

PROHIBITING SHIPMENT OF PETROLEUM IN VIOLATION
OF STATE LAW

MARCH 16, 1939.—Ordered to be printed

Mr. CONNALLY, from the Committee on Finance, submitted the following

REPORT

[To accompany S. 1302]

The Committee on Finance, to whom was referred the bill (S. 1302) to make permanently effective the act entitled "An act to regulate interstate and foreign commerce in petroleum and its products by prohibiting the shipment in such commerce of petroleum and its products produced in violation of State law, and for other purposes," approved February 22, 1935, as amended, having considered the same, report thereon with a recommendation that it pass.

Section 13 of the act of February 22, 1935, provides that "This act shall cease to be in effect on June 16, 1937." The act of June 14, 1937, amended section 13 of the act of February 22, 1935, by striking out "June 16, 1937" and inserting in lieu thereof "June 30, 1939." Senate bill 1302 repeals that section and makes the act permanent law. It provides also that no action or prosecution for the enforcement of the act of February 22, 1935, shall be deemed to be barred or prevented by reason of the expiration, after the date of such violation, of the effective period of such act, as originally enacted or as amended by the act of June 14, 1937, or the effective period of any State law, regulation, or order, with respect to contraband oil.

As the bill (S. 1302) makes the act of February 22, 1935, permanent law and, as the committee's favorable recommendation in that regard cannot be considered intelligently without knowledge as to what the law in question is, the act of February 22, 1935, is presented herewith:

[Public—No. 14—74th Congress]

[S. 1190]

AN ACT To regulate interstate and foreign commerce in petroleum and its products by prohibiting the shipment in such commerce of petroleum and its products produced in violation of State law, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby declared to be the policy of

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Congress to protect interstate and foreign commerce from the diversion and obstruction of, and the burden and harmful effect upon, such commerce caused by contraband oil as herein defined, and to encourage the conservation of deposits of crude oil situated within the United States.

Sec. 2. As used in this Act—

(1) The term "contraband oil" means petroleum which, or any constituent part of which, was produced, transported, or withdrawn from storage in excess of the amounts permitted to be produced, transported, or withdrawn from storage under the laws of a State or under any regulation or order prescribed thereunder by any board, commission, officer, or other duly authorized agency of such State, or any of the products of such petroleum.

(2) The term "products" or "petroleum products" includes any article produced or derived in whole or in part from petroleum or any product thereof by refining, processing, manufacturing, or otherwise.

(3) The term "interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, or from any place in the United States to a foreign country, but only insofar as such commerce takes place within the United States.

(4) The term "person" includes an individual, partnership, corporation, or joint-stock company.

Sec. 3. The shipment or transportation in interstate commerce from any State of contraband oil produced in such State is hereby prohibited. For the purposes of this section contraband oil shall not be deemed to have been produced in a State if none of the petroleum constituting such contraband oil, or from which it was produced or derived, was produced, transported, or withdrawn from storage in excess of the amounts permitted to be produced, transported, or withdrawn from storage under the laws of such State or under any regulation or order prescribed thereunder by any board, commission, officer, or other duly authorized agency of such State.

Sec. 4. Whenever the President finds that the amount of petroleum and petroleum products moving in interstate commerce is so limited as to be the cause, in whole or in part, of a lack of parity between supply (including imports and reasonable withdrawals from storage) and consumptive demand (including exports and reasonable additions to storage) resulting in an undue burden on or restriction of interstate commerce in petroleum and petroleum products, he shall by proclamation declare such finding, and thereupon the provisions of section 3 shall be inoperative until such time as the President shall find and by proclamation declare that the conditions which gave rise to the suspension of the operation of the provisions of such section no longer exist. If any provision of this section or the application thereof shall be held to be invalid the validity or application of section 3 shall not be affected thereby.

Sec. 5. (a) The President shall prescribe such regulations as he finds necessary or appropriate for the enforcement of the provisions of this Act, including but not limited to regulations requiring reports, maps, affidavits, and other documents relating to the production, storage, refining, processing, transporting, or handling of petroleum and petroleum products, and providing for the keeping of books and records, and for the inspection of such books and records and of properties and facilities.

