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SENATE

Senate Bill No. 1642

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INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

EXPLANATORY NOTE

This bill seeks to amend Republic Act No. 8479, otherwise known as the "Downstream Oil Industry Deregulation Act" by increasing competition at the retail industry level and strengthening the power of the Department of Energy.

One of the primary aims of this amendment is to encourage greater competition at the retail level. To address this, the retail industry has to be freed from the influence of big oil companies which own most of the retail outlets all over the country. This will encourage investment in the retail level, which will eventually lead to greater competition. With greater margin of competition, it is hoped that pump prices will be brought to reasonable levels.

The deregulation of the oil industry was brought about by the desire of the government to allow free market forces to influence the prices of oil petroleum products. With the deregulation of the industry, it was the intention of the law for new players to come in, thus creating an environment of competition, which eventually will lead to fair, market-driven oil prices.

There are currently 66 new players that invested in the oil industry. However, the industry suffers from incredulity in terms of fair competition. While new players are present, there is a growing concern whether there indeed exists free enterprise, or whether there is a cartel-like environment that allows present players to dictate in one way or the other the prices of oil products.

Despite all the developments in the industry, the reality is that there is a need for more players. Notwithstanding Section 10 of the Downstream Oil Industry Deregulation Act of 1998 which provides for financial assistance for the establishment and operation of gasoline stations, the number of existing gasoline stations does not seem to suggest a friendly retail-level industry. Of the Php300 million allocated by law to be taken out of PAGCOR coffers for this purpose, only Php30 million was actually divested to the DOE. Out of this amount, only Php20 million has been used up for loans since the passage of the oil deregulation law in 1998. With big oil companies controlling the industry down the whole supply chain, it is understandable that operating a gasoline station does not present itself to be a promising enterprise. Hence, there is the necessity to introduce the proposed amendment.

There is also a need to have transparency in the pricing of oil products. Deregulation allows industry players to determine their prices, but in an industry imbued with much public interest, the public has the right to know whether the prices are fairly determined. Thus, the Department of Energy's powers are

expanded so that it may effectively carry out its mandate to inform and protect the public from any illicit practices in the industry.

In view of the foregoing, approval of this bill is earnestly requested.



JINGGOY EJERCITO ESTRADA
Senator

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AN ACT
AMENDING REPUBLIC ACT NO. 8479, OTHERWISE KNOWN AS THE
"DOWNSTREAM OIL INDUSTRY DEREGULATION ACT"

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section 4 of R.A. No. 8479 is hereby amended to read as follows:

"SEC. 4. Definition of Terms. - For purposes of this Act, the following terms are herein below defined:

"(a) *Base Convention* shall refer to the international accord which governs the trade or movement of hazardous and toxic wastes across borders;

"(b) *Board* shall refer to the Energy Regulatory Board;

"(c) *BOI* shall refer to the Board of Investments;

"(D) **COMPANY OPERATED STATION MEANS A SERVICE STATION OWNED OR CONTROLLED BY AN OIL COMPANY AND OPERATED WITH COMPANY PERSONNEL, A SUBSIDIARY COMPANY, OR A COMMISSIONED AGENT OR UNDER CONTRACT WITH, ANY PERSON, FIRM OR CORPORATION MANAGING ANY SUCH OUTLET ON A FEE ARRANGEMENT OR ON ANY FEE FOR SERVICE ARRANGEMENT WITH THE OIL COMPANY.**

"(E) [(d)] *Crude Oil* shall refer to oil in its natural state before the same has been refined or otherwise treated, but excluding water, bottoms, sediments and foreign substances;

"(F) [(e)] *Dealer* shall refer to any person, whether natural or juridical, who is engaged in the marketing and direct selling of petroleum products to motorists, end users, and other consumers;

"(G) [(Q)] *DOE* shall refer to the Department of Energy;

"(H) [(g)] *DOJ* shall refer to the Department of Justice;

"(I) [(h)] *Downstream Oil Industry (DOI) or Industry* shall refer to the business of importing; exporting, re-exporting, shipping, transporting, processing, refining, storing, distributing, marketing and/or selling crude oil, gasoline, diesel, liquefied petroleum gas (LPG), kerosene, and other petroleum products;

