12.5
1974	9.3	June	14.1
1975	10.9	July	14.6
		Aug.	14.5

Source: Platt's Oilgram, FEA, Lundberg Survey, Inc. Bureau of Labor Statistics

<u>Month</u>	<u>Crude Cost</u>	<u>Refiner Margin</u>	<u>Dealer Margin</u>
MAY 79	36.7	19.8	11.9
JUN 79	40.5	20.1	14.1
JUL 79	44.2	19.9	15.2
AUG 79	47.0	21.5	14.5
SEP 79	48.0	23.1	14.1
OCT 79	49.2	23.2	13.5
NOV 79	52.5	21.4	13.4
DEC 79	56.3	21.4	13.6
JAN 80	59.1	25.7	14.0
FEB 80	62.2	28.6	14.2
MAR 80	64.0	30.6	13.8
APR 80	64.4	30.9	13.5
MAY 80	67.9	27.7	13.5

THE CURRENT ESTIMATED REFINER PROFIT MARGIN AS OF 7/1/80 IS 28¢

It is important to remember that the above figures represent gross margins on both levels and compares "Apples with Apples".

In testimony and press releases by the refiners they usually resort to comparing their net profit (and there is some question there) to a dealer's gross margin.

THE FOLLOWING EXCERPTS FROM THE NOVEMBER 1976 FEDERAL ENERGY AGENCY REPORT ON PROPOSING DECONTROL OF GASOLINE PRICING. PLEASE NOTE SIGNIFICANT INCREASE IN REFINER/DISTRIBUTOR PROFIT MARGIN.

1980 UPDATE

As indicated in Figure III-8, margins were relatively stable during the period 1968-1972, including the period of price controls. During the period 1972-1975, however, margins for all refined products increased by 47 percent, while the margins on motor gasoline increased, at a slower rate of 18 percent for 1972-1975. Following removal of the special products rule in March 1975 which had limited the amounts of costs allocable to motor gasoline, and the subsequent increase in gasoline prices, the refiner/distributor margin remained at a relatively high level through 1975 and reached 14.5 cents in August 1976.

TABLE III-4

4X REFINER/DISTRIBUTOR MARGIN FOR MOTOR GASOLINE
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1971	9.5	Mar.	11.7
1972	9.2	Apr.	11.2
1973	9.7	May.	12.5
1974	9.3	June	14.1
1975	10.9	July	14.6
		Aug.	14.5

Source: Platt's Oilgram, FEA, Lundberg Survey, Inc. Bureau of Labor Statistics

An updated comparison of refiner vs dealer margin was given several months ago by Secretary of Energy Duncan before a U.S. Senate Committee hearing.

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NOV 79	52.5	21.4	13.4
DEC 79	56.3	21.4	13.6
JAN 80	59.1	25.7	14.0
FEB 80	62.2	28.6	14.2
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THE CURRENT ESTIMATED REFINER PROFIT MARGIN AS OF 7/1/80 IS 28¢

It is important to remember that the above figures represent gross margins on both levels and compares "Apples with Apples".

In testimony and press releases by the refiners they usually resort to comparing their net profit (and there is some question there) to a dealer's gross margin.

A total of 1704 rent surveys were returned to us by dealers, showing the following statistics as to the average amount (in percentage) of rental increases since 1973:

Rent increase between May 1973 & May 1978 - 67%

Rent increase between May 1978 & July 1979 - 33%

Rent increase between May 1979 & July 1980 - 30%

RENT INCREASES BETWEEN MAY 1973 & JULY 1980 - 182%

The trend from July 1980 through July 1981 indicates another 25-75% increase in the average rent, which would bring the average total increase still higher. Some current rent increases over the course of a three year lease have been as high as 200%!

Samplings attached include some from a 1979 survey where the effect on a per gallon cost is illustrated.

NAME THEODORE E. CLINE JR.
 STATION NAME TEDS ARCO SERVICE PHONE NO. 609-3443
 ADDRESS N. DASEN DR. GLASSBORO NJ 08028
 Street City State Zip code
 TYPE OF STATION: Porcelain _____ Modern Other (specify) 3 DAY CO.
 AVERAGE BASE GALLONAGE (Monthly) 160,000
 RENT PAID: JUNE 1973 860.00 JUNE 1978 820.00
 DO YOU HAVE A THREE YEAR LEASE? Yes No _____
 IF SO, PLEASE LIST THE PROPOSED RENTS IN EACH OF THE 3 YEARS -
 June 1979 90.00 June 1980 420.00 June 1981 420.00 June 1982 420.00

NAME JOSEPH POSTORINO
 STATION NAME BELLEVILLE ARCO PHONE NO. 7599668
 ADDRESS 119 FRANKLIN ST BELLEVILLE NJ 07109
 Street City State Zip code
 TYPE OF STATION: Porcelain _____ Modern Other (specify) _____
 AVERAGE BASE GALLONAGE (Monthly) 4000.00
 RENT PAID: JUNE 1973 1.75 \$330.00 MIN JUNE 1978 \$330.00 FERT
 DO YOU HAVE A THREE YEAR LEASE? Yes No _____
 IF SO, PLEASE LIST THE PROPOSED RENTS IN EACH OF THE 3 YEARS -
 June 1979 330.00 June 1980 \$1500.00 MIN June 1981 SAME June 1982 \$1500.00

NAME JOHN J. GARECHT
 STATION NAME JOHN'S ARCO SER PHONE NO. _____
 ADDRESS 478 HIGH ST BURLINGTON NJ 08016
 Street City State Zip code
 TYPE OF STATION: Porcelain Modern _____ Other (specify) _____
 AVERAGE BASE GALLONAGE (Monthly) 45000
 RENT PAID: JUNE 1973 1.65 JUNE 1978 493.00
 DO YOU HAVE A THREE YEAR LEASE? Yes No _____
 IF SO, PLEASE LIST THE PROPOSED RENTS IN EACH OF THE 3 YEARS -
 June 1979 1.92.00 June 1980 1.75 June 1981 6X June 1982 7

NAME Michael H Delancourt
 STATION NAME Mike's Arco PHONE NO. 870-1244
 ADDRESS 2nd Ave & West End Ct. Long Branch,
 Street City State Zip code
 TYPE OF STATION: Porcelain _____ Modern Other (specify) _____
 AVERAGE BASE GALLONAGE (Monthly) 42,000
 RENT PAID: JUNE 1973 Based on gallons JUNE 1978 flat rate \$540.00 per month
 DO YOU HAVE A THREE YEAR LEASE? Yes No _____
 IF SO, PLEASE LIST THE PROPOSED RENTS IN EACH OF THE 3 YEARS -
 June 1979 \$540.00 June 1980 7200 June 1981 ? June 1982 ?

NAME JOHN F MATUZA
 STATION NAME MATUZAS ARCO PHONE NO. 3930441
 ADDRESS 602 LALOR ST TRENTON N.J. 08611
 Street City State Zip code
 TYPE OF STATION: Porcelain _____ Modern Other (specify) _____
 AVERAGE BASE GALLONAGE (Monthly) 45,000
 RENT PAID: JUNE 1973 NOT IN BUSINESS THEN JUNE 1978 \$477.00
 DO YOU HAVE A THREE YEAR LEASE? Yes No _____
 IF SO, PLEASE LIST THE PROPOSED RENTS IN EACH OF THE 3 YEARS -
 June 1979 \$477.00 June 1980 .0275 GAL PER \$1237.50 June 1981 .0275 GAL PER \$1237.50 June 1982 .0275 GAL PER \$1237.50
 DID YOU HAVE A FLAT RENT ADDENDUM TO YOUR ABOVE LEASE? YES HOW MUCH 458.75

NAME FOSCHI'S ARCO STATION
 STATION NAME 1118 N. DELSEA DRIVE VINELAND, N.J. 08360 PHONE NO. 696-9887
 ADDRESS _____
 Street City State Zip code
 TYPE OF STATION: Porcelain _____ Modern Other (specify) _____
 AVERAGE BASE GALLONAGE (Monthly) 40
 RENT PAID: JUNE 1973 unknown JUNE 1978 _____
 DO YOU HAVE A THREE YEAR LEASE? Yes No _____
 IF SO, PLEASE LIST THE PROPOSED RENTS IN EACH OF THE 3 YEARS -
 June 1979 463.00 June 1980 463.00 June 1981 463.00 June 1982 463.00
 DID YOU HAVE A FLAT RENT ADDENDUM TO YOUR ABOVE LEASE? NO HOW MUCH _____

