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Legislative Document

No. 1360

S.P. 479

In Senate, April 9, 2013

An Act To Amend the Motor Fuel Distribution and Sales Act

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator TUTTLE of York.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 10 MRSA §1453, sub-§1-C** is enacted to read:

3 **1-C. Consignment.** "Consignment" means a written or oral agreement between a
4 franchisor and a franchisee whereby the franchisor maintains ownership of motor fuel
5 provided to the franchisee and the franchisee sells the motor fuel on behalf of the
6 franchisor at a price determined by the franchisor.

7 **Sec. 2. 10 MRSA §1453, sub-§4,** as enacted by PL 1975, c. 549, is amended to
8 read:

9 **4. Franchise agreement.** "Franchise agreement" ~~shall mean any~~ means a written or
10 oral agreement, for a definite or indefinite period, between a refiner and a retail dealer or
11 between a distributor and a retail dealer or between a refiner and a distributor under
12 which:

13 A. A retail dealer or a distributor promises to sell or distribute ~~the~~ any petroleum
14 product or products of the a refiner; or

15 B. A retail dealer or a distributor is granted the right to use a trademark, trade name,
16 service mark or other identifying symbol or name owned by a refiner; or

17 C. A retail dealer or a distributor is granted the right to occupy premises owned,
18 leased or controlled by a refiner or distributor- and:

19 (1) Promises to sell or distribute any petroleum products of the refiner or the
20 distributor; or

21 (2) Is granted the right to use a trademark, trade name, service mark or other
22 identifying symbol or name owned by the refiner or the distributor.

23 **Sec. 3. 10 MRSA §1453, sub-§8,** as enacted by PL 1975, c. 549, is amended to
24 read:

25 **8. Person.** "Person" ~~shall mean any~~ means a natural person, corporation,
26 partnership, trust or other entity; and, in the case of any entity, ~~the term shall also include~~
27 includes any other entity ~~which that~~ that has a majority interest in ~~such the~~ the entity or
28 effectively controls ~~such the~~ the entity ~~as well as the officers, directors and other persons in~~
29 ~~active control of each such entity;.~~

30 **Sec. 4. 10 MRSA §1454, sub-§1,** as enacted by PL 1975, c. 549, is amended to
31 read:

32 **1. Franchise agreements.** When a franchise agreement between a refiner and a
33 retail dealer or a distributor or between a distributor and a retail dealer covers the sale of
34 petroleum products and those sales constitute more than 35% of the retail dealer's gross
35 sales and ~~such those~~ those gross sales are more than \$30,000 annually, ~~every such the~~ the franchise
36 agreement ~~shall be~~ is subject to the nonwaivable provisions set forth in this subsection,
37 whether or not they are expressly set forth in the agreement.

