

S. 1712

IN THE SENATE OF THE UNITED STATES

MAY 15 (calendar day, MAY 26), 1933

Referred to the Committee on Finance and ordered to be printed

AMENDMENT

Intended to be proposed by Mr. CAPPER to the bill (S. 1712) to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes, viz: On page 21, following line 3, insert the following:

1 “TITLE IV—SUPPLEMENT OF STATE

2 REGULATION OF PETROLEUM

3 “SECTION 401. To effectuate the purposes of this title
4 the President is hereby authorized to designate or appoint
5 an official who, as Administrator of Petroleum Conservation
6 (hereafter referred to as Administrator) shall exercise all
7 the powers granted by this title.

8 “SEC. 402. It shall be unlawful for any persons, natu-
9 ral or artificial, to sell, ship, or transport, or to deliver to

1 another for shipment or transportation, or to receive for
2 shipment or transportation, by rail, pipe line, water, truck,
3 or any other means of conveyance from any State, Territory,
4 or District of the United States to any other State, Territory,
5 or District of the United States, or to a foreign country, any
6 crude petroleum, or the products thereof, or to purchase or
7 receive any shipment of crude petroleum, or the products
8 thereof, in any State, Territory, or District of the United
9 States from any other State, Territory, or District of the
10 United States, or to conspire with any other persons, natu-
11 ral or artificial, to procure the transportation in interstate
12 or foreign commerce of any crude petroleum, or the prod-
13 ucts thereof, with the knowledge that such crude petroleum
14 was produced or withdrawn from storage in violation of any
15 law, or any regulation or order of any board, commission,
16 officer, or other duly authorized State or Federal agency,
17 in the State, Territory, or District of its production or in
18 excess of the market demand for crude petroleum as deter-
19 mined by the Administrator in accordance with the terms
20 of this title: *Provided*, That during the time of pendency
21 of a suit commenced in good faith in a court of competent
22 jurisdiction attacking the validity of any State statute, or
23 rule, order, or regulation thereunder, regulating the produc-
24 tion and transportation of natural gas, petroleum, or the
25 products thereof, the Administrator may accept a bond from

1 the complainants to insure that should the suit fail, the com-
2 plainants will withhold from transportation and sale, in
3 accordance with regulations prescribed by the Administra-
4 tor, an amount of petroleum, or the products thereof equiv-
5 alent to the amount produced and transported in excess of
6 quota pending the suit, plus 5 per centum of the said excess:
7 *Provided further*, That during the time of the pending c.
8 a suit with respect to which the Administrator has accepted
9 a bond the penal provisions of this title shall be suspended.

10 "SEC. 403. No persons, natural or artificial, shall
11 receive any crude petroleum or the products thereof for ship-
12 ment or transportation from a State, Territory, or District in
13 the United States to any other State, Territory, or District
14 of the United States, unless the shipper shall furnish and
15 the carrier shall receive in good faith an affidavit to the effect
16 that no part of such crude petroleum was produced in viola-
17 tion of any law or any regulation or order of any board,
18 commission, officer, or other duly authorized State or Federal
19 agency in the State, Territory, or District of its production,
20 and that no part of such crude petroleum was produced or
21 shipped in excess of the market demand as determined by
22 the Administrator in accordance with the terms of this title,
23 or that a suit has been commenced in good faith and a bond
24 filed pursuant to section 401 of this title. Such affidavit shall
25 otherwise be in such form as may be prescribed by authority

1 of the State in which such crude petroleum or the products
2 thereof are produced or tendered for transportation and shall
3 be subject to inspection upon request of such State author-
4 ity: *Provided, however,* That common carriers by railroad
5 may receive from other common carriers by railroad for
6 such transportation and may transport any crude petro-
7 leum or the products thereof without requiring such affidavit.

8 "SEC. 404. The Administrator is hereby invested with
9 the following powers and such incidental authority as may
10 be necessary to carry this Act into effect:

11 "(a) To investigate the oil industry in the United
12 States and the methods and costs of producing, transporting,
13 refining, selling, and distributing petroleum, and the
14 products thereof, and to determine in accordance with all
15 necessary and pertinent facts to be ascertained by him as
16 often as may be deemed necessary by him and for ensuing
17 periods of such duration as he may establish, the amount of
18 market demand for both domestic consumption and export
19 of crude petroleum and the products thereof for such periods
20 and to apportion properly and equitably such market de-
21 mands to currently produced domestic petroleum and to
22 imports and to withdrawals from domestic storage of petro-
23 leum and the products thereof.