- STATION RENT INFORMATION -

MONTH	RENT PAID	GALLONS SOLD	COST PER GALLON
MAY, 1973	\$ 0	0	0.9 CPG
MAY, 1978	\$ 661.94	17,900.2	.0370 CPG
JULY, 1979	\$ 882.59	11,486.3	.0768 CPG

BUSINESS NAME Brentwood Sales & Service, Inc
+/a Kross's Chevron Service

DEALER'S NAME Russell P. Brown BRAND Chevron

ADDRESS 1201 Old York Rd

CITY Ranitan NJ ZIP 08869 COUNTY Somerset

- STATION RENT INFORMATION -

MONTH	RENT PAID	GALLONS SOLD	COST PER GALLON
MAY, 1973	\$ 650.00	24640	2.6 CPG
MAY, 1978	\$ 850.00	30934	2.7 CPG
JULY, 1979	\$ 1050.00	25713	4.1 CPG

BUSINESS NAME FRANK'S SUNOCO SERVICE

DEALER'S NAME FRANK Di TO TO BRAND SUNOCO

ADDRESS 366 - ESSEX STREET

CITY Lodi N.J. ZIP 07144 COUNTY BERGEN

- STATION RENT INFORMATION -

MONTH	RENT PAID	GALLONS SOLD	COST PER GALLON
MAY, 1973	\$ <u>NOT IN BUSINESS</u>		
MAY, 1978	\$ 348.30	25,500	1.34 CPG
JULY, 1979	\$ 984.30	51,000	.019 CPG

BUSINESS NAME TOR MOBIL SERVICE

DEALER'S NAME JOAQUIN DIAS BRAND MOBIL

ADDRESS RT 1 & E GRAND ST.

CITY ELIZABETH NJ ZIP 07201 COUNTY UNION

Enter the rent paid and the gallonage sold for the months and years shown. Project the cost per gallon in the third column by dividing the rent paid by

- STATION RENT INFORMATION -

MONTH	RENT PAID	GALLONS SOLD	COST PER GALLON
MAY, 1973	\$ <u>1249⁷²</u>	<u>63400</u>	<u>205</u> CPG
MAY, 1978	\$ 42100 <u>1178.³⁰</u>	<u>42100</u>	<u>28¢</u> CPG
JULY, 1979	\$ <u>1450.⁰⁰</u>	<u>34100</u>	<u>4.25</u> CPG

BUSINESS NAME TOTOWA HEIGHTS SERVICE CENTER
 DEALER'S NAME THEO STRATOS BRAND SHELL
 ADDRESS 600 UNION BLVD
 CITY TOTOWA N.J ZIP 07012 COUNTY PASSAIC

- STATION RENT INFORMATION -

MONTH	RENT PAID	GALLONS SOLD	COST PER GALLON
MAY, 1973	\$ <u>880.00</u>	<u>633,994</u>	<u>1.4</u> CPG
MAY, 1978	\$ <u>1260.00</u>	<u>62,349.</u>	<u>2¢</u> CPG
JULY, 1979	\$ <u>1500.50</u>	<u>395025</u> <u>39502</u>	<u>3.8¢</u> 3.8 CPG

BUSINESS NAME LANDING SERVICE CENTER.
 DEALER'S NAME ROBERT A. SIMON BRAND SHELL
 ADDRESS LAKE-SIDE BLVD
 CITY LANDING N.J ZIP 07850 COUNTY MORRIS.

- STATION RENT INFORMATION -

MONTH	RENT PAID	GALLONS SOLD	COST PER GALLON
MAY, 1973	\$ <u>-</u>	<u>-</u>	<u>-</u> CPG
MAY, 1978	\$ <u>73250</u>	<u>36,450</u>	<u>.02</u> CPG
JULY, 1979	\$ <u>832.00</u>	<u>16,378</u>	<u>.05</u> CPG

BUSINESS NAME _____
 DEALER'S NAME TEANECK TIRE CENTER BRAND TEXACO
209 CEDAR LANE
 ADDRESS TEANECK, N.J. 07666
836-0233
 CITY _____ ZIP _____ COUNTY BERGEN

Enter the rent paid and the gallonage sold for the months and years shown. Project the cost per gallon in the third column by dividing the rent paid by the gallons sold. This will give you a rent_x per gallon figure.

- STATION RENT INFORMATION -

MONTH	RENT PAID	GALLONS SOLD	COST PER GALLON
MAY, 1973	\$ _____	_____	_____ CPG
MAY, 1978	\$ <u>750.00</u>	<u>38,126</u>	<u>1.97</u> CPG
JULY, 1979	\$ <u>900.00</u>	<u>32,755</u>	<u>2.75</u> CPG

BUSINESS NAME _____
DEALER'S NAME Tom Hagey Gulf Service Center
ADDRESS 523 Chestnut St. BRAND GULF
Edison, N. J. 07083
CITY _____ ZIP _____ COUNTY UNION

- STATION RENT INFORMATION -

MONTH	RENT PAID	GALLONS SOLD	COST PER GALLON
MAY, 1973	\$ <u>757.90</u>	<u>44,290</u>	<u>1.7</u> CPG
MAY, 1978	\$ <u>800</u>	<u>40,550</u>	<u>1.97</u> CPG
JULY, 1979	\$ <u>1,000</u>	<u>24,900</u>	<u>4.01</u> CPG

BUSINESS NAME Selsor's Service Center
DEALER'S NAME Russell Selsor BRAND TEXACO
ADDRESS 11 Lakeside Ave
CITY Princeton Lakes ZIP 07442 COUNTY PASSAIC

- STATION RENT INFORMATION -

MONTH	RENT PAID	GALLONS SOLD	COST PER GALLON
MAY, 1973	\$ <u>691.00</u>	<u>46,071</u>	<u>.0149</u> CPG
MAY, 1978	\$ <u>930.10</u>	<u>46,505</u>	<u>.02.00</u> CPG
JULY, 1979	\$ <u>1,200.00</u>	<u>33,100</u>	<u>.0362</u> CPG

BUSINESS NAME Charlie's Sunoco Station
DEALER'S NAME Charles Loring BRAND SUNOCO
ADDRESS Sunset Road & Summit Turn
CITY Willingboro ZIP 08046 COUNTY Burlington

Enter the rent paid and the gallonage sold for the months and years shown. Project the cost per gallon in the third column.

- STATION RENT INFORMATION -

MONTH	RENT PAID	GALLONS SOLD	COST PER GALLON
MAY, 1973	\$ <u>Agreed Station @ 75</u>		CPG
MAY, 1978	\$ <u>568.18</u>	<u>11,477</u>	<u>0.0494</u> CPG
JULY, 1979	\$ <u>840.97</u>	<u>13,803</u>	<u>0.061</u> CPG

BUSINESS NAME _____
 DEALER'S NAME John M. Glushko BRAND Chevron
 ADDRESS FAELET CHEVRON
 CITY 2549725 ROSELAND, N.J. 07730 ZIP _____ COUNTY Wanaumont

- STATION RENT INFORMATION -

MONTH	RENT PAID	GALLONS SOLD	COST PER GALLON
MAY, 1973	\$ <u>—</u>	<u>—</u>	<u>—</u> CPG
MAY, 1978	\$ <u>648.22</u>	<u>41,300</u>	<u>154</u> CPG
JULY, 1979	\$ <u>1000.00</u>	<u>32,600</u>	<u>31</u> CPG

BUSINESS NAME LAKEVIEW TEXACO, Inc. Robert A. Stone Pres
 DEALER'S NAME 126 BROADWAY
 ADDRESS WOODCLIFF LAKE, N.J. 07675 BRAND Tefco
 CITY _____ ZIP _____ COUNTY Bergen

- STATION RENT INFORMATION -

MONTH	RENT PAID	GALLONS SOLD	COST PER GALLON
MAY, 1973	\$ <u>62532</u>	<u>25013</u>	<u>2544</u> CPG
MAY, 1978	\$ <u>850.00</u>	<u>35779</u>	<u>244.24</u> CPG
JULY, 1979	\$ <u>1000.00</u>	<u>17822</u>	<u>5.61124</u> CPG

BUSINESS NAME LARSON'S SUNOCO
 DEALER'S NAME ROBERT S. LARSON BRAND SUNOCO
 ADDRESS US#10 OLD POST RD
 CITY EDISON N.J. ZIP 08817 COUNTY MIDDLESEX

