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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 8. SPECIAL BUSINESS REGULATIONS [18400 - 22949.92.2] (*Division 8 added by Stats. 1941, Ch. 44.*)

CHAPTER 7.5. Franchises [20999 - 20999.4] (*Chapter 7.5 added by Stats. 1975, Ch. 640.*)

20999. For purposes of this chapter, the following terms shall have the following meanings:

(a) "Franchise" means any contract between a refiner and a distributor, between a refiner and a retailer, between a distributor and another distributor, or between a distributor and a retailer, under which a refiner or distributor authorizes or permits a retailer or distributor to use, in connection with the sale, consignment, or distribution of gasoline, diesel, gasohol, or aviation fuel, a trademark which is owned or controlled by such refiner or by a refiner which supplies fuel to the distributor which authorizes or permits such use. The term "franchise" includes the following:

(1) Any contract under which a retailer or distributor is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of fuel under a trademark which is owned or controlled by such refiner or by a refiner which supplies fuel to the distributor which authorizes or permits such occupancy.

(2) Any contract pertaining to the supply of fuel which is to be sold, consigned, or distributed under a trademark owned or controlled by a refiner, or under a contract which has existed continuously since May 15, 1973, and pursuant to which, on May 15, 1973, fuel was sold, consigned, or distributed under a trademark owned and controlled on such date by a refiner.

(3) The unexpired portion of any franchise, as defined by the preceding provisions of this paragraph, which is transferred or assigned as authorized by the provisions of such franchise or by any applicable provision of state law which permits such transfer or assignment without regard to any provision of the franchise.

(b) "Franchise relationship" means the respective fuel marketing or distribution obligations and responsibilities of a franchisor and a franchisee which result from the marketing of fuel under a franchise.

(c) "Franchisor" means a refiner or distributor who authorizes or permits, under a franchise, a retailer or distributor to use a trademark in connection with the sale, consignment, or distribution of fuel.

(d) "Franchisee" means a retailer or distributor who is authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of fuel.

(e) "Refiner" means any person engaged in the refining of crude oil to produce fuel, and includes any affiliate of such person.

(f) "Distributor" means any person, including any affiliate of such person, who either purchases fuel for sale, consignment, or distribution to another, or receives fuel on consignment for consignment or distribution to his or her own fuel accounts or to accounts of his or her supplier, but shall not include a person who is an employee of, or merely serves as a common carrier providing transportation service for, such supplier.

(g) "Retailer" means any person who purchases fuel for sale to the general public for ultimate consumption.

(h) "Marketing premises" means, in the case of any franchise, premises which, under such franchise, are to be employed by the franchisee in connection with the sale, consignment, or distribution of fuel.

(i) "Leased marketing premises" means marketing premises owned, leased, or in any way controlled by a franchisor and which the franchisee is authorized or permitted, under the franchise, to employ in connection with the sale, consignment, or distribution of fuel.

(j) "Contract" means any oral or written agreement. For supply purposes, delivery levels during the same month of the previous year shall be prima facie evidence of an agreement to deliver such levels.

(k) "Trademark" means any trademark, trade name, service mark, or other identifying symbol or name.

(l) "Fuel" means gasoline, diesel, gasohol, or aviation fuel.

(m) "Failure" does not include any failure for a cause beyond the reasonable control of either the franchise relationship or the franchisee.

(n) "Fail to renew" and "nonrenewal" mean, with respect to any franchise relationship, a failure to reinstate, continue, or extend the franchise relationship at any of the following times:

(1) At the conclusion of the term, or on the expiration date, stated in the relevant franchise.

(2) At any time, in the case of the relevant franchise which does not state a term of duration or an expiration date.

(3) Following a termination, on or after the effective date of this act, of the relevant franchise which was entered into prior to the effective date of this act and has not been renewed after that date.

(o) "Affiliate" means any person who, other than by means of a franchise, controls, is controlled by, or is under common control with, any other person.

(p) "Relevant geographic market area" includes this state or a standard metropolitan statistical area within this state which has been established by the United States Office of Management and Budget.

(q) "Termination" includes cancellation.

(Repealed and added by Stats. 1981, Ch. 90, Sec. 2.)

20999.1. Notwithstanding the terms of any franchise, no franchisor shall terminate, cancel, or fail to or refuse to renew any existing franchise without good cause.

