

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1295

Session of
1975

INTRODUCED BY GILLESPIE, BENNETT, DOMBROWSKI, LETTERMAN,
ROMANELLI, ZWIKL, STOUT, HAMMOCK, KOWALYSHYN, MCGINNIS,
RUGGIERO, ECKENSBERGER AND O'KEEFE, MAY 7, 1975

REFERRED TO COMMITTEE ON MINES AND ENERGY MANAGEMENT,
MAY 27, 1975

AN ACT

1 Providing for the regulation and control of petroleum
2 franchising agreements; imposing powers and duties on the
3 Department of Labor and Industry.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short Title.--This act shall be known and may be
7 cited as the "Petroleum Franchise Act."

8 Section 2. Definitions.--The following words, terms and
9 phrases, when used in this act, shall have the meaning ascribed
10 to them except where the context clearly indicates a different
11 meaning:

12 "Automotive products" shall mean any product sold or
13 distributed by a retail dealer for use with a motor vehicle,
14 whether or not such product is essential for the maintenance of
15 the motor vehicle and whether or not such product is also used
16 for non-automotive purposes.

17 "Coupon" shall include stamps which are given to a customer

1 which may later be redeemed for service or merchandise, and
2 shall include "green stamps," "yellow stamps," and similar
3 promotions.

4 "Deposit in advance" shall mean any deposit, regardless of
5 its purported purpose, which is received by a distributor or
6 manufacturer from the retail dealer as a breakage, security or
7 other similar deposit.

8 "Distributor" shall mean any jobber or other person who
9 purchases motor fuel and other automotive products from a
10 manufacturer for the resale to a retail dealer.

11 "Manufacturer" shall mean every producer or refiner of
12 petroleum products, or the producer or fabricator of any
13 automotive product sold or distributed by a service station.

14 "Marketing agreement" shall mean a written or parol agreement
15 between a manufacturer and a retail dealer or a distributor and
16 a retail dealer under which (i) the dealer promises to sell or
17 distribute the product or products of the manufacturer or
18 distributor; (ii) the retail dealer is granted the right to use
19 a trademark, trade name, service mark or other identifying
20 symbol or name owned by a manufacturer or distributor; or (iii)
21 the retail dealer is granted the right to occupy premises,
22 owned, leased or controlled by a manufacturer or distributor.

23 "Motor fuel" shall mean and include any substance or
24 combination of substances which is intended to be or is capable
25 of being used for the purpose of propelling or running by
26 combustion any internal combustion engine and sold or used for
27 that purpose.

28 "Retail dealer" shall mean and include any person operating a
29 service station, filling station, store, garage or other place
30 of business for the sale of motor fuel for delivery into the

1 service tank or tanks of any vehicle propelled by an internal
2 combustion engine.

3 "Retail fuel outlet" shall mean a place at which gasoline and
4 oil are stored and supplied to service stations or to the
5 public, and which is operated by independent contractors or by
6 persons in the employ of such independent contractors.

7 Section 3. Price Signs on Fuel Pumps and Premises.--Every
8 retail dealer in motor fuel shall publicly display and maintain
9 on each pump or other dispensing device, from which motor fuel
10 is sold by him, at least one sign and not more than two signs
11 stating the price per gallon of the motor fuel sold by him from
12 such pump or device, which price shall be the total price for
13 such motor fuel, including all State and Federal taxes.

14 Section 4. Prohibited Sales Practices.--It shall be a
15 violation of this act for any franchisor, directly or
16 indirectly, through any officer, agent or employee, to engage in
17 any of the following practices:

18 (1) To require a franchisee at time of entering into a
19 franchise arrangement to assent to a release, assignment,
20 novation, waiver or estoppel which would relieve any person from
21 liability imposed by this act.

22 (2) To prohibit directly or indirectly the right of free
23 association among franchisees for any lawful purpose.

24 (3) To require or prohibit any change in management of any
25 franchisee unless such requirement or prohibition of change
26 shall be for good cause, which cause shall be stated in writing
27 by the franchisor.

28 (4) To restrict the sale of any equity or debenture issue or
29 the transfer of any securities of a franchise or in any way
30 prevent or attempt to prevent the transfer, sale or issuance of

1 shares of stock or debentures to employees, personnel of the
2 franchisee, or heir of the principal owner, as long as basic
3 financial requirements of the franchisor are complied with, and
4 provided any such sale, transfer or issuance does not have the
5 effect of accomplishing a sale of the franchise.