Enter the rent paid and the gallonage sold for the months and years shown. Project the cost per gallon in the third column by dividing the rent paid by the gallons sold. This will give you a rent per gallon figure. 11X

- STATION RENT INFORMATION -

MONTH	RENT PAID	GALLONS SOLD	COST PER GALLON
MAY, 1973	<u> </u>	<u> </u>	<u> </u> CPG
MAY, 1978	\$ <u>732.00</u>	<u>34000</u>	<u>2.14</u> CPG
JULY, 1979	\$ <u>900.00</u>	<u>34000</u>	<u>2.64</u> CPG

BUSINESS NAME Circle Mobil Service
 DEALER'S NAME David Aro BRAND Mobil
 ADDRESS Rte 202-31
 CITY Flemington ZIP 08822 COUNTY hunterdon

- STATION RENT INFORMATION -

MONTH	RENT PAID	GALLONS SOLD	COST PER GALLON
MAY, 1973	\$ <u>800.</u>	<u>63394</u>	<u>0.76</u> CPG
MAY, 1978	\$ <u>1125.</u>	<u>43326</u>	<u>0.57</u> CPG
JULY, 1979	\$ <u>1930.</u>	<u>37084</u>	<u>0.52</u> CPG

BUSINESS NAME Joseph R. Herms
 DEALER'S NAME FORD AVE. CITGO S/S INC. BRAND Citgo
 ADDRESS FORD AVE. & LAFAYETTE RD.
FORDS. N. J. 02863
 CITY ZIP COUNTY Walden

- STATION RENT INFORMATION -

MONTH	RENT PAID	GALLONS SOLD	COST PER GALLON
MAY, 1973	\$ <u>NOT IN BUSINESS</u>	<u>at the time</u>	<u> </u> CPG
MAY, 1978	\$ <u>967.00</u>	<u>59 101</u>	<u>1.64</u> CPG
JULY, 1979	\$ <u>1367.00</u>	<u>42,500</u>	<u>3.22</u> CPG

BUSINESS NAME WILLOW AVE GULF SERVICE, INC.
 DEALER'S NAME VINCENT MANENTE BRAND GULF
 ADDRESS 1324 WILLOW AVE
 CITY Hoboken ZIP N J COUNTY 07030 - Hudson

Enter the rent paid and the gallonage sold for the months and years shown. Project the cost per gallon in the third column by dividing the rent paid by the gallons sold. This will give you the cost per gallon.

2. LEASE. Shell hereby leases to Lessee, and Lessee hereby leases from Shell, the Premises located at Sharp & Hopatcong, Hopatcong, New Jersey. Subject to article 6.2, Lessee acknowledges that the Premises are in good and safe condition and repair. Shell shall have the right from time to time, without liability to Lessee, to make alterations of the Premises, but any such alteration shall not unreasonably interfere with or restrict the use for which the Premises are herein leased.

3. TERM. This lease shall be in effect for the term beginning on December 1, 1980, and ending on November 30, 1983, unless extended pursuant to article 14 or otherwise by written agreement, but may be terminated by Lessee at any time by giving Shell at least 90 days' notice, or may be terminated by Shell as provided in the succeeding articles hereof.

4. RENT. Lessee shall pay Shell, as rent for each calendar month, without deduction, set off, notice or demand, the sum specified in the following schedule, in advance not later than the first day of such month:

**Note attached sheet..1980 rent is \$1025.

	<u>Period</u>	<u>Monthly Rent</u>
From	<u>December 1</u> , 19 <u>80</u> through <u>November 30</u> , 19 <u>81</u>	\$ <u>1745.00</u>
From	<u>December 1</u> , 19 <u>81</u> through <u>November 30</u> , 19 <u>82</u>	\$ <u>2465.00</u>
From	<u>December 1</u> , 19 <u>82</u> through <u>November 30</u> , 19 <u>83</u>	\$ <u>3180.00</u>
From	<u>-----</u> , 19 <u>---</u> through <u>-----</u> , 19 <u>---</u>	\$ <u>-----</u>

Rent for any period less than a calendar month shall be prorated. The rent for each month shall be delivered to Shell at its address specified for notices hereunder or mailed to Shell in sufficient time to be received by the rental due date at such address as may be provided by Shell to Lessee in writing from time to time.

5. USE.

5.1 General. The Premises shall be used for operation of the (check applicable provision below):

automobile service station existing on the date of this Lease, or existing upon completion of any such station proposed or under construction on the date of this Lease, including the retail sale of petroleum products and automotive accessories, and minor repairs and services for motor vehicles.

motor fuel dispensing station existing on the date of this Lease, or existing upon completion of any such station proposed or under construction on the date of this Lease, including the retail sale of petroleum products and carry-out automotive accessories, but excluding any automotive repairs or services except such incidental services as are normally provided to vehicles receiving motor fuel while at the motor fuel dispensing driveway area (such as checking oil and coolant levels and cleaning windshields).

5.2 Lessee's Efforts. Lessee shall devote Lessee's best efforts to preserve the value of the Premises for the foregoing authorized use by serving effectively the public's and consumer's needs, and, to assure that end, shall keep the station open for operation and fully illuminated at least 18 ~~13x~~ hours ~~each~~ day (fro

To, and part of, SERVICE STATION LEASE dated October 31, 19 77, between SHELL OIL COMPANY ("Shell") and Richard Walicki ("Lessee"), substituting as articles 3, 5, and 6, respectively, the following:

3. RENT. Lessee shall pay Shell, as rent for each calendar month, the sum specified in the following schedule, in advance not later than the first day of such month:

	<u>Period</u>	<u>Monthly Rent</u>
From	<u>November 4</u> , 19 <u>77</u> through <u>November 30</u> , 19 <u>78</u>	\$ <u>830.00</u>
From	<u>December 1</u> , 19 <u>78</u> through <u>November 30</u> , 19 <u>79</u>	\$ <u>930.00</u>
From	<u>December 1</u> , 19 <u>79</u> through <u>November 30</u> , 19 <u>80</u>	\$ <u>1025.00</u>
From	<u>-</u> , 19 <u>-</u> through <u>-</u> , 19 <u>-</u>	\$ <u>-</u>

Rent for any period less than a calendar month shall be prorated. The rent for each month shall be delivered to Shell at the address first herein specified or mailed to Shell in sufficient time to be received by the rental date at such address as may be provided by Shell to Lessee in writing from time to time.

* * *

5. USE. The Premises shall be used only for operation of the automobile service station existing on the date of this Lease, including the retail sale of petroleum products and automotive accessories, and minor repairs and services for motor vehicles (but excluding the selling, leasing, parking or storing of motor vehicles, trailers, boats or any other mobile equipment). Lessee shall devote Lessee's best efforts to preserve the value of the Premises for the foregoing authorized use by serving effectively the public's and consumers' needs, and, to that end, shall keep the service station open and fully illuminated at least from 6:00 A.M. to 12:00 MIDNIGHT each day, excepting None. Lessee shall satisfy all regulatory requirements and timely pay all charges incident to Lessee's use of the Premises and the business conducted thereon, including all Federal, state and local taxes and assessments, and license, permit, occupation and inspection taxes and fees, all water, sewer, waste disposal, gas, electricity, telephone and other utility charges (all meters and accounts for which shall be in Lessee's name unless Shell, in its discretion, directs otherwise to protect the Premises or itself against possible liens or claims), and all taxes on Lessee's property on the Premises; and if Lessee fails so to do, Shell may (but shall not be obligated to) pay the same and charge them to Lessee. Lessee shall not maintain or permit any dangerous animal or other dangerous condition or attractive nuisance on the Premises. Lessee shall comply with all Federal, state and municipal laws, ordinances, regulations, orders, licenses and permits relating to the Premises or any use thereof or to any act or activity on the Premises; and Lessee shall not commit or permit any fraudulent or illegal act or activity or any consumption of intoxicating beverages on the Premises. Without Shell's prior written consent, Lessee shall not make any attachments or additions to, or any alterations of, any building or other improvement on the Premises, or construct any additional buildings or structures thereon. Any such change to which Shell may give its consent shall be made in accordance with Shell's specifications and by a contractor approved by Shell, which consent and approval shall not be unreasonably withheld and upon completion shall become a part of the Premises and property of Shell.