- 1 A. ~~Each~~ A retail dealer ~~and each~~ or distributor as franchisee ~~shall have~~ has the right
2 to cancel a franchise agreement until midnight of the 7th business day after the day
3 on which the agreement was signed, by giving the franchisor written notice of the
4 cancellation. Upon the franchisee's giving the franchisor such a notice, all money,
5 equipment and merchandise loaned, sold or delivered to the franchisee under the
6 agreement ~~shall~~ must be returned to the franchisor for full credit, or the cash
7 equivalent. If the franchisor is the owner of the real estate upon which the franchisee
8 conducted ~~his~~ business, the franchisee shall deliver full possession of the real estate
9 to the franchisor immediately upon such cancellation.
- 10 B. ~~No~~ An agreement ~~shall~~ may not contain ~~any~~ a provision ~~which~~ that in any way
11 limits the right of either party to trial by jury, the interposition of counterclaims or
12 crossclaims.
- 13 C. The price at which a franchisee sells products ~~shall~~ may not be fixed or
14 maintained by a franchisor, nor ~~shall~~ may any person seek to do so, nor ~~shall~~ may the
15 price of products be subject to enforcement or coercion by any person in any manner.
16 ~~Nothing herein shall, but this paragraph may not~~ be construed to prohibit a franchisor
17 from suggesting prices ~~and to franchisees or~~ or counseling ~~with~~ franchisees concerning
18 prices. Each agreement ~~shall~~ must have, in ~~ten-point~~ 10-point type, the legend:
19 "PRICE FIXING OR MANDATORY PRICES FOR ANY PRODUCTS COVERED
20 IN THIS AGREEMENT IS PROHIBITED. A SERVICE STATION DEALER OR
21 WHOLESALE DISTRIBUTOR MAY SELL ANY PRODUCTS LISTED IN THIS
22 AGREEMENT FOR A PRICE ~~WHICH HE~~ THAT THE SERVICE STATION
23 DEALER OR WHOLESALE DISTRIBUTOR ALONE MAY DECIDE." The
24 provisions of this paragraph do not apply to any petroleum products included in a
25 franchisor's consignment agreement with a franchisee or to any franchise agreement
26 that provides for petroleum products to be sold on consignment by a franchisee on
27 behalf of a franchisor.
- 28 D. ~~No~~ A franchisor ~~shall~~ may not withhold ~~his~~ consent to any assignment, transfer or
29 sale of the franchise agreement, ~~provided that~~ as long as the assignee, transferee or
30 purchaser of the franchise agreement meets the qualifications required in the
31 franchise agreement.
- 32 E. If the franchise agreement requires the franchisee to provide a cash deposit in
33 advance for the use of the service station or delivery of fuel, except as advance
34 payment in whole or in part for product ordered, ~~such the cash~~ deposit ~~shall~~ must be
35 held by the franchisor, and may be used by the franchisor in ~~his~~ the franchisor's
36 business, ~~and shall be retained for the term of the agreement unless it is sooner~~
37 ~~terminated.~~ Interest at a rate of at least ~~6%~~ the one-year United States Treasury
38 bill rate, or the rate of a comparable instrument if the one-year United States Treasury
39 bill rate is not offered, as of the first business day of the year in which the interest is
40 paid must be paid to the franchisee at least annually on the use of the cash deposit to
41 the extent not otherwise applied by the franchisor to obligations of the franchisee as
42 provided in the franchise agreement. Within 90 days after the termination of the
43 agreement, any portion of the cash deposit ~~shall~~ that has not otherwise been applied
44 by the franchisor to obligations of the franchisee as provided in the franchise
45 agreement must be returned, together with any unpaid interest on ~~such~~ any unused
46 cash deposit at the rate of at least ~~6% per year~~ the one-year United States Treasury

1 bill rate, or the rate of a comparable instrument if the one-year United States Treasury
2 bill is not offered, as of the first business day of the year in which the interest is paid.

3 For purposes of this paragraph, "one-year United States Treasury bill rate" means the
4 weekly average one-year constant maturity Treasury yield, as published by the Board
5 of Governors of the Federal Reserve System, for the last full week of the calendar
6 year immediately prior to the year in which interest is paid.

7 F. ~~No~~ An agreement ~~shall~~ may not provide for the use of any promotion, premium,
8 coupon, give-away or rebate in the operation of the business, except that a dealer may
9 participate in a promotion, premium, coupon, give-away or rebate sponsored by the
10 franchisor, if the dealer so desires.

11 **Sec. 5. 10 MRSA §1454, sub-§2**, as amended by PL 1975, c. 623, §§6-C and
12 6-D, is further amended to read:

13 **2. Termination of franchise agreements.** ~~No refiner or distributor, as a~~ franchisor,
14 ~~shall may not~~, directly or through any officer, agent or employee, terminate, cancel or fail
15 to renew a franchise agreement, except for good cause. For purposes of this section,
16 "good cause ~~shall include~~ " includes, but is not ~~be~~ limited to:

17 A. With respect to franchise agreements ~~wherein~~ in which the franchisor leases real
18 property and improvements to the franchisee;

19 (1) The sale or lease of ~~such the~~ real property and improvements by the
20 franchisor to other than a subsidiary or affiliate of the franchisor for any use;

21 (2) The sale or lease of ~~such the~~ real property and improvements to a subsidiary
22 or affiliate of the franchisor; for a purpose other than the wholesale distribution or
23 the retail sale of motor fuels;

24 (3) The conversion of ~~such the~~ real property and improvements to a use other
25 than the wholesale distribution or the retail sale of motor fuels; or

26 (4) The lawful termination of lease, license or other nonownership under which
27 the franchisor is entitled to possession or control of ~~such the~~ real property and
28 improvements;