6 (5) To provide any term or condition in any lease or other
7 agreement ancillary or collateral to a franchise, which term or
8 condition directly or indirectly violates this act.

9 (6) To increase rent during the term of the lease except for
10 additional real estate taxes or improvements, other than
11 maintenance, to the real property.

12 (7) To prohibit the franchisee from purchasing similar
13 products from another source when the franchisor is unable to
14 supply products sufficient to satisfy the franchisee's demand.

15 Section 5. Rules and Regulations by Department of Labor and
16 Industry.--The Department of Labor and Industry shall make such
17 rules and regulations as it deems necessary for the proper
18 enforcement of this act, and shall utilize its facilities to
19 carry this act into effect.

20 Section 6. Independence of Retail Dealers.--No manufacturer
21 or distributor of petroleum products shall open a major brand,
22 secondary brand or unbranded retail gasoline outlet or service
23 station in this Commonwealth in competition with its own
24 franchised dealer.

25 Section 7. Equal Treatment.--(a) Every manufacturer,
26 distributor or other person supplying petroleum products to
27 retail dealers and other retail fuel outlets shall extend all
28 voluntary allowances uniformly to every dealer or outlet
29 supplied in the immediate geographical area.

30 (b) Every manufacturer, distributor or other person

1 supplying petroleum products to retail dealers or other retail
2 fuel outlets shall establish reasonable classifications of
3 equipment and apply all equipment rentals uniformly to all
4 dealers and outlets supplied.

5 (c) Every manufacturer, distributor or other person
6 supplying petroleum products to retail dealers or other retail
7 fuel outlets shall apportion uniformly all gasoline and special
8 fuels supplied during periods of shortages, on an equitable
9 basis, and shall not discriminate among dealers and outlets in
10 such allotments.

11 Section 8. Equipment Purchased by Retail Dealer.--Property
12 purchased by a retail dealer and affixed or appended to a
13 service station or retail fuel outlet shall remain the property
14 of the person purchasing same, notwithstanding the fact that it
15 is permanently attached. Upon termination of a marketing
16 agreement, termination of a lease or the vacating of the
17 premises by the retail dealer, the purchaser of the property
18 shall have a reasonable time in which to remove same from the
19 premises or may enter into an agreement with the owner of the
20 premises for the purchase of the equipment at a fair and
21 equitable price. In removing property which has become affixed
22 to the premises, the person removing the property shall leave
23 the premises in the same condition as they were at the time the
24 property was attached.

25 Section 9. Purchase Promotion Sales.--No agreement, formal
26 or informal, shall provide for the use of any promotion,
27 premium, coupon, give-away, or rebate in the operation of the
28 business: Provided, however, That a dealer may participate in a
29 promotion, premium, coupon, give-away or rebate sponsored by a
30 manufacturer or distributor.

1 Section 10. Marketing Agreements.--Every marketing agreement
2 between a manufacturer and a retail dealer or between a
3 distributor and a retail dealer shall be subject to the
4 following non-waivable provisions, whether or not they are
5 expressly set forth in the agreement:

6 (1) No agreement shall require a retail dealer to keep his
7 station or outlet open for business for any specified number of
8 hours per day, or days per week provided their agreed upon
9 allocation has been sold.

10 (2) The parties shall have the right to cancel a marketing
11 agreement until midnight of the seventh business day after the
12 day on which the agreement was signed, by giving the other party
13 notice in writing of the cancellation. Upon giving the other
14 party such notice, all money, equipment and merchandise loaned,
15 sold or delivered to the retail dealer under the agreement shall
16 be returned to the other party for full credit, or the cash
17 equivalent. If the other party to the agreement is the owner of
18 the real estate upon which the retail dealer conducted his
19 business, the dealer shall deliver full possession of the real
20 estate back to the other party.

21 (3) No agreement shall contain any provision which in any
22 way limits the right of either party to a trial by jury, the
23 interposition of counter-claims or cross-claims.