6. MAINTENANCE-REPAIRS-REPLACEMENTS. Subject to the following provisions of this article 6, Lessee shall

2. LEASE. Shell hereby leases to Lessee, and Lessee hereby leases from Shell, the Premises located at Route 19 & Virginia, Livingston, New Jersey Subject to article 6.2, Lessee acknowledges that the Premises are in good and safe condition and repair. Shell shall have the right from time to time, without liability to Lessee, to make alterations of the Premises, but any such alteration shall not unreasonably interfere with or restrict the use for which the Premises are herein leased.

3. TERM. This lease shall be in effect for the term beginning on January 1, 1981, and ending on June 30, 1983, unless extended pursuant to article 14 or otherwise by written agreement, but may be terminated by Lessee at any time by giving Shell at least 90 days' notice, or may be terminated by Shell as provided in the succeeding articles hereof.

4. RENT. Lessee shall pay Shell, as rent for each calendar month, without deduction, set off, notice or demand, the sum specified in the following schedule, in advance not later than the first day of such month:

****Note attached sheet..1980 rent is \$1650.**

	<u>Period</u>	<u>Monthly Rent</u>
From	<u>January 1</u> , 19 <u>81</u> through <u>December 31</u> , 19 <u>81</u>	\$ <u>2610.00</u>
From	<u>January 1</u> , 19 <u>82</u> through <u>December 31</u> , 19 <u>82</u>	\$ <u>3570.00</u>
From	<u>January 1</u> , 19 <u>83</u> through <u>June 30</u> , 19 <u>83</u>	\$ <u>4530.00</u>
From	<u>-----</u> , 19 <u>---</u> through <u>-----</u> , 19 <u>---</u>	\$ <u>-----</u>

Rent for any period less than a calendar month shall be prorated. The rent for each month shall be delivered to Shell at its address specified for notices hereunder or mailed to Shell in sufficient time to be received by the rental due date at such address as may be provided by Shell to Lessee in writing from time to time.

5. USE.

5.1 General. The Premises shall be used for operation of the (check applicable provision below):

automobile service station existing on the date of this Lease, or existing upon completion of any such station proposed or under construction on the date of this Lease, including the retail sale of petroleum products and automotive accessories, and minor repairs and services for motor vehicles.

motor fuel dispensing station existing on the date of this Lease, or existing upon completion of any such station proposed or under construction on the date of this Lease, including the retail sale of petroleum products and carry-out automotive accessories, but excluding any automotive repairs or services except such incidental services as are normally provided to vehicles receiving motor fuel while at the motor fuel dispensing driveway area (such as checking oil and coolant levels and cleaning windshields).

5.2 Lessee's Efforts. Lessee shall devote Lessee's best efforts to preserve the value of the Premises for the foregoing authorized use by serving effectively the public's and consumer's needs, and, to assure that end, shall keep the station open for operation and fully illuminated at least 18 hours each day (from

To, and part of, SERVICE STATION No. 1234 dated January 26, 19 78,
between SHELL OIL COMPANY ("Shell") and Raymond Dennig
("Lessee"), substituting its articles 3, 5 and 6, respectively, the following:

3. RENT. Lessee shall pay Shell, as rent for each calendar month, the sum specified in the following schedule, in advance not later than the first day of such month:

<u>Period</u>		<u>Monthly Rent</u>
From <u>February 1</u> , 19 <u>78</u>	through <u>December 31</u> , 19 <u>78</u>	\$ <u>1370.00</u>
From <u>January 1</u> , 19 <u>79</u>	through <u>December 31</u> , 19 <u>79</u>	\$ <u>1500.00</u>
From <u>January 1</u> , 19 <u>80</u>	through <u>December 31</u> , 19 <u>80</u>	\$ <u>1650.00</u>
From <u>-</u> , 19 <u>-</u>	through <u>-</u> , 19 <u>-</u>	\$ <u>-</u>

Rent for any period less than a calendar month shall be prorated. The rent for each month shall be delivered to Shell at the address first herein specified or mailed to Shell in sufficient time to be received by the rental due at such address as may be provided by Shell to Lessee in writing from time to time.

* * *

5. USE. The Premises shall be used only for operation of the automobile service station existing on the date of this lease, including the retail sale of petroleum products and automotive accessories and minor repairs and services for motor vehicles (but excluding the selling, leasing, parking or storing of motor vehicles, trailers, boats or any other mobile equipment). Lessee shall devote Lessee's best efforts to preserve the value of the Premises for the foregoing authorized use by serving effectively the public's and consumers' needs, and, to that end, shall keep the service station open and fully illuminated at least from ~~6:00~~ 12:00 A.M. to ~~12:00~~ midnight each day, excepting none. Lessee shall satisfy all regulatory requirements and timely pay all charges incident to Lessee's use of the Premises and the business conducted thereon, including all Federal, state and local taxes and assessments, and license, permit, occupation and inspection taxes and fees, all water, sewer, waste disposal, gas, electricity, telephone and other utility charges (all meters and accounts for which shall be in Lessee's name unless Shell, in its discretion, directs otherwise to protect the Premises or itself against possible liens or claims), and all taxes on Lessee's property on the Premises; and if Lessee fails so to do, Shell may (but shall not be obligated to) pay the same and charge them to Lessee. Lessee shall not maintain or permit any dangerous animal or other dangerous condition or attractive nuisance on the Premises. Lessee shall comply with all Federal, state and municipal laws, ordinances, regulations, orders, licenses and permits relating to the Premises or any use thereof or to any act or activity on the Premises; and Lessee shall not commit or permit any fraudulent or illegal act or activity or any consumption of intoxicating beverages on the Premises. Without Shell's prior written consent, Lessee shall not make any attachments or additions to, or any alterations of, any building or other improvement on the Premises, or construct any additional buildings or structures thereon. Any such change to which Shell may give its consent shall be made in accordance with Shell's specifications and by a contractor approved by Shell, which consent and approval shall not be unreasonably withheld and upon completion shall become a part of the Premises and property of Shell.

TO ALL SHELL DEALERS!

SEVERAL MONTHS AGO WE "UNDERSTOOD" THAT SHELL OIL, AFTER APPEARING TO HAVE SOME OF THE HIGHEST RENT INCREASES, WOULD REVIEW ALL RENTS AND WOULD BECOME MORE COMPETITIVE.

SOMEHOW, THIS MESSAGE HAS NOT "FILTERED DOWN" TO ITS DEALERS.

WHAT IS A FACT IS THAT SHELL, AT A HEARING ON OUR RENT BILL, SEEMED ANXIOUS TO MAKE A STATEMENT THAT THEIR RENT INCREASES WERE 20%.

WE ARE REPRINTING BELOW A STATEMENT TO THAT EFFECT BY BILL RAMSEY WHO APPEARS TO BE SINCERE IN HIS EFFORTS TO ESTABLISH GOOD DEALER RELATIONS.

USING THIS NEWS ARTICLE, WE SUGGEST ALL WHO RECEIVED RENT INCREASES THIS YEAR, EXCEEDING 20%, TO CALL SHELL FOR AN ADJUSTMENT AND LET US KNOW IF ITS "FACT OR FICTION".

IN THE MEANTIME, HAVE YOU SENT IN YOUR RENT SURVEY????

JERRY M. FERRARA,
Executive Director

28 □

THE STAR-LEDGER, Friday, October 10, 1983

Committee schedules hearing on gas station rent controls

.....Assemblyman Dennis Riley (D-Camden), sponsor of the measure, charged that in one case Arco raised the rents by 300 per cent, and Shell by \$1,000 a month to its dealers.

He said these increases were "an outrage, and unconscionable."

He said if the petroleum companies are allowed to raise the rents that much, "The retailer will be controlled one end to the other of the pipeline."

Riley said that Shell wants to set the rent at \$2,610 a month in 1981, \$3,570 in 1982 and \$4,530 in 1983.

He noted that in 1978 Shell's rental to its operators was between \$1,370 and \$1,650 a month.

→ W. D. Ramsey, New Jersey district manager for Shell, said that rents for Shell retailers are going up only an average of 20 per cent.

NOTE: AS OF THIS COMMITTEE HEARING DATE, DECEMBER 1ST, WE HAVE NO EVIDENCE THAT SHELL'S STATED POLICY IS A FACT.



PETROLEUM PRODUCTS

NEW YORK DIVISION
A. DIEBUS
DIVISION MARKETING MANAGER

TEXACO INC.
580 WHITE PLAINS ROAD
TARRYTOWN, NEW YORK 10591
914-332-1000

August 26, 1980

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. John Maklary
DBA: Mak's Texaco
Routes 206 & 518
Rocky Hill, NJ 08553

RE: ROCKY HILL, NJ
ROUTES 206 & 518

Dear Sir:

We refer to a certain G77C lease dated August 22, 1977, in effect between you as lessee, and us, as lessor, of the above service station premises.