29 B. Mutual agreement of the franchisor and franchisee to terminate, cancel or not
30 renew the franchise agreement;

31 C. Criminal misconduct or a violation of law relating to the business or premises of
32 the dealer franchisee;

33 D. Fraud, which ~~shall include,~~ includes but is not ~~be~~ limited to the following:

34 (1) Adulteration of the franchisor's products;

35 (2) Commingling of funds;

36 (3) Misleading consumers or misbranding ~~of~~ gasoline;

37 (4) Trademark violations;

38 (5) Intentionally overcharging or deceiving customers as to repairs ~~which that~~
39 are not needed; and

- 1 (6) Intentionally deceiving the franchisor regarding a term of the term of the
2 lease;
- 3 E. Failure of the ~~dealer franchisee~~ to open for business for 5 consecutive days,
4 exclusive of holidays; and reasonable vacation and sick days;:
- 5 F. Bankruptcy or insolvency of the ~~dealer franchisee~~;
- 6 G. Nonpayment of rent; or loss by the franchisor of its legal right to grant possession
7 of leased premises to the ~~dealer franchisee~~; or
- 8 H. Public condemnation or other public taking; and
- 9 I. Substantial noncompliance with the obligations of the franchise agreement.

10 **Sec. 6. 10 MRSA §1454, sub-§3**, as enacted by PL 1975, c. 549, is amended to
11 read:

12 **3. Notice of termination.** ~~The~~ Except when a franchise agreement is terminated,
13 cancelled or not renewed by mutual agreement of the franchisor and the franchisee, the
14 franchisor shall give the franchisee advance written notice of termination, cancellation or
15 intent not to renew. Notwithstanding any statute to the contrary, advance notice required
16 by this subsection ~~shall~~ must precede the effective date of such termination, cancellation
17 or nonrenewal by at least:

18 A. ~~45~~ Forty-five days ~~where~~ when the asserted cause is ~~substantial noncompliance~~
19 ~~with the obligations of the franchise agreement~~ specified in subsection 2, paragraph H
20 or I;

21 B. ~~120~~ One hundred twenty days ~~where~~ when the asserted cause is ~~among those~~
22 specified in subsection 2, paragraph A; or

23 C. 7 Seven days ~~where~~ when the asserted cause is ~~among those~~ specified in
24 subsection 2, ~~paragraphs~~ paragraph C, D and, E, F or G.

25 **Sec. 7. 10 MRSA §1454, sub-§4**, as enacted by PL 1975, c. 549, is amended to
26 read:

27 **4. Compensation on termination of franchise.** Upon the termination of any
28 franchise, the franchisee ~~shall be~~ is entitled to fair and reasonable compensation by the
29 franchisor for the franchisee's remaining inventory, supplies, equipment and furnishings
30 purchased by the franchisee from the franchisor or its approved sources ~~and costs and~~
31 ~~expenses paid to the franchisor under the terms of the franchise or any ancillary or~~
32 ~~collateral agreement; provided no~~ except that compensation ~~shall be~~ is not allowed for
33 personalized items ~~which~~ that have no value to the franchisor.

34 **Sec. 8. 10 MRSA §1456, sub-§2**, as enacted by PL 1975, c. 549, is amended to
35 read:

36 **2. Court action.** The court shall grant such equitable relief as is necessary to
37 remedy the effects of conduct prohibited under this chapter, ~~which is~~ that the court finds
38 to exist, including declaratory judgment and mandatory or prohibitive injunctive relief.
39 The court may grant interim equitable relief, and actual and punitive damages ~~where~~

1 when indicated, in suits under this chapter and may, ~~unless such suit is frivolous,~~ direct
2 that costs, reasonable ~~attorney~~ attorney's and expert witness fees incurred by the
3 franchisee in those portions of the action in which the franchisee is the prevailing party be
4 paid by the franchisor.

5

SUMMARY

6 This bill makes changes to the Motor Fuel Distribution and Sales Act by allowing a
7 franchisor that has entered into a consignment agreement with a franchisee to set the price
8 at which the motor fuel must be sold without being subject to the motor fuel price-fixing
9 prohibition for motor fuel franchise agreements. The bill also makes a variety of
10 technical changes to the laws governing motor fuel franchise agreements.