24 (4) The price at which a retail dealer sells products shall
25 not be fixed nor maintained by a manufacturer or distributor,
26 nor shall any person seek to do so, nor shall the price of
27 products be subject to enforcement or coercion by any person in
28 any manner. Nothing herein shall be construed to prohibit a
29 manufacturer or distributor from suggesting prices and
30 counseling with dealers concerning prices. Each agreement

1 between a manufacturer and a dealer or between a distributor and
2 a dealer shall have, in ten-point type, the legend: "PRICE
3 FIXING OR MANDATORY PRICES FOR ANY PRODUCTS COVERED IN THIS
4 AGREEMENT IS PROHIBITED. A SERVICE STATION DEALER MAY SELL ANY
5 PRODUCTS LISTED IN THIS AGREEMENT FOR A PRICE WHICH HE ALONE MAY
6 DECIDE."

7 (5) No party to a marketing agreement with a retail dealer
8 shall unreasonably withhold his consent to any assignment,
9 transfer or sale of the marketing agreement; nor may a
10 manufacturer or distributor unreasonably refuse to renew a
11 marketing agreement.

12 (6) With respect to non-renewal of a marketing agreement,
13 either party must give the other party notice of intent not to
14 renew the marketing agreement at least 90 days prior to the
15 expiration of the term of that marketing agreement, and shall
16 state the reason for such non-renewal.

17 (7) If the marketing agreement or rental agreement requires
18 the retail dealer to provide to the distributor or manufacturer
19 or other party to the agreement any deposit in advance or any
20 deposit for the use of the service station, such deposit shall
21 be held by the person designated to receive it in the agreement
22 and shall be held for the term of the rental agreement unless it
23 is sooner terminated. Within 30 days after the termination of
24 the agreement the deposit shall be returned.

25 Section 11. Termination of Contract or Franchise.--(a)
26 Franchise agreements may be cancelled for just cause. In the
27 event a marketing agreement between a dealer and manufacturer is
28 terminated or cancelled, whether by mutual consent or otherwise,
29 the manufacturer shall, within 30 days, tender to the dealer,
30 for products which were sold to the dealer which the dealer has

1 been unable to sell, the full price originally paid by the
2 dealer for the products. In the event there is any existing
3 indebtedness owed directly to the manufacturer by the dealer,
4 the value of the products being repurchased shall first be
5 applied to the existing indebtedness, which shall be reduced not
6 only by the value of the products repurchased but also by the
7 subtraction of any interest or service charges imposed on the
8 products being repurchased. If the manufacturer does not make
9 such tender within 30 days, the dealer may sell the products for
10 as reasonable a price as may be obtained, and shall have a cause
11 of action against the manufacturer for the balance.

12 (b) A franchisor shall not cancel or terminate a franchise
13 prior to the stated expiration date unless the franchisee whose
14 franchise is to be terminated failed to comply with the
15 requirements of the franchise or a cancellation or termination
16 may occur in situations involving abandonment; conviction of the
17 franchisee of a felony, fraud, or a commercial dishonesty;
18 bankruptcy, the franchisee's filing of a petition for an
19 arrangement under the Bankruptcy Act; insolvency of the
20 franchisee; any loss by the franchisor of the right to grant
21 possession to the place of business; loss of the right by the
22 franchisor to the use of a trade mark, trade name, service mark,
23 or other identifying symbol or name covered by the franchise; or
24 the franchisee's adulteration, or misrepresentation of the
25 franchised goods.

26 Section 12. Failure to Renew Franchise.--A franchisor shall
27 not fail to renew a franchise unless:

28 (1) the franchisee whose franchise is not renewed failed to
29 comply with the reasonable requirements of the franchise; or

30 (2) such franchiser withdraws entirely from the sale of the

1 franchised goods in the Commonwealth; or

2 (3) where applicable, such franchisor intends to and does
3 relinquish an ownership or leasehold interest the franchisor may
4 have in the place of business; or

5 (4) the franchisor receives substantiated consumer
6 complaints concerning the conduct of the retail franchise
7 outlet; or

8 (5) the franchisee is convicted of a crime involving the
9 demised premises.

10 Section 13. Construction.--The provisions of this act shall
11 be liberally construed in order to effectively carry out the
12 purposes of this act.

13 Section 14. Effective Date.--This act shall take effect
14 immediately and shall apply to all new or renewed franchise
15 agreements or contracts signed after the effective date.