We refer also to our offer to renew said lease for a period of three years commencing December 1, 1980 at a rental of \$1,425.00 per month for the first year, \$1,575.00 per month for the second year and \$1,750.00 per month for the third year.

As you have failed to accept our offer to renew your lease at said rental, we hereby give you written notice of the termination of your lease effective November 30, 1980.

You are required to vacate said premises and remove all your personal property therefrom on or prior to said termination date.

We hereby offer to repurchase from you on the termination of said lease, at the current wholesale prices, any and all products purchased by you from us subject to our right to apply proceeds against any existing indebtedness owed by you to us, and subject further to there being no other liens against said products by or on behalf of other creditors.

Very truly yours,


A. DIEBUS

NOTE: THE PRESENT RENT ON THIS STATION IS \$975 AND THE INITIAL INCREASE TO \$1425 IS APPROXIMATELY 50%.

18X

IS A CANCELLATION NEGOTIATIONS

NAME Jerome C KIRSTEN PHONE NO. 624-9870
 STATION NAME T/A HIGH SERVICE BRAND GOIF
 ADDRESS 644 HIGH ST NEWARK N.J.
 IS YOUR STATION: OWNED BY YOU NO LEASED FROM COMPANY YES
 LEASED FROM JOBBER NO LEASED FROM PRIVATE INDIVIDUAL NO
 TYPE OF STATION: Porcelain YES Modern _____ Other (specify) _____
 AVERAGE BASE GALLONAGE (Monthly) _____ NO. OF BAYS 3
 RENT PAID: JUNE 1978 \$575⁰⁰ JUNE 1979 575⁰⁰
 DO YOU HAVE A THREE-YEAR LEASE? Yes _____ No ✓

PLEASE LIST THE RENTS IN EACH OF THE YEARS BELOW:

JUNE 1980 575⁰⁰ JUNE 1981 _____ JUNE 1982 _____ JUNE 1983 _____

DID YOU HAVE A FLAT RENT ADDENDUM TO YOUR ABOVE LEASE? YES HOW MUCH? _____
 LEASE EXPIRED JUNE 30, 1980 - NEW LEASE PRESENTED WAS FOR 3 YEARS STARTING 7/1/80 FOR \$400 INCREASE + 400 MORE EACH YEAR.

I requested a 3 month extension @ original rental so I could sell my station after 24 years of operation. I refused to pay the rental new lease which was a \$0.00 increase the 1st yr of the increases in the coming 2 years. This is one of the main reasons for me to get out of the business.

Jerome C Kirsten

NOTE: THIS STATION IS IN A HIGH RISK AREA WHERE DEALER HAD TO INSTALL STEEL MESH IRON GRATES TO COVER ALL DOORS. 19X

RELATIONSHIP OF THIS TITLE TO STATE LAW

15 USC 2806.

SEC. 106. (a) To the extent that any provision of this title applies to the termination (or the furnishing of notification with respect thereto) of any franchise, or to the nonrenewal (or the furnishing of notification with respect thereto) of any franchise relationship, no State or any political subdivision thereof may adopt, enforce, or continue in effect any provision of any law or regulation (including any remedy or penalty applicable to any violation thereof) with respect to termination (or the furnishing of notification with respect thereto) of any such franchise or to the nonrenewal (or the furnishing of notification with respect thereto) of any such franchise relationship unless such provision of such law or regulation is the same as the applicable provision of this title.

(b) Nothing in this title authorizes any transfer or assignment of any franchise or prohibits any transfer or assignment of any franchise as authorized by the provisions of such franchise or by any applicable provision of State law which permits such transfer or assignment without regard to any provision of the franchise.

PLEASE NOTE - Contrary to opinion expressed by opponents of A-941, the federal Petroleum Marketing Practices Act does not preclude any state action on rents, etc. Its preemption merely pertains to notification and termination provisions.

Section (b) of above specifically was added to make clear that the right granted under the New Jersey Franchise Practices Act to transfer or assign the franchise was not in any way prohibited.

NOTE: THIS IS A NEW VERSION OF A MOBIL LEASE. EVEN AFTER GETTING AN INCREASED RENT THEY TAKE A UNILATERAL RIGHT TO RAISE IT AGAIN 20%.

(1) From October 1, 1980 to January 31, 19 81 the sum of: (i) \$ 1,004 per month GPC rental with a collection rate of 2.1 cents per gallon, plus (ii) \$ 796 per month APC rental with a collection rate of 2.0 cents per gallon; such total of \$ 1,800 to be collected at the rate of 4.1 cents per gallon.

(2) From February 1, 19 81 to September 30, 19 81 the sum of: (i) \$ 1,004 per month GPC rental with a collection rate of 2.1 cents per gallon, plus (ii) \$ 963 per month APC rental with a collection rate of 2.0 cents per gallon; such total of \$ 1,967 to be collected at the rate of 4.1 cents per gallon.

(3) From October 1, 19 81 to September 30, 19 82 the sum of: (i) \$ 1,320 per month GPC rental with a collection rate of 2.7 cents per gallon, plus (ii) \$ 963 per month APC rental with a collection rate of 2.0 cents per gallon; such total of \$ 2,283 to be collected at the rate of 4.7 cents per gallon.

(4) From October 1, 19 82 to September 30, 1983 the sum of: (i) \$ 1,635 per month GPC rental with a collection rate of 3.4 cents per gallon, plus (ii) \$ 963 per month APC rental with a collection rate of 2.0 cents per gallon; such total of \$ 2,598 to be collected at the rate of 5.4 cents per gallon.

As used in this section, GPC or Gasoline Profit Center refers to the rental for the use of the motor fuel facilities at the premises and the related equipment listed on Schedule A. As used in this section, APC or Alternate Profit Center refers to the rental for the use of the non-motor fuel facilities at the premises. As used in this section the collection rate is the gallonage collection to be applied against each gallon of motor fuel delivered by or on behalf of Landlord into the storage tanks at the premises. If in any month during the term of this lease there is a deficiency between the amount collected by the collection rate and the rental due for the month, Tenant shall pay such deficiency to Landlord not later than the fifteenth day of the following month. If in any month there is an overpayment, the overpayment will be refunded to Tenant or, at Landlord's option, applied to any account owing by Tenant to Landlord. The APC rent has been calculated on the use of the non-motor fuel facilities by Tenant as of the effective date of this lease. If Tenant alters Tenant's business practices so as to add to or change the current use upon which the APC rent is based, Tenant agrees to negotiate in good faith a revised APC rent at the request of the Landlord. In the event Landlord and Tenant fail to agree on a revised APC rent within thirty days of Landlord's request, Tenant shall, on notice from Landlord, either discontinue the added or changed use, or vacate the premises.

(b) Landlord may, on sixty days prior written notice, increase the rent for either the GPC or the APC or both by not more than 20% each for any of the rental periods specified in Paragraph (a) above, effective with the commencement of the rental period as specified therein. If Landlord shall exercise this option, the collection rate will be adjusted accordingly.

(c) If, during any 12-month period measured from the effective date of this lease or the annual anniversary date thereof, there is delivered into the storage tanks listed in

TESTIMONY GIVEN BY M. E. PORTER, EASTERN REGION MANAGER, CAPITAL INVESTMENT, AMOCO OIL COMPANY, BEFORE THE NEW JERSEY SENATE COMMITTEE ON LABOR, INDUSTRY AND PROFESSIONS, MONDAY, DECEMBER 1, 1980.

THANK YOU, MR. CHAIRMAN. I AM MAX PORTER, MANAGER, CAPITAL INVESTMENT, EASTERN REGION OF AMOCO OIL COMPANY.

