

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 920

H. P. 735

House of Representatives, March 5, 1975

Referred to the Committee on Business Legislation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. LaPointe of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Regulate the Distribution and Sale of Motor Fuels.

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

10 MRSA c. 215 is enacted to read:

CHAPTER 215

MOTOR FUEL DISTRIBUTION AND SALES

§ 1451. Short title

This chapter shall be known as the Motor Fuel Distribution and Sales Act.

§ 1452. Legislative findings and purpose

The Legislature finds and declares that the distribution and retail sale of motor fuels at reasonable prices and in adequate supply throughout the State vitally affects the public health, welfare and safety, and that increased competition at all levels of the motor fuel market and maintenance within that market of a significant proportion of businesses independent of major marketers and refiners will promote reasonable prices and better assure supplies to all areas of the State. It is therefore necessary to define and regulate the relationship between parties to franchise agreements involving the sale or distribution of motor fuels in the State and to prescribe other trade practices.

§ 1453. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

1. **Automotive product.** "Automotive product" shall mean any product sold or distributed by a retailer for use with a motor vehicle, whether or not such product is essential for the maintenance of the motor vehicle and whether or not such product is also used for non-automotive purposes;

2. **Coupon.** "Coupon" shall mean stamps which are given to a customer which may be later redeemed for service or merchandise, and shall include "green stamps" and similar promotions;

3. **Deposit in advance.** "Deposit in advance" shall mean any deposit, regardless of its purported purpose, which is received by a distributor or refiner from a retail dealer or distributor as a breakage, security or other similar deposit;

4. **Distributor.** "Distributor" shall mean any person engaged in the sale, consignment or distribution of petroleum products to wholesale or retail outlets, whether or not such person owns, leases or in any way controls such outlets;

5. **Franchise agreement.** "Franchise agreement" shall mean any 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 product or products of the 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.

6. **Franchisee.** "Franchisee" shall mean either a distributor who has entered into a franchise agreement with a refiner or a retail dealer who has entered into a franchise agreement with a distributor or a refiner;

7. **Franchisor.** "Franchisor" shall mean either a refiner who enters into a franchise agreement with a distributor or retail dealer, or a distributor who enters into a franchise agreement with a retail dealer;

8. **Motor fuel.** "Motor fuel" and "petroleum product" shall mean any substance or combination of substances which is intended to be or is capable of being used for the purpose of propelling or running by combustion any internal combustion engine which is sold or used for that purpose;

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

10. **Place of business.** "Place of business" shall mean:

A. Any fixed geographical location at which, pursuant to a franchise agreement, motor fuels are sold or distributed or a trademark, trade name, service mark or other identifying symbol is used or displayed; or

B. Any premises owned, leased or controlled by a refiner or distributor, in which a retail dealer or a distributor is granted the right of occupancy pursuant to a franchise agreement.

11. Refiner. "Refiner" shall mean any person engaged in the refining or importing of petroleum products;

12. Retail dealer. "Retail dealer" shall mean any person who operates a service station, filling station, store, garage or other place of business for the sale of motor fuel for delivery into the service tank or tanks of any vehicle propelled by an internal combustion engine.

13. Retail fuel outlet. "Retail fuel outlet" shall mean a place at which gasoline and oil are stored and supplied to the public, which is operated directly by a refiner or distributor;

§ 1454. Franchised dealers and distributors

1. Franchise agreements. Every franchise agreement between a manufacturer and a retail dealer or a distributor or between a distributor and a retail dealer shall be subject to the following nonwaivable provisions, whether or not they are expressly set forth in the agreement:

A. No agreement shall require a retail dealer to keep his station open for business for an unreasonable number of hours per day or days per week.

B. Each retail dealer and each distributor as franchisee shall have 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 giving the franchisor such notice, all money, equipment and merchandise loaned, sold or delivered to the franchisee under the agreement shall 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.

C. No agreement shall contain any provision which in any way limits the right of either party to trial by jury, the interposition of counter-claims or cross-claims.

D. The price at which a franchisee sells products shall not be fixed or maintained by a franchisor, nor shall any person seek to do so, nor shall the price of products be subject to enforcement or coercion by any person in any manner. Nothing herein shall be construed to prohibit a franchisor from suggesting prices and counseling with franchisees concerning prices. Each agreement shall have, in ten-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 ALONE MAY DECIDE.'

E. No agreement shall 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.

F. No franchisor shall unreasonably withhold his consent to any assignment, transfer or sale of the franchise agreement.

G. Notwithstanding any contract provision, no lease agreement or any other contract which bases rent upon the amount of products sold shall permit any increase in such rentals if there is a governmentally imposed ceiling on the amount which may be charged for the product.

H. 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 deposit shall be held by the franchisor, may be used by the franchisor in his business, and shall be retained for the term of the agreement unless it is sooner terminated. Interest at a rate of at least 6% shall be paid to the franchisee at least annually. Within 90 days after the termination of the agreement, the deposit shall be returned, together with any unpaid interest on such deposit at the rate of at least 6% per year.

2. Termination of franchise agreements. No refiner or distributor, as franchisor, shall, 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:

A. The refusal or failure of a retail dealer or a distributor, as franchisee, to substantially comply with any material and reasonable obligation of the franchise agreement.

B. With respect to franchise agreements wherein the franchisor leases real property and improvements to the franchisee,

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

(2) The sale or lease of such 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; or

(3) The conversion of such 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 real property and improvements.

C. The voluntary abandonment by the franchisee of the franchise agreement;

D. The conviction of the franchisee in a court of competent jurisdiction of an offense which involves moral turpitude and is directly related to the business conducted pursuant to the franchise agreement;

E. Mutual agreement to terminate.

3. Notice of termination. The franchisor shall give the franchisee advance written notice of termination, cancellation or intent not to renew. Advance notice required by this subsection shall precede the effective date of such termination, cancellation or nonrenewal by at least:

A. Ninety days, where the asserted cause is substantial noncompliance with the obligations of the franchise agreement;

B. Six months where the asserted cause is among those specified in subsection 2, paragraph B;

C. Fifteen days where the asserted cause is the voluntary abandonment of the franchise by the franchisee.

Notice of termination, cancellation or intent not to renew, which is based on the conviction of the franchisee as set forth in subsection 2, paragraph D, may be given at any time following such conviction and may be made effective upon delivery and written receipt of such notice.

4. Compensation on termination of franchise. Upon the termination of any franchise, the franchisee shall be entitled to fair and reasonable compensation by the franchisor for the franchisee's 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 compensation shall be allowed for personalized items which have no value to the franchisor.

§ 1455. Equal treatment

Every refiner and every distributor supplying motor fuels to retail dealers and other retail fuel outlets shall:

1. Voluntary allowances. Extend all voluntary allowances uniformly and equitably to every dealer and outlet so supplied.

§ 1456. Statute of limitations

No action may be brought under this chapter for a cause of action which arose more than 2 years prior to the date such action is brought.

§ 1457. Legal and equitable remedies

1. If a franchisor or distributor engages in conduct prohibited under this chapter, a franchisee or a distributor may maintain a suit against such franchisor or distributor.

2. The court shall grant such equitable relief as is necessary to remedy the effects of conduct prohibited under this chapter, which it 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 indicated, in suits under this chapter and may, unless such suit is frivolous, direct that costs, reasonable attorney and expert witness fees be paid by the franchisor.

STATEMENT OF FACT

This bill establishes protection for franchise gasoline retailers.