As used in this section good cause is limited to the following:

(a) The gasoline dealer or petroleum distributor failed to comply with essential and reasonable requirements of the franchise agreement;

(b) The gasoline dealer or petroleum distributor failed to act in good faith in carrying out the terms of the franchise; or

(c) The franchisor is withdrawing from the marketing location at which the franchise of a gasoline dealer is located, provided that the franchisor pays the gasoline dealer the current wholesale market value for all qualifying equipment and supplies purchased by the gasoline dealer from the franchisor or affiliate of the franchisor. This subdivision shall only apply to those gasoline dealer franchises which are entered into or renewed on or after January 1, 1979. As used in this subdivision, "qualifying equipment and supplies" means all equipment and supplies purchased by the gasoline dealer from the franchisor or an affiliate of the franchisor which is free and clear of all liens, security interests and other encumbrances, valued on a first-in, first-out basis, evidenced by receipted invoices, and is (i) in first-class and resalable condition, (ii) in the original packages or containers and (iii) bears the original labels and trademarks, and (iv) the goods display no evidence of deterioration. This subdivision shall not be construed to create any priority over any other debt between the parties to the franchise arising from the same franchise agreement.

(d) For other legitimate business reasons (except that a termination, or cancellation of a franchise for the purpose of enabling the petroleum distributor or manufacturer to assume operation of the distributor's or gasoline dealer's business shall not be considered to be a legitimate business reason unless the gasoline dealer or distributor is paid reasonable compensation for the value of his franchise, including a reasonable amount for goodwill).

(Amended by Stats. 1981, Ch. 90, Sec. 3.)

20999.2. No petroleum distributor shall deny to any gasoline dealer or prospective gasoline dealer the right to be accompanied by counsel or a personal representative to any meeting held between the parties for the purpose of negotiating the terms of a franchise.

(Added by Stats. 1978, Ch. 706.)

20999.25. (a) In the case of leased marketing premises as to which the franchisor owns a fee interest, the franchisor shall not sell, transfer, or assign to another person the franchisor's interest in the premises unless the franchisor has first either made a bona fide offer to sell, transfer, or assign to the franchisee the franchisor's interest in the premises, other than signs displaying the franchisor's insignia and any other trademarked, servicemarked, copyrighted or patented items of the franchisor, or, if applicable, offered to the franchisee a right of first refusal of any bona fide offer acceptable to the franchisor made by another to purchase the franchisor's interest in the premises.

(b) In the case of leased marketing premises which the franchisor leases from a third party, following notice by the franchisor to the franchisee of termination or nonrenewal of the franchise by reason of the expiration of the franchisor's underlying lease from the third party, the franchisor shall, upon request by the franchisee and subject to the franchisee purchasing or leasing the premises from the third party prior to the date of termination or nonrenewal of the franchise set forth in the notice, make a bona fide offer to sell to the franchisee any interest the franchisor may have in the improvements on the premises, other than signs displaying the franchisor's insignia and any other trademarked, servicemarked, copyrighted or patented items of the franchisor, at a price not to exceed the fair market value of the improvements or the book value, whichever is greater, or, if applicable, offer the franchisee a right of first refusal

of any bona fide offer acceptable to the franchisor made by another to purchase the franchisor's interest in the improvements. For the purposes of this subdivision, "book value" means actual cost less actual depreciation taken.

(c) Nothing in this section shall be deemed to require a franchisor to continue an existing franchise agreement or to renew a franchise relationship if not otherwise required by federal law.

(d) For the purposes of this section, the following terms shall have the following meanings:

(1) "Marketing premises" means, in the case of any franchise, premises which, under such franchise, are to be employed by the franchisee in connection with the sale, consignment, or distribution of motor fuel.

(2) "Leased marketing premises" means marketing premises owned, leased, or in any way controlled by a franchisor and which the franchisee is authorized or permitted, under the franchise, to employ in connection with the sale, consignment, or distribution of motor fuel.

(Amended by Stats. 1985, Ch. 442, Sec. 1.)

20999.3. (a) Any person who violates any provision of this chapter may be sued in the superior court in the county in which the defendant resides or where a franchise affected by the violation does business, for temporary and permanent injunctive relief and for damages, if any, and the costs of suit.

(b) No action shall be maintained to enforce any liability created under any provision of this chapter unless brought before the expiration of two years after the violation upon which it is based or the expiration of one year after the discovery by the plaintiff of the facts constituting such violation, whichever occurs first.

(Amended by Stats. 1981, Ch. 512, Sec. 2.)

20999.4. At such time as a franchisor intends to withdraw from the marketing of fuel through retail and distribution outlets in the relevant geographic market area, prompt notification, together with a plan describing the schedule and conditions of the withdrawal, shall be provided by the franchisor to the Governor.

(Added by Stats. 1981, Ch. 90, Sec. 4.)