AMOCO OIL HAS 309 DIRECT DELIVERED ACCOUNTS IN NEW JERSEY, 156 OF WHICH WOULD BE ADVERSELY AFFECTED BY THE PASSAGE OF A.941. OF THESE 156 ACCOUNTS, ONLY 46 ARE COMPANY OWNED, LAND AND BUILDING; 110, OR 70%, ARE OWNED BY PRIVATE, THIRD PARTY INDIVIDUALS WHO LEASE THEM TO AMOCO OIL UNDER VARIOUS TERMS AND CONDITIONS. THESE 110 HAVE RENT INCREASE CLAUSES IN THEIR LEASE WITH US OR ARE SUBJECT TO RE-NEGOTIATION AT FREQUENT INTERVALS. PRIVATE PROPERTY OWNERS EXPECT TO RECEIVE A FAIR MARKET VALUE RENTAL ON LAND AND BUILDINGS THEY OWN AND, IN FACT, INSIST UPON IT. THE PROPOSED BILL WILL LIMIT OUR ABILITY TO RECOVER THIS INCREASED RENT AND ADVERSELY IMPACT ON THE LONG TERM VIABILITY OF THOSE SERVICE STATIONS, AND MAY PRECLUDE THEM FROM REMAINING IN OUR SYSTEM.

THE PROPOSED BILL DOES NOT AFFECT ALMOST HALF, 49%, OF THE SERVICE STATIONS CURRENTLY IN AMOCO'S SYSTEM. 153 OF THE 309 DIRECT ACCOUNTS ARE OWNED BY PRIVATE INDIVIDUALS WHO HAVE INVESTED IN, OR LEASED THEIR OWN FACILITIES. AMOCO MERELY ACTS AS THEIR SUPPLIER OF PETROLEUM PRODUCTS. THESE DEALERS ARE FACED WITH THE SAME TYPE OF INVESTMENTS AND RISING COSTS AS AMOCO OIL OR ANY PRIVATE PROPERTY OWNER. THUS THE BILL DOES NOT AFFECT ALL DEALERS, ONLY

SOME DEALERS WHO LEASE THEIR REAL ESTATE AND IMPROVEMENTS FROM DISTRIBUTORS OF PETROLEUM PRODUCTS.

IN 1974, AMOCO HAD 166 RENT PAYING DIRECT ACCOUNTS OPERATING IN NEW JERSEY. OUR TOTAL ANNUAL RENT INCOME FROM THOSE ACCOUNTS WAS \$1.5M. IN 1974, OUR AVERAGE VOLUME WAS 349 THOUSAND GALLONS PER YEAR, PER STATION. AVERAGE RENT INCOME FROM THESE ACCOUNTS WAS \$657 PER MONTH. BY 1980, AVERAGE VOLUME PER AMOCO ACCOUNT HAD INCREASED TO 560,585 THOUSAND GALLONS. AT THE SAME TIME, AVERAGE RENT INCOME TO AMOCO INCREASED ONLY \$290 TO \$950 PER MONTH, AN AVERAGE OF LESS THAN 8% PER YEAR. IN 1980, AVERAGE RENT INCOME TO AMOCO WENT TO 2.0¢ PER GALLON, FROM 1.9¢ PER GALLON IN 1974, AN INCREASE OF ONLY 1/10 OF ONE CENT IN A SIX-YEAR PERIOD.

DURING THE LAST FIVE YEARS, AMOCO RENT INCREASES HAVE LAGGED APPRECIABLY BEHIND VOLUME INCREASES. AT THE SAME TIME, OTHER COSTS ASSOCIATED WITH THE OPERATION OF OUR PHYSICAL FACILITIES-- MAINTENANCE, TAXES AND DEPRECIATION, HAVE ALSO ESCALATED AT RATES IN EXCESS OF OUR RENT INCREASES.

THE POINT IS THAT DURING A TIME FRAME WHEN RENT INCREASES UNDER D.O.E. REGULATIONS WERE NOT PROHIBITED AND DEALERS, IN TURN, COULD HAVE PASSED THOSE INCREASES TO THE CONSUMERS, AMOCO IMPLEMENTED ONLY MODEST CHANGES. THIS DEMONSTRATES THAT LEGISLATION MAY NOT BE IN THE BEST INTEREST OF THE DEALER.

THE ARGUMENT HAS BEEN ADVANCED THAT DEALERS NEED A 15% CAP TO ENSURE THAT RENT INCREASES ARE NOT EXORBITANT.

HOWEVER, WHEN AVERAGED OUT OVER A NUMBER OF YEARS MOST LESSEE-DEALERS HAVE RECEIVED RENT INCREASES SUBSTANTIALLY LESS THAN 15% -- SOME NONE AT ALL. RENT INCREASES IN A NON-CONTROLLED ENVIRONMENT DEPEND ON THE VALUE OF THE PROPERTY.

MAXIMUMS TEND TO BECOME FLOORS. PRUDENT MANAGEMENT WILL BE INCLINED TO INCREASE THE RENT EACH YEAR TO AT OR NEAR THE MAXIMUM TO AVOID BEING CAUGHT SHORT SOMEWHERE ALONG THE LINE.

THE RESULT WILL BE HIGHER RENTS FOR THE VAST MAJORITY OF DEALERS THAN THEY WOULD OTHERWISE EXPECT.

IT IS TRUE OUR COMPANY IS NOW LOOKING AT FUTURE RENT INCREASES WHICH WILL TAKE INTO ACCOUNT THE MARKET VALUE OF OUR PROPERTIES, BUT THAT IS NO DIFFERENT THAN OTHER COMMERCIAL PROPERTY OWNERS HAVE BEEN DOING ALL ALONG.

PROHIBITING A FAIR MARKET VALUE RENT RETURN, AS A.941 WOULD DO, WILL HAVE SEVERAL ADVERSE EFFECTS ON THE NEW JERSEY CONSUMER. ONE IS THAT REAL ESTATE COSTS WHICH CANNOT BE RECOVERED FROM RENTS WOULD HAVE TO BE PASSED THROUGH TO THE CONSUMER IN THE FORM OF HIGHER GASOLINE PRICES. A SECOND IS, THAT WHEN SERVICE STATIONS BECOME UNPROFITABLE, THEY HAVE TO BE REMOVED FROM THE SYSTEM.

PRESENTLY, 5% (15 S.S.'s) OF AMOCO STATIONS IN NEW JERSEY ALREADY FIT THAT CATEGORY.

AMOCO'S OBLIGATION TO ITS SHAREHOLDERS IS TO EARN AN ADEQUATE RETURN ON THEIR INVESTMENT. THIS MEANS THAT THE PRESENT USE OF A PIECE OF PROPERTY IS IN COMPETITION WITH ITS MARKET VALUE FOR OTHER POTENTIAL USES, SUCH AS Mc DONALD'S RESTAURANTS, BANKS, CLEANERS, ETC., AND IS NOT PERPETUALLY DEDICATED TO SERVICE STATION USE.

LET ME REMIND THE COMMITTEE THAT, IN MANY INSTANCES, OUR SERVICE STATION DEALERS USE OUR PROPERTY FOR GENERATING INCOME IN MANY WAYS OTHER THAN JUST SELLING GASOLINE. A TWO, THREE OR FOUR BAY SERVICE STATION IS NOT NEEDED FOR THE SALE OF GASOLINE, BUT IS NEEDED BY THE DEALERS TO GENERATE INCOME FROM THE SALE OF MOTOR OIL, TIRES, BATTERIES, AUTOMOTIVE ACCESSORIES, MOTOR TUNEUPS, STATE INSPECTIONS, ETC., WHICH ARE VERY PROFITABLE TO THE DEALER. IF WE CAN'T SECURE AN ADEQUATE RETURN FROM THE DEALER FOR FACILITIES WHICH ENABLE HIM TO GENERATE INCOME, WHY SHOULD WE CONTINUE TO INVEST OR RETAIN OUR INVESTMENT IN THEM?

DEALER EXPENSES HAVE INCREASED, BUT SO HAVE THEIR MARGINS AND VOLUME. MARGINS IN NEW JERSEY HAVE INCREASED FROM ABOUT 6¢ PER GALLON IN JANUARY 1979, ON REGULAR GASOLINE, TO ABOUT 11¢ PER GALLON IN OCTOBER, 1980.

I HAVE STATED PREVIOUSLY AND I WANT TO RE-EMPHASIZE THAT AVERAGE DEALER VOLUME PER STATION HAS INCREASED SUBSTANTIALLY. COUPLED WITH THE AFOREMENTIONED PROFIT MARGIN INCREASE, THE DEALER MARKUP ON GASOLINE SINCE JANUARY, 1979, TO OCTOBER, 1980, HAS GONE FROM ABOUT \$35,000 TO OVER \$61,600 ANNUALLY, OR HAS INCREASED 76% IN THIS SHORT PERIOD OF TIME. DURING THE SAME PERIOD OF TIME, THE AVERAGE RENT FOR AMOCO DEALERS HAS INCREASED LESS THAN \$120 PER MONTH. LABOR COSTS, UTILITIES, AND OTHER OPERATING EXPENSES OF THE DEALER HAVE ALSO INCREASED DURING THAT TIME, AS HAS EVERY OTHER BUSINESSMAN'S. RENT INCREASES ON THE PART OF AMOCO ARE NOT REALLY A CONTRIBUTING FACTOR.