"(J) [(i)] *Hauler* shall refer to any person, whether natural or juridical, engaged in the transport, distribution, hauling, and carriage of petroleum products, whether in bulk or packed form, from the oil companies and independent marketers to the petroleum dealers and other consumers;

"(K) [(j)] *LPG Distributor* shall refer to any person or entity, whether natural or juridical, engaged in exporting, refilling, transporting, marketing, and/or selling of LPG to end users and other consumers;

"(L) [(k)] *New Industry Participants* shall refer to new participants in a particular sub-sector of the downstream oil industry with investments and initial business operations commencing after January 1, 1994;

"(M) *OIL COMPANY* SHALL REFER TO ANY PERSON, FIRM OR CORPORATION OR AFFILIATE THEREOF, ENGAGED IN THE REFINING R IMPORTATION OF PETROLEUM PRODUCTS TO BE SOLD TO DEALERS OR RETAILERS.

"(N) [(l)] *Person* shall refer to any person, whether natural or juridical, who is engaged in any activity of the downstream oil industry;

"(O) [(m)] *Petroleum* shall refer to the naturally occurring mixture of compounds of hydrogen and carbon with a small proportion of impurities and shall include any mineral oil, petroleum gas, hydrogen gas, bitumen, asphalt, mineral wax, and all other similar or naturally-associated substances, with the exception of coal, peat, bituminous shale and/or other stratified mineral fuel deposits;

"(P) [(n)] *Petroleum Producers* shall refer to products formed in the case of refining crude petroleum through distillation, cracking, solvent refining and chemical treatment coming out as primary stocks from the refinery such as, but not limited to: LPG, naphtha, gasolines, solvents, kerosenes, aviation fuels, diesel oils, fuel oils, waxes and petrolatums, asphalt, bitumens, coke and refinery sludges, or other such refinery petroleum fractions which have not undergone any process or treatment as to produce separate chemically-defined compounds in a pure or commercially pure state and to which various substances may have been added to render them suitable for particular uses: *Provided*, That the resultant product contains not less than fifty percent (50%) by weight of such petroleum products;

"(Q) [(o)] *Singapore Import Parity (SIP)* shall refer to the deemed landed cost of a petroleum product imported from Singapore at a

free-on-board price equal to the average Singapore Posting for that product at the time of loading;

“(R) [(p)] Singapore Posting shall refer to the price of petroleum products periodically posted by oil refineries in Singapore and reported by independent international publications: and

“(S) [(q)] *Wholesale Posted Price (WPP)* shall refer to the ceiling price of petroleum products set by the Board based on its duly approved automatic pricing formula.”

SEC. 2. Section 10 of R.A. 8479 is hereby amended to read as follows:

“SEC 10. *Promotion of Retail Competition.* - (A) To achieve the social and policy objective of fair prices, facilitate the attainment of a truly competitive product market in the retail level, the DOE shall promote and encourage by way of information dissemination, networking, FINANCING and management skills training, the active and direct participation of the private sector and cooperatives in the retailing of petroleum products through joint venture/supply agreements with new industry participants for the establishment and operation of gasoline stations: *Provided*, That the training herein shall include LPG retailing.

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“Of this amount, two percent (2%) plus any additional funding shall be allocated for the two-fold program; one percent (1%) plus any additional funding shall be set aside for administrative, maintenance, and other operating expenses: ninety-four percent (94%) shall be used exclusively for lending and financial assistance: the remaining three percent (3%) shall be utilized in accordance with the provisions of Section 26 of this Act: *Provided*, That the loans to be awarded herein shall be from short- to medium-term with low interest rates; *Provided, further* That these loans shall be awarded to qualified persons who are able to comply with the conditions set forth in the next two (2) preceding paragraphs.

“(B) BEGINNING JANUARY 1, 2011, NO OIL COMPANY MAY OPEN NEW COMPANY-OPERATED GASOLINE STATION, *PROVIDED*, THAT BEGINNING JANUARY 1, 2012, NO SUCH OIL COMPANY MAY OPERATE MORE THAN ONE HALF (1/2) THE NUMBER OF ITS GASOLINE STATIONS LAWFULLY OPERATED ON JANUARY 1, 2011; *PROVIDED FURTHER*, THAT BEGINNING JANUARY 1, 2013, NO SUCH OIL COMPANY MAY OPERATE ANY GASOLINE STATION *PROVIDED*, *FINALLY* THAT OIL COMPANIES MAY ENTER INTO NON-EXCLUSIVE FRANCHISE AGREEMENT WITH INDEPENDENT GASOLINE STATION DEALERS.