24 "(b) To establish regulations concerning the importa-
25 tion of crude petroleum or the products thereof; and no

1 foreign crude petroleum or the products thereof shall be
2 imported into the United States without a certificate from
3 the Administrator stating that said crude petroleum or the
4 products thereof are imported in accordance with the regu-
5 lations concerning market demand: *Provided*, That as long
6 as the United States has the capacity to produce sufficient
7 crude petroleum to supply the demand for consumption with-
8 in the United States and for export of petroleum from the
9 United States, the Administrator shall have authority, and
10 he is hereby directed, to limit imports of crude petroleum
11 and any of the products thereof to an amount not exceeding
12 the average daily imports of such crude petroleum and the
13 products thereof during the last six months of the calendar
14 year 1932: *Provided further*, That the provisions of this
15 paragraph shall not be held or applied to prohibit the impor-
16 tation of crude petroleum under bond for purposes of expor-
17 tation after processing or refining in this country.

18 “(c) To allocate to the oil-producing States equitable
19 proportions of the total market demand, determined as
20 provided in this section, in order to preserve and protect
21 the correlative rights of the oil-producing States and to
22 assist them in the proper enforcement of their State con-
23 servation statutes.

24 “(d) In the case of the failure of any State to accept
25 conform, or agree to restrict production to the amount de-

1 terminated for that State by the Administrator or in the event
2 that there is no State authority to restrict or prorate pro-
3 duction to the amount determined by the Administrator, the
4 Administrator may appoint an emergency committee to pro-
5 rate equitably the production within that State to pools,
6 areas, and common sources of supply to conform to the
7 amount determined by the Administrator and to prevent
8 unreasonable discrimination in favor of any one such pool,
9 area, or common source of supply as against another; and
10 in the event that such a committee cannot agree upon a basis
11 of proration, the Administrator may establish the allowable
12 production of pools, areas, common sources of supply, and/or
13 wells.

14 “(e) To recommend to each oil-producing State the
15 enactment of uniform laws for the conservation of crude
16 petroleum, for the prevention of the premature exhaustion
17 of the domestic supply, and for the limitation of production
18 to the reasonable market demand.

19 “(f) To prevent the premature abandonment of wells
20 of settled production to establish a minimum price for the
21 production of petroleum no less than the average operating
22 costs of such wells as determined by the Administrator.
23 The Administrator in determining when such abandonment
24 would be premature shall, at all times, take into considera-

1 tion the interests of the purchasing and consuming public
2 and the oil industry as a whole.

3 “(g) To prevent unfair competition by the sale of
4 petroleum or the products of petroleum at prices tending
5 to destroy competition and to prevent the exploitation of
6 the consuming public through excessive prices, the Admin-
7 istrator is hereby authorized and directed to establish maxi-
8 mum and minimum prices for crude petroleum and the
9 products thereof and any prices for crude petroleum and the
10 products thereof less than the minimum or more than the
11 maximum prices so established by the Administrator shall
12 be unreasonable prices within the meaning of this statute,
13 and any sale of crude petroleum or the products thereof at
14 prices other than within the prices so established is hereby
15 declared to be unfair competition and unlawful and, since
16 the prices of such products in intrastate commerce directly
17 affect the prices of those products in interstate commerce,
18 the sale of such products in intrastate commerce at
19 prices higher than the maximum price or lower than the
20 minimum price so established by the said Administrator
21 is hereby declared to be contrary to the public policy and the
22 general welfare and in violation of the provisions of this title.

23 “(h) To adopt and issue regulations from time to time
24 for the proper enforcement and carrying out of the provisions
25 of this title.

1 “(i) To investigate any monopolistic practices in the
2 oil industry in the United States and to take steps to curb
3 them under existing laws, to investigate the feasibility of
4 divorcing the pipe lines and storage facilities from affiliated
5 refinery or holding companies, and to devise a practicable
6 means for attaining that end.

7 “(j) To institute proceedings to divorce from any hold-
8 ing company any pipe-line company which is controlled by
9 such holding company in contravention of existing antitrust
10 laws.

11 “(k) To initiate or intervene in all cases concerning
12 rates and regulations in reference to the transportation and
13 storage of crude petroleum and its products by pipe lines
14 and railroads, and upon his request, the Interstate Com-
15 merce Commission shall grant a preference to the hearing
16 and determination of such cases.

17 “(l) To gather and compile information concerning,
18 and to investigate from time to time the organization, busi-
19 ness, conduct, practices, transactions, and management of
20 any persons, natural or artificial, engaged in the production,
21 transportation, refining and marketing of crude petroleum,
22 or the products thereof.

23 “SEC. 405. Any individual who, after notice as pro-
24 vided for in the rules or regulations promulgated hereunder,
25 violates any of the provisions of this Act, or any rule, regu-

1 lation, or order made by the Administrator in pursuance
2 thereof, or who makes any false statement in any affidavit
3 required by this title, and any officer or agent of a corpo-
4 ration who, after such notice, participates in the violation
5 of this title, or any rule, regulation, or order made by the
6 Administrator in pursuance thereof, by such a corporation,
7 shall be subject to a fine of not less than \$1,000 and not
8 exceeding \$5,000 and by imprisonment for not less than one
9 year and not exceeding five years. Any corporation which
10 after such notice violates any of the provisions of this title,
11 or any rule, regulation, or order made by the Administrator
12 in pursuance thereof, shall be subject to a fine of not less than
13 \$5,000 and not exceeding \$10,000, and each violation of
14 this title and each day such violation continues shall
15 constitute a separate offense.