I AM SOMEWHAT PUZZLED AS TO WHY LEGISLATION IS BEING PROPOSED TO CONTROL SERVICE STATION RENTS. DOES THIS MEAN THAT RENTS OF SUPER MARKETS SHOULD BE CONTROLLED OR TIED TO THE PRICE OF SUGAR, FLOUR, BUTTER AND EGGS? - OR THAT THE RENTS IN RESTAURANTS BE CONTROLLED BECAUSE OF THE PRICE OF COFFEE? - OR THAT RENTS BANKS PAY SHOULD BE CONTROLLED BECAUSE OF HIGH INTEREST RATES AND THE SCARCITY OF MONEY? WILL OTHER SEGMENTS OF THE BUSINESS COMMUNITY COME UNDER THIS TYPE OF ACTION AND THEIR RENTS BE TIED TO A VERY SUSPECT ECONOMIC INDICATOR SUCH AS THE CONSUMER PRICE INDEX?

IT IS OUR OPINION THAT ACTIONS OF THIS TYPE ULTIMATELY AFFECT THE CONSUMER. AS I STATED EARLIER, WE MUST GENERATE AN ADEQUATE RETURN ON OUR INVESTMENT, AS ANY GOOD BUSINESSMAN DOES. INCREASED COSTS NOT RECOVERED THROUGH RENT INCREASES, END UP IN THE CONSUMER PRICE.

WITHOUT ANTICIPATION OF RESTRICTIVE TYPE LEGISLATION SUCH AS THIS, AMOCO HAS INCREASED ITS NET INVESTMENT IN MARKETING FACILITIES IN THE STATE OF NEW JERSEY BY OVER ONE AND A HALF MILLION DOLLARS DURING THE LAST TWO YEARS. TO THE EXTENT THAT NEW JERSEY BECOMES INCREASINGLY INHOSPITABLE TO SERVICE STATION INVESTMENTS, IT WILL BE THE MOTORING PUBLIC WHO PAYS THE PRICE IN LESS COMPETITION AND LOWER PRODUCT AVAILABILITY.

THIS CONCLUDES MY PREPARED REMARKS. I WOULD BE HAPPY TO TRY TO ANSWER ANY QUESTIONS YOU MAY HAVE.

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STATEMENT OF
D. L. EASTMAN
ON BEHALF OF
MOBIL OIL CORPORATION
REGARDING ASSEMBLY BILL NO. 941

MY NAME IS DON EASTMAN, AND I AM HERE ON BEHALF OF MOBIL OIL CORPORATION. MOBIL IS A MAJOR REFINER AND MANUFACTURER IN THE STATE OF NEW JERSEY, EMPLOYING OVER 4,200 PEOPLE. WE OPERATE A 100,000 BARREL PER DAY REFINERY LOCATED IN PAULSBORO, NEW JERSEY. IN ADDITION, WE ARE A SIGNIFICANT MARKETER OF PETROLEUM PRODUCTS IN NEW JERSEY AND, AS SUCH, COMPRISE SIX TO SEVEN PERCENT OF THE MARKET IN THE STATE FOR MOTOR GASOLINE. WE ARE VERY DISTURBED BY ASSEMBLY BILL 941, AND BELIEVE THAT PORTIONS OF IT ARE ILLEGAL, AND THAT ITS PURPURTED GOAL OF REDUCING COSTS OF GASOLINE TO THE PUBLIC WOULD NOT BE ACCOMPLISHED.

WE HAVE A NUMBER OF PROBLEMS WITH ASSEMBLY BILL 941. MANY OF THESE PROBLEMS NATURALLY RESULT BY THE VERY NATURE OF THE COMPLEXITY OF OUR DISTRIBUTION SYSTEM TO THE PEOPLE OF NEW JERSEY. FOR INSTANCE, MOBIL SERVES THE CITIZENS OF NEW JERSEY THROUGH 451 TOTAL RETAIL OUTLETS. OF THESE 451 OUTLETS, THERE ARE 216 WHERE MOBIL OWNS OR LEASES THE PROPERTY. WE REFER TO THESE AS "OG&L'S". WE HAVE 152 NON-LESSEE STATIONS. THESE ARE LOCATIONS OWNED OR CONTROLLED BY THE DEALER, WHERE MOBIL MERELY HAS A SUPPLY CONTRACT. WE REFER TO THESE AS "N-DEALERS". WE HAVE 83 RETAIL OUTLETS WHICH ARE OWNED OR CONTROLLED BY INDEPENDENT MOBIL DISTRIBUTORS.

IN EXAMINING EACH OF THESE GROUPS, YOU WILL RECOGNIZE THE

COMPLEXITY INVOLVED ATTEMPTING TO CONTROL RENTS OF ONLY ONE SMALL GROUP. LET ME EXPLAIN, STARTING WITH THE OG&L GROUP. OF THE 216 OG&L'S, MOBIL OWNS THE GROUND AT ONLY 95 LOCATIONS. THE REST, OR 121 OUTLETS, ARE LEASED BY MOBIL FROM A THIRD PARTY. AS SUCH, MOBIL IS SUBJECT TO RENTAL INCREASES FROM OUR LANDLORD AT VARIOUS TIMES AND IN VARYING AMOUNTS. OBVIOUSLY, THIS BILL WOULD PROHIBIT MOBIL FROM RECOVERING FROM THE DEALER, ANY INCREASED GROUND RENT WHICH WE INCURRED FROM OUR LANDLORD. IF WE ARE CAUGHT IN THE MIDDLE AND ARE UNABLE TO RECOVER OUR COSTS, IT WOULD UNDOUBTEDLY AFFECT THE FUTURE VIABILITY OF THESE LOCATIONS AS FRANCHISE OPERATIONS. WE WOULD POINT OUT THAT ANY ATTEMPT TO MODIFY THE BILL TO ALLOW US TO PASS ON OUR INCREASED GROUND RENTAL COSTS FOR THESE STATIONS WHEREIN MOBIL HAS A LANDLORD, WHILE AT THE SAME TIME RESTRAINING RENT INCREASES ON THE SITES WHEREIN WE OWN THE GROUND, WOULD ONLY SERVE TO PLACE ONE SEGMENT OF OUR LESSEE DEALERS AT A COMPETITIVE DISADVANTAGE WITH ANOTHER SEGMENT OF OUR LESSEE DEALERS.

REGARDING THE 152 NON-LESSEE STATIONS, OR "N-DEALERS", WE ARE NOT PRIVY TO INFORMATION AS TO HOW MANY ARE OWNED BY THE DEALER VERSUS HOW MANY ARE LEASED BY THE DEALER. HOWEVER, WE DO KNOW THAT A SIGNIFICANT NUMBER ARE LEASED BY THE DEALER FROM THIRD PARTIES NOT AFFILIATED WITH THE PETROLEUM INDUSTRY, IN GROUND LEASES VERSUS BEING OWNED. THESE DEALERS WOULD PRESUMABLY NOT BE AFFECTED BY THIS BILL, AND COULD POSSIBLY INCUR A COMPETITIVE DISADVANTAGE VERSUS DEALERS WHOSE RENT IS CONTROLLED.

NOW LET'S MOVE TO THE THIRD GROUP OF RETAIL OUTLETS, THOSE

WHICH ARE OWNED OR CONTROLLED BY INDEPENDENT MOBIL DISTRIBUTORS. AS I STATED EARLIER, THERE ARE 83 OF THESE LOCATIONS, OF WHICH 36 ARE LEASED TO DEALERS. OBVIOUSLY, THEY WILL BE AT A COMPETITIVE ADVANTAGE VERSUS OTHER STATIONS WHERE THE RENT IS NOT CONTROLLED.

IT SUFFICES TO SAY THAT THE COMPLICATIONS RESULTING FROM THIS BILL ARE CONSIDERABLE AND SHOULD BE ADDRESSED, BEFORE ANY BILL OF THIS NATURE COULD BE CONSIDERED.

IN ADDITION TO THE COMPLICATIONS JUST BRIEFLY REVIEWED WITH YOU, I WOULD NOW LIKE TO ADDRESS MYSELF TO THE FACTS CONCERNING MOBIL'S RENTAL SITUATION OVER THE PAST 6 YEARS.

