VETO MESSAGE - No. 6769

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 7410-B, entitled:

"AN ACT to amend the general business law, in relation to prohibiting a producer or refiner from selling, transferring, or assigning interest in a retail outlet leased to a dealer unless the producer or refiner makes certain offers of the producer's or refiner's interest to such dealer"

NOT APPROVED

Over the past few decades, the petroleum industry in the United States had been moving in the direction of vertical integration. Within the oil industry, a single producer commonly owns the oil wells, refines the oil, and sells gasoline at roadside stations. The existing State and federal business and antitrust laws deter refiners and other firms from engaging in predatory and monopolistic behavior but, at the same time, have allowed them to seek lower operating costs through vertical integration.

Today, vertical integration is waning and a divestment of the retail dealer stations and repair shops by the producers have been widely undertaken within this industry, creating issues relating to who has the right to purchase or operate retail stations. There is a competition for the operation of these stations between those who currently operate the stations and those who seek to enter into this market.

Existing federal law governs these transactions: The Petroleum Marketing Practices Act (PMPA) was enacted in 1978 after Congressional hearings established that franchisors had used superior bargaining power and threats of termination to gain unfair advantages in contract disputes with their franchisees. The Act has two purposes. First, the Act protects franchisees from franchisors' superior bargaining power. Second, the Act creates a uniform set of rules governing the franchisor-franchisee relationship with respect to petroleum franchises. To meet these objectives, the Act delineates specific grounds upon which a termination or nonrenewal can take place. Furthermore, Article 11-B of the General Business Law provides additional protections to dealers who own producer franchises.

This bill would expand upon federal and State law by providing that if a producer owns a fee simple interest in a retail outlet leased to a dealer, the producer may not sell, transfer or assign to another person the producer's interest in the retail outlet unless the producer makes a bona fide effort to sell to the dealer the producer's interest in the retail outlet. The bill also would require the producer to offer a right of first refusal to the dealer of any bona fide offer acceptable to the producer made by a third party to purchase the producer's interest in the retail outlet.

Should the producer lease the premises from a third party and sublease the retail outlet to a dealer, this bill would provide that the producer may not sell, transfer or assign to a third party their interest in the

third-party lease unless the producer makes a bona fide effort to sell, transfer or assign to the dealer the producer's interest. The bill also would require the producer to make a bona fide effort to sell, transfer or assign to the dealer their interest in any improvements or equipment owned at the retail outlet and it would require the producer to accept an offer made by a third party to purchase their interest in the retail outlet at a price not exceeding the greater of the fair market value or the book value of the improvements and equipment.

Small businesses are the lifeblood of out State and I support the efforts of the sponsors to assist these local businesses in their endeavors. Nonetheless, I am constrained to veto this bill for several reasons. First, the law is not necessary as the PMPA already provides many of the "right of refusal" protections embodied in this bill. Moreover, Article 11-B of the General Business Law already prohibits franchise terminations, except for good cause shown (e.g., fraud, mismanagement). Second, this bill would place yet more restrictions on the ability of parties to negotiate contracts and agreements. This bill grants various property rights to lessees that are comparable to those of a landowner although they incur less risk as a tenant, thus providing an unfair benefit to lessees without the risk. Third, while a "right of refusal" may seem innocent on its face, it could have an impact on minority participation in the oil and gas industry. As Governor, I have successfully opened new opportunities for minority and women-owned businesses in State contracting. This bill unfortunately would negatively impact a trend of inclusion in the oil and gas business, by locking in existing dealerships and keeping out new entrants. Fourth, this bill has technical errors that could lead to litigation. For example, this bill would prohibit a producer that reorganizes its business from transferring its station to an affiliate or subsidiary without first providing an opportunity for the lessee to make an offer. Also, the bill does not provide for a time limit on the dealer's right of refusal, which could enable dealers to tie up a potential sale through court action.

Finally this bill does little to enhance the relationships between gasoline producers and dealers. Indeed, a similar law was recently enacted in New Jersey, and has led to confusion in the industry and unnecessary litigation. In today's poor economic climate, the State should not be imposing laws that cause additional cost burdens on businesses.

The bill is disapproved. (signed) DAVID A. PATERSON