(b) Whenever the President finds it necessary or appropriate for the enforcement of the provisions of this Act he shall require certificates of clearance for petroleum and petroleum products moving or to be moved in interstate commerce from any particular area, and shall establish a board or boards for the issuance of such certificates. A certificate of clearance shall be issued by a board so established in any case where such board determines that the petroleum or petroleum products in question does not constitute contraband oil. Denial of any such certificate shall be by order of the board, and only after reasonable opportunity for hearing. Whenever a certificate of clearance is required for any area in any State, it shall be unlawful to ship or transport petroleum or petroleum products in interstate commerce from such area unless a certificate has been obtained therefor.

(c) Any person whose application for a certificate of clearance is denied may obtain a review of the order denying such application in the United States district court for the district wherein the board is sitting by filing in such court within thirty days after the entry of such order a written petition praying that the order of the board be modified or set aside, in whole or in part. A copy of such petition shall be forthwith served upon the board, and thereupon the board shall certify

and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript, such court shall have jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the board shall be considered by the court unless such objection shall have been urged before the board. The finding of the board as to the facts, if supported by evidence, shall be conclusive. The judgment and decree of the court shall be final, subject to review as provided in sections 128 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 225 and 347).

SEC. 6. Any person knowingly violating any provision of this Act or any regulation prescribed thereunder shall upon conviction be punished by a fine of not to exceed \$2,000 or by imprisonment for not to exceed six months, or by both such fine and imprisonment.

SEC. 7. (a) Contraband oil shipped or transported in interstate commerce in violation of the provisions of this Act shall be liable to be proceeded against in any district court of the United States within the jurisdiction of which the same may be found, and seized for forfeiture to the United States by a process of libel for condemnation; but in any such case the court may in its discretion, and under such terms and conditions as it shall prescribe, order the return of such contraband oil to the owner thereof where undue hardship would result from such forfeiture. The proceedings in such cases shall conform as nearly as may be to proceedings in rem in admiralty, except that either party may demand a trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States. Contraband oil forfeited to the United States as provided in this section shall be used or disposed of pursuant to such rules and regulations as the President shall prescribe.

(b) No such forfeiture shall be made in the case of contraband oil owned by any person (other than a person shipping such contraband oil in violation of the provisions of this Act) who has with respect to such contraband oil a certificate of clearance which on its face appears to be valid and to have been issued by a board created under authority of section 5, certifying that the shipment in question is not contraband oil, and such person had no reasonable ground for believing such certificate to be invalid or to have been issued as a result of fraud or misrepresentation of fact.

SEC. 8. No common carrier who shall refuse to accept petroleum or petroleum products from any area in which certificates of clearance are required under authority of this Act, by reason of the failure of the shipper to deliver such a certificate to such carrier, or who shall refuse to accept any petroleum or petroleum products when having reasonable ground for believing that such petroleum or petroleum products constitute contraband oil, shall be liable on account of such refusal for any penalties or damages. No common carrier shall be subject to any penalty under section 6 in any case where (1) such carrier has a certificate of clearance which on its face appears to be valid and to have been issued by a board created under authority of section 5, certifying that the shipment in question is not contraband oil, and such carrier had no reasonable ground for believing such certificate to be invalid or to have been issued as a result of fraud or misrepresentation of fact, or (2) such carrier, as respects any shipment originating in any area where certificates of clearance are not required under authority of this Act, had no reasonable ground for believing such petroleum or petroleum products to constitute contraband oil.

SEC. 9. (a) Any board established under authority of section 5, and any agency designated under authority of section 11, may hold and conduct such hearings, investigations, and proceedings as may be necessary for the purposes of this Act, and for such purposes those provisions of section 21 of the Securities Exchange Act of 1934 relating to the administering of oaths and affirmations, and to the attendance and testimony of witnesses and the production of evidence (including penalties), shall apply.

(b) The members of any board established under authority of section 5 shall be appointed by the President, without regard to the civil-service laws but subject to the Classification Act of 1923, as amended; and any such board may appoint, without regard to the civil-service laws but subject to the Classification Act of 1923, as amended, such employees as may be necessary for the execution of its functions under this Act.

SEC. 10. (a) Upon application of the President, by the Attorney General, the United States district courts shall have jurisdiction to issue mandatory injunctions commanding any person to comply with the provisions of this Act or any regulation issued thereunder.

(b) Whenever it shall appear to the President that any person is engaged or about to engage in any acts or practices that constitute or will constitute a violation of any provision of this Act or of any regulation thereunder, he may in his

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discretion, by the Attorney General, bring an action in the proper United States district court to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond.

