

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

—
S.P. 479 - L.D. 1360

An Act To Amend the Motor Fuel Distribution and Sales Act

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. ~~Each A~~ A retail dealer ~~and each or~~ distributor as franchisee ~~shall have~~ has the right to cancel a franchise agreement until midnight of the 7th business day after the day on which the agreement was signed, by giving the franchisor written notice of the cancellation. Upon the franchisee's giving the franchisor such a notice, all money, equipment and merchandise loaned, sold or delivered to the franchisee under the agreement ~~shall~~ must be returned to the franchisor for full credit, or the cash equivalent. If the franchisor is the owner of the real estate upon which the franchisee conducted ~~his~~ business, the franchisee shall deliver full possession of the real estate to the franchisor immediately upon such cancellation.

B. ~~No An~~ agreement ~~shall~~ may not contain ~~any~~ a provision ~~which that~~ in any way limits the right of either party to trial by jury, the interposition of counterclaims or crossclaims.

C. The price at which a franchisee sells products ~~shall~~ may not be fixed or maintained by a franchisor, nor ~~shall~~ may any person seek to do so, nor ~~shall~~ may the price of products be subject to enforcement or coercion by any person in any manner. ~~Nothing herein shall,~~ this paragraph may not be construed to prohibit a franchisor from suggesting prices ~~and to franchisees or~~ to franchisees or counseling ~~with~~ franchisees concerning prices. Each agreement ~~shall~~ must have, in ~~ten-point~~ 10-point type, the legend: "PRICE FIXING OR MANDATORY PRICES FOR ANY PRODUCTS COVERED IN THIS AGREEMENT IS PROHIBITED. A SERVICE STATION DEALER OR WHOLESALE DISTRIBUTOR MAY SELL ANY PRODUCTS LISTED IN THIS AGREEMENT FOR A PRICE ~~WHICH HE~~ THAT THE SERVICE STATION DEALER OR WHOLESALE DISTRIBUTOR ALONE MAY DECIDE." The provisions of this paragraph do not apply to any petroleum products included in a franchisor's consignment agreement with a franchisee or to any franchise agreement that provides for petroleum products to be sold on consignment by a franchisee on behalf of a franchisor.

D. ~~No A~~ franchisor ~~shall~~ may not withhold ~~his~~ consent to any assignment, transfer or sale of the franchise agreement, ~~provided that~~ as long as the assignee, transferee or purchaser of the franchise agreement meets the qualifications required in the franchise agreement.

E. If the franchise agreement requires the franchisee to provide a cash deposit in advance for the use of the service station or delivery of fuel, except as advance payment in whole or in part for product ordered, ~~such the cash deposit shall~~ must be held by the franchisor; ~~and~~ may be used by the franchisor in ~~his~~ the franchisor's business; ~~and shall be retained for the term of the agreement unless it is sooner terminated.~~ Interest at a rate of at least ~~6%~~ the one-year United States Treasury bill rate, or the rate of a comparable instrument if the one-year United States Treasury bill rate is not offered, as of the first business day of the year in which the interest is paid ~~must~~ be paid to the franchisee at least annually on the use of the cash deposit to the extent not otherwise applied by the franchisor to obligations of the franchisee as provided in the franchise agreement. Within 90 days after the termination of the agreement, any portion of the cash deposit shall that has not otherwise been applied by the franchisor to obligations of the franchisee as provided in the franchise agreement must be returned, together with any unpaid interest on ~~such~~ any unused cash deposit at the rate of at least ~~6% per year~~ the one-year United States Treasury bill rate, or the rate of a comparable instrument if the one-year United States Treasury bill is not offered, as of the first business day of the year in which the interest is paid.

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

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

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

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

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

- (1) The sale or lease of ~~such~~ the real property and improvements by the franchisor to other than a subsidiary or affiliate of the franchisor for any use;
- (2) The sale or lease of ~~such~~ the real property and improvements to a subsidiary or affiliate of the franchisor; for a purpose other than the wholesale distribution or the retail sale of motor fuels;
- (3) The conversion of ~~such~~ the real property and improvements to a use other than the wholesale distribution or the retail sale of motor fuels; or
- (4) The lawful termination of lease, license or other nonownership under which the franchisor is entitled to possession or control of ~~such~~ the real property and improvements;

- B. Mutual agreement of the franchisor and franchisee to terminate, cancel or not renew the franchise agreement;
- C. Criminal misconduct or a violation of law relating to the business or premises of the ~~dealer~~ franchisee;
- D. Fraud, which ~~shall include~~, includes but is not ~~be~~ limited to the following:
 - (1) Adulteration of the franchisor's products;
 - (2) Commingling of funds;
 - (3) Misleading consumers or misbranding ~~of~~ gasoline;
 - (4) Trademark violations;
 - (5) Intentionally overcharging or deceiving customers as to repairs ~~which~~ that are not needed; and
 - (6) Intentionally deceiving the franchisor regarding a term of the term of the lease;
- E. Failure of the ~~dealer~~ franchisee to open for business for 5 consecutive days, exclusive of holidays, and reasonable vacation and sick days;
- F. Bankruptcy or insolvency of the ~~dealer~~ franchisee;
- G. Nonpayment of rent, or loss by the franchisor of its legal right to grant possession of leased premises to the ~~dealer~~ franchisee; ~~or~~
- H. Public condemnation or other public taking; and
- I. Substantial noncompliance with the obligations of the franchise agreement.

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

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

- A. ~~45~~ Forty-five days ~~where~~ when the asserted cause is ~~substantial noncompliance with the obligations of the franchise agreement specified in subsection 2, paragraph H or I;~~
- B. ~~120~~ One hundred twenty days ~~where~~ when the asserted cause is ~~among those~~ specified in subsection 2, paragraph A; or
- C. 7 Seven days ~~where~~ when the asserted cause is ~~among those~~ specified in subsection 2, ~~paragraphs~~ paragraph C, D ~~and~~, E, F or G.

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

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

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

2. Court action. The court shall grant such equitable relief as is necessary to remedy the effects of conduct prohibited under this chapter, ~~which is~~ that the court finds to exist, including declaratory judgment and mandatory or prohibitive injunctive relief. The court may grant interim equitable relief, and actual and punitive damages ~~where~~ when indicated, in suits under this chapter and may, ~~unless such suit is frivolous,~~ direct that costs, reasonable ~~attorney~~ attorney's and expert witness fees incurred by the franchisee in those portions of the action in which the franchisee is the prevailing party be paid by the franchisor.