“IT SHALL BE UNLAWFUL FOR OIL COMPANIES TO:

“(1) SELL OR OFFER TO SELL PETROLEUM PRODUCTS TO AN INDEPENDENT GASOLINE STATION DEALER AT A PRICE

THAT EXCEEDS THE CURRENT MARKET RETAIL PRICE OF PETROLEUM PRODUCT OF THE SAME GRADE BEING SOLD AT ANY COMPANY OPERATED STATION DURING THE PERIOD THAT OIL COMPANIES ARE ALLOWED TO OPERATE GASOLINE STATIONS;

"(2) OVERCHARGE AN INDEPENDENT GASOLINE STATION DEALER FOR PETROLEUM PRODUCT;

"(3) PERFORM SUCH OTHER ACTS WHERE THE EFFECT THEREOF AMOUNTS TO A CIRCUMVENTION OF THIS PROVISION OR OF OTHER ACTS PROHIBITED BY THIS LAW.

"ANY PERSON, INCLUDING BUT NOT LIMITED TO THE CHIEF OPERATING OFFICER OR CHIEF EXECUTIVE OFFICER OF THE PARTNERSHIP, CORPORATION OR ANY ENTITY INVOLVED, WHO IS FOUND GUILTY OF ANY OF THE SAID PROHIBITED ACTS SHALL SUFFER THE PENALTY OF IMPRISONMENT FOR FIVE (5) YEARS AND FINE RANGING FROM FIVE HUNDRED THOUSAND PESOS (P500,000.00) TO ONE MILLION PESOS (P1,000,000.00)."

SEC. 3. Section 14 of RA 8479 is hereby amended to read as follows:

"SECTION 14. *Monitoring* - (a) The DOE shall monitor and publish daily international crude oil prices, as well as follow the movements of domestic oil prices THROUGHOUT THE WHOLE SUPPLY CHAIN. IT SHALL DETERMINE THE FACTORS WHICH CAUSE THE INCREASE AND DECREASE IN PRICES OF PETROLEUM PRODUCTS AND ANALYZE THE PROPRIETY AND NECESSITY OF SUCH INCREASE OR DECREASE. THIS MAY BE THE BASIS, AMONG OTHERS, FOR THE PROPER ACTION AGAINST ANY PERSON OR ENTITY IN THE INDUSTRY WHICH VIOLATES THE PROVISIONS OF THIS ACT. TO IMPLEMENT THIS, ANY PERSON OR ENTITY ENGAGED IN THE INDUSTRY SHALL SUBMIT A VERIFIED MONTHLY REPORT TO THE DOE OF THEIR PRICES FOR THE PROCESSING, SALE, EXPORTATION, REFINING, STORAGE, TRANSPORT OR DELIVERY OF PETROLEUM PRODUCTS, DETAILING IN THE SAID REPORT ALL THE FACTORS, ASSUMPTIONS, AND FORMULATE USED IN THE COMPUTATION OF THE PRICE. THE INFORMATION HEREUNDER OBTAINED SHALL BE CONSIDERED AS MATTER OF PUBLIC INTEREST AND SHALL BE MADE PUBLIC FROM TIME TO TIME.

"(B) ON THE BASIS OF RELEVANT DATA AND INFORMATION OBTAINED, INCLUDING BUT NOT LIMITED TO THE AFORESAID REPORT, THE DOE SHALL ISSUE AND PUBLISH EACH MONTH AN OPINION WHICH STATES ITS VIEW WHETHER THE PRICES OF PETROLEUM PRODUCTS AT THE RETAIL LEVEL FAIRLY REFLECT THEIR COST OF PRODUCTION.