(c) The United States district courts shall have exclusive jurisdiction of violations of this Act or the regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this Act or the regulations thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by this Act or regulations thereunder, or to enjoin any violation of this Act or any regulations thereunder, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 128 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 225 and 347).

SEC. 11. Wherever reference is made in this Act to the President such reference shall be held to include, in addition to the President, any agency, officer, or employee who may be designated by the President for the execution of any of the powers and functions vested in the President under this Act.

SEC. 12. If any provision of this Act, or the application thereof to any person or circumstance, shall be held invalid, the validity of the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 13. This Act shall cease to be in effect on June 16, 1937.

Approved, February 22, 1935.

Two years ago your committee considered a bill which proposed, as does S. 1302, to make permanent the act of February 22, 1935. Comprehensive hearings were held before a subcommittee and all who desired to appear in behalf of, or in opposition to, the bill were heard at that time. Your committee recommended then that the law be made permanent (Rept. No. 246, 75th Cong., 1st sess., dated March 25, 1937), and the measure so passed the Senate on March 29, 1937. When that measure (S. 790; H. R. 5366) was considered by the House of Representatives, it was amended so as only to extend the act of February 22, 1935, to June 30, 1939, to which amendment the Senate subsequently agreed. The additional experience gained during the past 2 years further convinces your committee as to the effectiveness of the act and the need for its enactment into permanent law. Although some of those who objected to the measure 2 years ago and were fully heard by your subcommittee at that time continue to object, your committee is convinced that the preponderant opinion of State conservation authorities and of those engaged in the oil industry favors the permanent enactment of the law.

The act of February 22, 1935, is a measure which supports the oil-producing States in their efforts to prevent waste in the production of oil. Six States (Arkansas, Kansas, Louisiana, New Mexico, Oklahoma, and Texas), that in the aggregate produce more than 70 percent of the national oil output, have enacted laws pursuant to which the production of crude oil is regulated so as to prevent waste and to avoid discrimination. Three other States (California, Illinois, and Michigan) are considering at present the enactment of similar legislation. The Federal Government, through the act of February 22, 1935, simply supports the State policy by providing that petroleum, or the products thereof, produced in excess of the amounts permitted by State law is contraband and may not be moved in interstate or foreign commerce.

Prior to the enactment of this law, there were many instances in which there was an almost total disregard of the orders issued by the State conservation authorities, with the oil produced in violation of State laws finding its principal market in interstate commerce. As a result the authority of the State was subjected to challenge by some of those who shipped in interstate commerce. So excessive was the production of oil in violation of State laws that many operators in areas of settled, or pumping production were faced with the prospect of being forced to abandon their properties, due to their inability to compete with those who had no regard for the laws of the State. The fields in which such excess oil was produced were subjected to operating practices which were extremely wasteful and the loss of petroleum reserves in the settled areas was threatened.

During the 4 years which have elapsed since the act was approved, there has developed a widespread recognition of the fact that orderly and efficient methods of production, in which due regard is given to the maintenance of reservoir energy and the retention of gas in solution with the oil, make possible the increased ultimate recovery of oil from the underground reservoirs. The great East Texas field is a noteworthy example. It has been estimated that the conservation efforts of the State of Texas, to which the act of February 22, 1935, gives support, have added 2,000,000,000 barrels to the quantity of oil which will be produced from that field. Production in the East Texas field, as in the other oil fields of Texas, is regulated in accordance with the physical characteristics of the field so that the reservoir pressure may be preserved and that oil may be withdrawn without waste.

In his letter of March 13, 1939, to the committee, the Secretary of the Interior calls attention to the fact that a continuous stream of reasonably priced petroleum products is essential for the maintenance of the national defense and our economic structure; that the proved oil reserve of the United States is not equal to that of the remainder of the world, although we consume more than the total of all other countries; that our petroleum supply is being maintained to an important degree by improved methods of production which make possible an increased recovery of oil from our proved reserves; that the act of February 22, 1935, by giving strong support to the oil and gas conservation laws of the oil-producing States, has made a substantial contribution to the conservation of the oil and gas resources of the Nation; and that it has done so without placing any undue burden upon the consumer of petroleum products.

It is evident to your committee that, if the support accorded the oil-producing States through the act of February 22, 1935, were to be withdrawn, much of the progress toward conservation achieved during the past 4 years would be lost and the oil industry would soon face the disturbances which it encountered before this measure was enacted.