16 "SEC. 406. All crude petroleum or products of such
17 petroleum produced in excess of the market demand as deter-
18 mined by the Administrator shall be subject to a tax of 50
19 cents a barrel, in addition to any other tax imposed by law
20 upon the production thereof.

21 "SEC. 407. When any persons, natural or artificial,
22 produce, withdraw from storage, or ship crude petroleum, or
23 the products thereof in violation of the provisions of this
24 Act, or of any rule, regulation, or order of the Administrator
25 in pursuance thereof, the Administrator, through his duly

1 appointed representative, or through the United States dis-
2 trict attorney of the district where the violation occurs, shall
3 bring action in the Federal court for that district for a manda-
4 tory or other injunction, and the said court is hereby given
5 jurisdiction to grant said injunction, or such other relief as
6 may be proper. An application for a temporary injunction
7 may be made under this section and the court may in proper
8 case grant such temporary injunction without notice: *Pro-*
9 *vided,* That if upon final hearing, or upon appeal to the
10 higher courts, if an appeal from the decision of the district
11 court in such proceeding shall be taken, it shall be determined
12 that no mandatory or other injunction should lie or other
13 equitable relief be granted, the defendant or defendants shall
14 be permitted to produce, withdraw from storage, or ship
15 crude petroleum, or the products thereof so as to recover
16 or make up the amounts such defendant or defendants could
17 lawfully have produced, withdrawn from storage, or shipped
18 during the period of the temporary injunction. No bond
19 shall be required in any proceeding hereunder authorized
20 by the Administrator. Neither a temporary nor a perma-
21 nent injunction granted under the provisions of his section
22 shall be stayed or superseded by any district court of the
23 United States, or by any judge thereof, or by any circuit
24 judge acting as district judge, unless the application for the

1 same shall be presented to a circuit or district judge, and
2 shall be heard and determined by three judges, of whom
3 at least one shall be a circuit judge, and then only after
4 due hearing and reasonable notice, and unless a majority
5 of the said three judges shall concur in granting such appli-
6 cation. When such application, as aforesaid, is presented
7 to the judge, he shall immediately call to his assistance to
8 hear and determine the application two other judges. All
9 proceedings provided for in this section shall take precedence
10 over other causes pending in said courts.

11 "SEC. 408. The Supreme Court of the District of
12 Columbia shall have exclusive jurisdiction to hear and
13 determine suits to enjoin acts done by or under authority
14 of the Administrator under color of the provisions of this
15 title, subject to the usual right of appeal by either party to
16 the Court of Appeals of the District of Columbia, whose
17 final judgment may be reviewed by the Supreme Court of
18 the United States by petition for certiorari or by appeal as
19 provided by law and the rules of the court: *Provided*, That
20 such suits shall be commenced within sixty days after the
21 performance of the act or acts complained of: *Provided*
22 *further*, That no temporary or other injunction shall be
23 granted in any such suit until final determination thereof
24 on the merits: *And provided further*, That the power of

1 said courts shall extend only to a review of questions of
2 law and that the decision of the Administrator on all ques-
3 tions of fact shall be conclusive and not subject to review
4 by any court.

5 " SEC. 409. For the purposes of carrying out the pro-
6 visions of this title there shall be levied and collected by the
7 Bureau of Internal Revenue a tax of one fourth of 1 cent
8 on each barrel of crude petroleum produced in or imported
9 into the United States, and the Administrator is hereby
10 authorized and empowered to draw upon the fund collected
11 under the said tax from time to time in such sums as he
12 may require, and he is hereby further authorized and em-
13 powered to employ such agents, technical assistants, field
14 men, and clerical forces as he may deem proper and neces-
15 sary and the Administrator is hereby authorized and em-
16 powered to fix and pay the salaries and office and traveling
17 expenses of such agents and employees.

18 " TITLE V—MISCELLANEOUS PROVISIONS

19 " SEPARABILITY CLAUSE

20 " SEC. 501. If any provision of this Act, or the appli-
21 cation thereof to any person or circumstances, is held invalid,
22 the remainder of the Act, and the application of such provi-
23 sion to other persons or circumstances, shall not be affected
24 thereby.

"SHORT TITLE

1

2

"SEC. 502. This Act may be cited as the 'National

3

Industrial Recovery Act.'

AMENDMENT

Intended to be proposed by Mr. CARRER to the bill (S. 1712) to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes.

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AMENDMENT

Intended to be proposed by Mr. SHEPPARD to the bill (S. 1712) to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes, viz:

- 1 On page 13, line 2, between the word " projects " and
- 2 the word " as " insert the following: " and such technical
- 3 construction for the Army Air Corps and construction of
- 4 such aircraft and aircraft equipment for said Air Corps ".

AMENDMENT

Introduced to be proposed by Mr. SHERRARD to the bill (S. 1712) to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes.

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