I HAVE ACCUMULATED SOME STATISTICS WHICH I BELIEVE THE COMMITTEE WILL FIND OF INTEREST. WE SELECTED A REPRESENTATIVE GROUP OF 98 LESSEE DEALER SERVICE STATIONS THAT WERE IN EXISTENCE IN 1973, AND WE COMPILED STATISTICS ON THIS SAME GROUP OF LESSEE STATIONS AS OF 1979. IN 1973, THE AVERAGE SERVICE STATION RENTAL WAS \$7,422 PER YEAR, VERSUS \$9,470 PER YEAR IN 1979 -- AN INCREASE OF ONLY 27.6% OVER A SIX-YEAR PERIOD. IN THIS SAME SIX-YEAR PERIOD, THE CONSUMER PRICE INDEX INCREASED APPROXIMATELY 66%, YET OUR RENTAL INCREASED ONLY AS STATED, 27.6%. DURING THIS SAME SIX-YEAR PERIOD, THE AVERAGE YEARLY VOLUME PER STATION INCREASED FROM 439,436 GALLONS PER YEAR TO 476,811 GALLONS PER YEAR, OR AN INCREASE OF 8.57%. HOWEVER, THE MOST INTERESTING FACTOR IS THE DEALER PROFIT MARGIN. THIS HAS INCREASED FROM APPROXIMATELY 6 CENTS PER GALLON IN 1973 TO 16.1 CENTS PER GALLON AT THE END OF 1979. THIS IS AN INCREASE OF 267% ON THE DEALER'S PROFIT ON THE SALE OF GASOLINE. AND, OF COURSE, THIS GROSS PROFIT FACTOR DOES NOT INCLUDE THE PROFIT THE DEALER MAKES ON

THE SALE OF TIRES, BATTERIES AND ACCESSORIES, AS WELL AS HIS MECHANICAL REPAIR BUSINESS. I THINK YOU SHOULD UNDERSTAND, WE DO NOT BEGRUDGE THE DEALER THIS PROFIT, AND CERTAINLY IT IS NOT 16.1 CENTS PER GALLON IN TODAY'S MARKET, BUT RATHER A MARGIN OF ABOUT 11 CENTS PER GALLON ON THE AVERAGE. THE AVERAGE DEALER WORKS HARD, PUTS IN LONG HOURS AND IS DESERVING. BUT, WITH THIS PROFIT PICTURE, WE ASK YOU -- IS HE SO DESERVING AS TO RECEIVE SPECIAL PROTECTIVE LEGISLATION -- FROM A BILL WHICH IS OSTENSIBLY DESIGNED TO PROTECT THE CONSUMER.

CERTAINLY, MOBIL'S MODEST RENT INCREASE OF 27.6%, OR 4.6% PER YEAR, OVER A SIX-YEAR PERIOD IS ONLY INDICATIVE OF THE FACT THAT WE HAVE FALLEN FAR BEHIND INFLATION AND ARE NOT REALIZING THE FAIR RENTAL INCOME ATTRIBUTABLE TO THE PROPERTY. WE ATTEMPT TO ACHIEVE A RENTAL BASED ON THE INCOME-PRODUCING CAPABILITY OF THE PARTICULAR PROPERTY. IN THE REAL ESTATE BUSINESS, THIS IS THE UNIVERSALLY ACCEPTED METHOD OF CALCULATING PROPER RENTAL INCOME, WHETHER THE PROPERTY BE A SHOPPING CENTER, AN OFFICE BUILDING, OR A SERVICE STATION. OUR RENTAL INCOME OF 1973 WAS BASED ON A REVENUE GENERATING CAPACITY OF THAT DAY AND TIME. TODAY, IT SHOULD PROPERLY REFLECT THE 1980 REVENUE GENERATING CAPACITY OF THAT PROPERTY. UNDER OUR RENTAL POLICY, WHICH IS ADMINISTERED UNIFORMLY ON A NATION-WIDE BASIS, WE ATTEMPT TO ACHIEVE AS RENTAL, 15% TO 20% OF THE GROSS ~~IN~~ ^{PROFIT} ~~COME~~ GENERATING POTENTIAL OF AN OUTLET.

THERE IS ALSO THE POTENTIAL PSYCHOLOGICAL EFFECT OF A LAW LIMITING RENT INCREASES TO A CERTAIN PERCENTAGE A YEAR. THE ACTUAL

RESULTS OF SUCH A LAW COULD BE COUNTER-PRODUCTIVE, INsofar AS THE INTENDED RESULTS. THIS TYPE LAW COULD WELL RESULT IN FRANCHISORS AUTOMATICALLY TAKING THE FULL 15% EACH YEAR, WHEN, WERE IT NOT FOR SUCH A LAW, THEY WOULDN'T TAKE NEARLY THAT MUCH. IN OTHER WORDS, THERE IS A REAL DANGER THAT A COMPANY WILL FEEL THEY WOULD FALL BEHIND AND NOT BE ABLE TO LATER RECOUP ITS COSTS, IN THE EVENT THEY TAKE LESS THAN THE 15% IN ANY ONE YEAR OR SERIES OF YEARS.

GENTLEMEN, THIS LEGISLATION IS SIMPLY UNNECESSARY -- IT IS ILL-FOUNDED AND WOULD SERVE ONLY TO AFFORD COST PROTECTION TO A SMALL SPECIAL INTEREST GROUP, WITH NO CORRESPONDING BENEFIT TO THE PUBLIC. IN ACTUAL PRACTICE, IT COULD EVEN BE COUNTER-PRODUCTIVE, AND ADVERSELY AFFECT THE BEST INTERESTS OF THE VERY SPECIAL INTEREST GROUP IT IS DESIGNED TO PROTECT. CERTAINLY, UNDER THE PROFIT PICTURE I HAVE DESCRIBED TODAY, THIS SAME SPECIAL INTEREST GROUP IS MAKING SUBSTANTIAL PROFITS, AND DOES NOT NEED YOUR HELP.

THANK YOU FOR THE OPPORTUNITY TO APPEAR AND EXPRESS MOBIL'S VIEWS ON THIS BILL. I WILL BE MOST HAPPY TO ANSWER ANY OF YOUR QUESTIONS.

December 1, 1980

STATEMENT

by

NEW JERSEY BUSINESS AND INDUSTRY ASSOCIATION

on

Assembly bill 941

to the

Senate Committee on Labor, Industry and Professions

December 1, 1980

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Mr. Chairman, members of the Senate Committee on Labor, Industry and the Professions, this statement is being submitted on behalf of New Jersey Business and Industry Association. We appreciate this opportunity to comment on Assembly bill 941.

This legislation promotes government intrusion into the contractual relationship of two commercial parties, each of which must be assumed to have sufficient bargaining power of its own.

As a result of testimony by selected dealers, this committee may conclude that in certain situations, one side (refiners) has the economic advantage over the other (dealers). We submit, however, that even were this to be true, it should not be the responsibility of the legislature to attempt to constantly balance the economic scales by entering into every commercial contract. If it does so in this instance, a precedent will have been established which can bode no good for the American economic system in New Jersey. Government will have dictated a contractual term which is crucial to a commercial relationship. Once done, who can predict where the intervention will come next?

The prevailing public mood favors less of a government role in the affairs of business and commercial competition. The recent general election results bear this out. This growing public feeling is no doubt due at least in part to the recognition that the consumer simply does not profit from the substitution of government wisdom for that of the marketplace. If anything, in the long run, government wisdom serves only to increase the cost of goods and services to the consumer.

2.

One reason government wisdom is at a disadvantage is that its actions all too often tend to have an arbitrary impact. The particulars of A-941 present a current example.

When first proposed, a 15% ceiling on annual rent increases appeared to be reasonable, since the rate of inflation at that time was about 12 or 13%. Last spring, however, that rate was almost 20%! For several months, the 15% ceiling would have been inadequate and unfairly low.

In conclusion, we urge you to reject A-941 for three basic reasons:

1. It would establish a bad precedent in that the legislature would be tempted to become involved in other, strictly commercial relationships.
2. It is not in the public interest since it is contrary to the movement away from government regulation and interference in private affairs.
3. Its arbitrary impact will hurt some while offering little or no relief to the consumer.

Thank you for considering our comments.

NEW JERSEY BUSINESS & INDUSTRY ASSOCIATION