“(C) [It] THE DOE shall [likewise] monitor the quality of petroleum products and stop the operation of businesses involved in the sale of petroleum products which do not comply with the national standards of quality that are aligned with the national standards/protocols of quality. The Bureau of Product Standards of the DTI, together with the Department of Environment and Natural Resources (DENR), the DOE, the Department of Science and Technology (DOST), representatives of the fuel and automotive industries and the consumers, shall set the specifications for all types of fuel and fuel-related products to improve fuel composition for increased efficiency and reduced emissions. The BPS shall also specify the allowable content of additives in all types of fuels and fuel-related products.

“(D) [(b)] The DOE shall monitor the refining and manufacturing processes of local petroleum products to ensure that clean and safe (environment and worker-benign) technologies are applied. This shall also apply to the process of marketing local and imported petroleum products.

“(E) [(c)] The DOE shall maintain a periodic schedule of present and future total industry inventory of petroleum products for the purpose of determining the level of supply. To implement this, the importers, refiners, and marketers are hereby required to submit monthly to the DOE their actual importations, local purchases, sales and/or consumption, and inventory on a per crude/product basis.

“(F) [(d)] Any report from any person of an unreasonable rise in the prices of petroleum products shall be immediately acted upon. For this purpose, the creation of the DOE-DOJ Task Force is hereby mandated to determine within thirty (30) days the merits of the report and initiate the necessary actions warranted under the circumstance: *Provided*, That nothing herein shall prevent the said task force from investigating and/or filing the necessary complaint with the proper court or agency *motu proprio*.

“Upon the effectivity of this Act, the Secretaries of Energy and Justice shall jointly appoint the members of a committee who shall be tasked with the drafting of the rules and guidelines to be adopted by the Task Force in the performance of its duty. These guidelines shall ensure the efficiency, promptness, and effectiveness in the handling of its cases. The Task Force shall be organized and its members appointed within one (1) month from the effectivity of this Act.

“(G) [(e)] In times of national emergency, when the public interest so requires, the DOE may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any person or entity engaged in the Industry.”

SEC 4. A new Section 15 is inserted to read as follows:

SECTION 15. VISITORIAL AND INSPECTION POWERS. - (A). TO ENFORCE AND ENSURE COMPLIANCE WITH THE PROVISIONS OF THIS ACT OR DETERMINE ANY VIOLATION

THEREOF, THE SECRETARY OF ENERGY OR HIS DULY AUTHORIZED REPRESENTATIVES SHALL REGULARLY CONDUCT AN UNANNOUNCED INSPECTION OF PREMISES AND EQUIPMENT OWNED, LEASED OR OPERATED BY PERSONS OR ENTITIES ENGAGED IN THE INDUSTRY, AND SHALL HAVE THE AUTHORITY TO INSPECT THE BOOKS OF ACCOUNTS AND RECORDS OF ANY SUCH PERSON OR ENTITY AND TO INVESTIGATE ANY FACT, CONDITION OR MATTER WHICH MAY BE NECESSARY TO DETERMINE VIOLATIONS OR WHICH MAY AID THE ENFORCEMENT OF THIS ACT."

SEC. 5. The current Section 15 is renumbered to become Section 16. A new Section 17 is hereby inserted to read as follows:

"SECTION 17. FOR THE DOE TO EFFECTIVELY CARRY OUT ITS MANDATE UNDER THIS ACT, THE CONGRESS SHALL INCREASE ITS BUDGET IN THE GENERAL ANNUAL APPROPRIATIONS TO BE ALLOCATED FOR THE MONITORING OF PRICES, QUALITY AND LEVEL OF SUPPLY OF PETROLEUM PRODUCTS, AND THE ENFORCEMENT OF THE SECRETARY'S VISITORIAL AND INSPECTION POWERS."

SEC. 6. Sections 16 to 29 of the current law are hereby renumbered accordingly pursuant to the foregoing amendments.

SEC. 7. Repealing Clause. - All laws, decrees and orders or parts thereof inconsistent herewith, are deemed repealed or modified accordingly.

SEC. 8. Separability Clause. -The provisions of this Act are hereby declared to be separable and, in the event any of such provisions is declared unconstitutional, the other provisions which are not affected thereby shall remain in full force and effect.

SEC. 9. Effectivity - This Act shall take effect fifteen (15) days following its publications in a newspaper of general circulation in the Philippines.

Approved,