



Ohio Petroleum Marketers &
Convenience Store Association

BEFORE THE SENATE CIVIL JUSTICE COMMITTEE

ON SENATE BILL NO. 150

TESTIMONY OF THE OHIO PETROLEUM MARKETERS & CONVENIENCE STORE ASSOCIATION

Wednesday, June 24, 2015

Chairman Bacon and Members of the Civil Justice Committee,

My name is Jennifer Rhoads and I serve as the president and CEO of the Ohio Petroleum Marketers & Convenience Store Association. I appreciate the opportunity to submit testimony in support of Senate Bill 150.

The Ohio Petroleum Marketers & Convenience Store Association (OPMCA) is a statewide trade association serving approximately 500 member firms. For over 90 years, OPMCA has represented the interests of those who transport and market finished petroleum products at both wholesale and retail, including operating retail chains, convenience stores, truck stops and commercial fueling facilities. Its members operate the overwhelming majority of Ohio’s retail outlets and convenience stores selling motor fuel, and employ nearly 65,000 Ohioans. OPMCA also has associate members that serve as contractors and suppliers of products and services to the petroleum and convenience store industry.

Convenience stores are America’s fueling stations. Convenience stores sell the majority of the gasoline purchased in the country— approximately 80 percent of all fuel sold in the United States. A total of 4,035 convenience stores sell motor fuels in Ohio, accounting for 5.9 billion gallons sold annually. Overall, 78 percent of all convenience stores in Ohio sell motor fuels.

OPMCA is in support of Senate Bill 150.

In general, retailers are agnostic about the fuels they sell. They simply want to sell fuels that are legal, available in sufficient quantities, and meet the demands of consumers. However, the volume of renewable fuels being offered in the market, and the diversity of the new fuels attempting to gain market share, are forcing retailers to make critical decisions about their fuels business.

While retailers are increasingly interested in taking advantage of the new opportunities to meet consumers’ demands as the fuels sector changes, retailers are concerned about fuel compatibility. Many emerging fuels are approved for use only with specific vehicles. However, if a consumer uses one of these fuels in a non-approved vehicle or engine (known as "misfueling"), the retailer could be held liable for voiding the consumer’s vehicle warranty or damaging components of the vehicle. This is a significant risk that limits retailer willingness to offer new fuels.

Retailers across the country, including here in Ohio, continue to express concern over potential liability from consumer misfueling. The National Association of Convenience Stores (NACS) recently surveyed both consumers and retailers to assess current market conditions and over 46% of retailers cited liability concerns over offering new fuels in the retail marketplace. More than half of the retailers surveyed said that reasonable protection from misfueling liability would entice them to sell emerging fuels.

Further complicating matters, the NACS survey revealed that three of five (59%) of consumers who would consider using an emerging fuel would plan to do so with an incompatible vehicle. Specifically regarding E15 (85% gasoline blended with 15% ethanol) -- the most likely new fuel entering the market to meet federal standards -- consumers said they planned to use the fuel even though their primary vehicle is from the model year 2001 or earlier. All of these vehicles are *prohibited* from using E15 by the US Environmental Protection Agency. The survey also revealed consumers were not much more familiar with E85 (15% gasoline blended with 85% ethanol), which has been on the market for more than a decade. Only 29% of consumers surveyed said they were familiar with the product and only 10% said they drive a flex fuel vehicle, which is required for use of E85.

In a changing fuels landscape, consumer misfueling is a very real concern. Retailers identify the type of fuel product being offered for sale on their fuel dispensers in accordance with state and federal law. But, while retailers proudly serve time-starved consumers, they remain concerned that consumers unfamiliar with an emerging fuel's compatibility with their vehicle or engine may inadvertently choose to purchase an incompatible fuel. Moreover, consumers' sensitivity about the price of fuel could entice them to intentionally purchase a new fuel, which may in fact be offered at lesser price than conventional gasoline, with knowledge that the fuel is not compatible with their vehicle or engine. Consumers making that decision should assume its risk, not have the ability to later blame the retailer.

S.B. 150 is designed to protect retailers that properly identify the type of motor fuel being offered for sale -- and do not participate in customers' fuel selections -- from civil liability. Under the bill, a retailer cannot be held liable when a customer chooses to put motor fuel into an engine or motor that is not compatible with that fuel provided that the incompatible fuel was dispensed at a retail station and the fuel dispenser correctly identified the type of fuel offered.

OPMCA supports protecting retailers from liability when a customer chooses—whether accidentally or intentionally— to put incompatible fuel into an engine or motor. We believe the consumer bears the responsibility for their fuel choices at a retail station that satisfies the requirements set forth under the proposed legislation.