Your committee believes it highly desirable that the act of February 22, 1935, be made permanent law because it has fully demonstrated its efficacy in aiding the States in their efforts to prevent waste in the production of an essential and irreplaceable natural resource and because of the continued need of this support by the Federal Government in the enforcement of their laws. Your committee recommends, accordingly, that the bill (S. 1302) be speedily enacted by the Congress.

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The following letter, dated March 13, 1939, from the Secretary of the Interior recommending the enactment of this legislation is included herein and made a part of this report:

DEPARTMENT OF THE INTERIOR,
Washington, March 13, 1939.

HON. PAT HARRISON,
Chairman, Committee on Finance, United States Senate.

MY DEAR SENATOR HARRISON: I have received your letter of February 15 with which you enclosed a copy of S. 1302, to make permanently effective the act approved February 22, 1935, as amended, generally known as the Connally Act, and requesting that I report thereon.

This law which has now been in effect 4 years has been a definite forward step toward the conservation of petroleum, an irreplaceable national resource, through cooperation between the oil-producing States and the Federal Government. As stated in the report of the National Resources Committee forwarded to the Congress by the President, February 15:

"The rank of petroleum as a source of energy, its vital importance in national defense, its vulnerability to destructive forces in exploitation, and its comparatively small reserve in comparison with its high rate of withdrawal place this commodity in a unique position among the natural resources."

A continuous stream of reasonably priced petroleum products is essential for the maintenance of the national defense and our economic structure. The consumption of gasoline, Diesel oil, fuel oil, and lubricating oil has become so commonplace that few people realize that all of the airplanes, a large number of locomotives, and virtually all of the United States merchant marine and Navy are driven by petroleum products. The industrial life of this country, including agriculture, our metropolitan centers and their suburban areas, our towns, large and small, are geared to the use of petroleum products. In our national defense, petroleum is not only vital to the military forces but to the civil and manufacturing and transportation facilities which support or supplement the Army and Navy. It is estimated that at current rates of consumption a national emergency would require an additional supply of 800,000 barrels of petroleum daily.

The proved oil reserve of the United States is not equal to that of the remainder of the world, but the annual consumption of petroleum in this country exceeds the total of all other countries. (United States percentage of world reserve, 50; of consumption, 60.) In other words we are pressing on our proved reserve of petroleum more than the rest of the world and we may consequently face an oil scarcity before there is a corresponding shortage abroad.

Six oil-producing States (Arkansas, Kansas, Louisiana, New Mexico, Oklahoma, and Texas), which produce about 70 percent of the national output of petroleum, have enacted laws authorizing the regulation of oil and gas production to prevent waste and to avoid discrimination. The Federal Government through the Connally law, as amended, supports the expressed policies of these States by prohibiting the shipment in interstate and foreign commerce of petroleum produced in violation of the laws of these States. Three other States (California, Illinois, and Michigan), which in total produce 24 percent of the national output, have similar legislation under consideration and, if such laws are passed, the Connally Act would apply to petroleum produced in those States.

This procedure is preventing waste and increasing the efficiency of oil production in the United States. Our petroleum supply is being maintained to an important degree by improvements in methods of production, which make possible an increased recovery of oil from our proved reserves. By making certain that we produce oil in the United States more efficiently, and with a higher recovery factor than in other countries, our oil supply can be brought closer to a parity with the oil resources of the rest of the world and we can thus postpone the time when we will have to depend upon foreign supplies or alternative fuels, both at higher prices.

In brief, it is my opinion that the Connally Act, by giving strong support to the oil and gas conservation laws of the oil-producing States, has made a substantial contribution to the conservation of the oil and gas resources of the Nation and also that the Federal and State responsibilities in this respect have been coordinated without placing any undue burden upon the consumer of petroleum products. In fact, I am convinced that the consumer will continue to benefit if the policy announced in the Connally Act of making adequate supplies of oil available at reasonable prices is adopted as permanent legislation of the United States.

Accordingly, I favor the continuance of the Connally Act as a step toward the protection of our needs for oil for the national defense and for the general welfare. The gains so far accomplished by some of the States, and by the Federal Government, should not be lost and future legislation should be built upon this foundation of State and Federal cooperation. I accordingly recommend that Senate 1302 be passed.

I have been advised by the Bureau of the Budget that there would be no objection by that Office to the presentation of this report to your committee.

Sincerely yours,

HAROLD L. ICKES,
Secretary of the Interior.

