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**Veto Message: Governor Kunin
1988 (H.533)
An act relating to the motor fuel tax and dealers.**

STATE OF VERMONT
Executive Department.
Montpelier, Vt., June 21, 1988

The following communication relating to the veto of H. 533 was received from the Governor:

The Honorable Ralph G. Wright
Speaker of the House
House of Representatives
State House
Montpelier, VT. 05602

Dear Speaker Wright:

I am returning herewith to the House, unsigned and without my approval, House bill 533, entitled:

An act relating to motor fuel tax and dealers.

The legislative intent in enacting this bill was to provide the Commissioner of Motor Vehicles with additional investigative and enforcement tools to assist in his efforts to ensure compliance with the motor fuel tax laws. I fully support this goal.

Unfortunately, one of the provisions in the bill contains a serious error that cannot be overlooked. Section 4 directs the Commissioner to impose a monetary penalty upon a motor fuel dealer if "upon examination of [his or her] books and records . . . , the Commissioner or his or her agents find that [the] dealer has obtained motor fuel without payment of the tax to distributor as required by 23 V.S.A. Section 3106." The problem with this

provision is that it penalizes dealers for failure to take action they are nowhere obligated to take.

The statutory provision referred to in Section 4, 23 V.S.A. § 3106, does not impose upon the dealer the obligation to pay the motor fuel tax — either to a distributor or to anyone else. Rather, it states that "each distributor shall pay to the Commissioner a tax of 13 cents per gallon upon each gallon of motor fuel sold by the distributor. . . .[or] used within the state by him or her" (23 V.S.A. § 3106(a)) (emphasis added). Nor does any other statutory provision impose a motor fuel tax obligation upon the dealer.

Moreover, nowhere in the statutes are dealers required to record in their "books and records" any information with respect to payment of the motor fuel tax. Although Section 3 of this bill would require dealers to keep records "of all purchases of motor fuel," the only information that dealers would be required to include in those records would be "the date of purchase, number of gallons, and the identity of the seller"; this provision would not require tax payment information to be recorded at all.

Yet, if this bill were to become law, a dealer could be penalized for not recording in his or her books payment of a tax the dealer is neither obligated to pay, nor obligated to record. Due process requires more. The United States Supreme Court has repeatedly struck down statutes under the Due Process Clause where the statute was not "sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties," Bouie v. City of Columbia, 378 U.S. 347,351 (1963), quoting Connally v. General Construction Company, 269 U.S. 385,391 (1926). "The underlying principle is that no man shall be held...responsible for conduct which he could not reasonably understand to be proscribed." Bouie, supra, 378 U.S. at 351, quoting United States v. Harris, 347 U.S. 612,617 (1954).

Because this bill so clearly violates due process, I cannot permit it to become law. But I urge the Legislature to re-enact a similar bill next session to accomplish the bill's primary purpose of strengthening the authority of the Commissioner of Motor Vehicles to enforce the motor fuel tax laws.

Sincerely yours,
/s/ Madeleine M. Kunin,
Governor

*Note: Pocket Veto- The General Assembly adjourned May 20, 1988, 32 days before the veto message was received.

Sources: *Journal of the House*, May 20, 1988 (pages 1319-1320)