CHAPTER 215

MOTOR FUEL DISTRIBUTION AND SALES

§1451. Short title

This chapter shall be known as the Motor Fuel Distribution and Sales Act. [PL 1975, c. 549 (NEW).]

SECTION HISTORY

PL 1975, c. 549 (NEW).

§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. [PL 1975, c. 549 (NEW).]

SECTION HISTORY

PL 1975, c. 549 (NEW).

§1453. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings: [PL 1975, c. 549 (NEW).]

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;
[PL 1975, c. 549 (NEW).]

1-A. Blender. "Blender" means any person who blends blend stock with gasoline or who sells or distributes blend stock for the purpose of being blended with gasoline.
[PL 2011, c. 632, §1 (NEW).]

1-B. Blend stock. "Blend stock" means ethanol, methanol or any other products blended with gasoline to produce motor fuel.
[PL 2011, c. 632, §1 (NEW).]

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.
[PL 2013, c. 219, §1 (NEW).]

2. 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;
[PL 1975, c. 549 (NEW).]

3. 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;

[PL 1975, c. 549 (NEW).]

4. Franchise agreement. "Franchise agreement" 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 any petroleum product or products of a refiner; [PL 2013, c. 219, §2 (AMD).]

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 [PL 1975, c. 549 (NEW).]

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. [PL 2013, c. 219, §2 (AMD).]

[PL 2013, c. 219, §2 (AMD).]

5. 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;

[PL 1975, c. 549 (NEW).]

6. 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;

[PL 1975, c. 549 (NEW).]

7. 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;

[PL 1975, c. 549 (NEW).]

8. Person. "Person" means a natural person, corporation, partnership, trust or other entity and, in the case of any entity, includes any other entity that has a majority interest in the entity or effectively controls the entity.

[PL 2013, c. 219, §3 (AMD).]

9. 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 [PL 1975, c. 549 (NEW).]

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. [PL 1975, c. 549 (NEW).]

[PL 1975, c. 549 (NEW).]

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

[PL 1975, c. 549 (NEW).]

11. 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;

[PL 1975, c. 549 (NEW).]

12. 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;
[PL 1975, c. 549 (NEW).]

SECTION HISTORY

PL 1975, c. 549 (NEW). PL 2011, c. 632, §1 (AMD). PL 2013, c. 219, §§1-3 (AMD).

§1454. Franchised dealers and distributors

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 those gross sales are more than $30,000 annually, the franchise agreement is subject to the nonwaivable provisions set forth in this subsection, whether or not they are expressly set forth in the agreement.

A. A retail dealer or distributor as franchisee 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 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 business, the franchisee shall deliver full possession of the real estate to the franchisor immediately upon such cancellation. [PL 2013, c. 219, §4 (AMD).]

B. An agreement may not contain a provision that in any way limits the right of either party to trial by jury, the interposition of counterclaims or crossclaims. [PL 2013, c. 219, §4 (AMD).]

C. The price at which a franchisee sells products may not be fixed or maintained by a franchisor, nor may any person seek to do so, nor may the price of products be subject to enforcement or coercion by any person in any manner, but this paragraph may not be construed to prohibit a franchisor from suggesting prices to franchisees or counseling franchisees concerning prices. Each agreement must have, in 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 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. [PL 2013, c. 219, §4 (AMD).]

D. A franchisor may not withhold consent to any assignment, transfer or sale of the franchise agreement as long as the assignee, transferee or purchaser of the franchise agreement meets the qualifications required in the franchise agreement. [PL 2013, c. 219, §4 (AMD).]

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, the cash deposit must be held by the franchisor and may be used by the franchisor in the franchisor's business. Interest at a rate of at least 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 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 any unused cash deposit at the rate of at least

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. [PL 2013, c. 219, §4 (AMD).]

F. An agreement 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. [PL 2013, c. 219, §4 (AMD).]

[PL 2013, c. 219, §4 (AMD).]

2. Termination of franchise agreements. A franchisor 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 " includes, but is not limited to:

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

(1) The sale or lease of 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 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 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 the real property and improvements; [PL 2013, c. 219, §5 (AMD).]

B. Mutual agreement of the franchisor and franchisee to terminate, cancel or not renew the franchise agreement; [PL 2013, c. 219, §5 (AMD).]

C. Criminal misconduct or a violation of law relating to the business or premises of the franchisee; [PL 2013, c. 219, §5 (AMD).]

D. Fraud, which includes but is not limited to the following:

(1) Adulteration of the franchisor's products;

(2) Commingling of funds;

(3) Misleading consumers or misbranding gasoline;

(4) Trademark violations;

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

(6) Intentionally deceiving the franchisor regarding a term of the term of the lease; [PL 2013, c. 219, §5 (AMD).]

E. Failure of the franchisee to open for business for 5 consecutive days, exclusive of holidays and reasonable vacation and sick days; [PL 2013, c. 219, §5 (AMD).]

F. Bankruptcy or insolvency of the franchisee; [PL 2013, c. 219, §5 (AMD).]

G. Nonpayment of rent or loss by the franchisor of its legal right to grant possession of leased premises to the franchisee; [PL 2013, c. 219, §5 (AMD).]

H. Public condemnation or other public taking; and [PL 2013, c. 219, §5 (AMD).]

I. Substantial noncompliance with the obligations of the franchise agreement. [PL 1975, c. 623, §6-D (NEW).]

[PL 2013, c. 219, §5 (AMD).]

3. Notice of termination. 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 must precede the effective date of such termination, cancellation or nonrenewal by at least:

A. Forty-five days when the asserted cause is specified in subsection 2, paragraph H or I; [PL 2013, c. 219, §6 (AMD).]

B. One hundred twenty days when the asserted cause is specified in subsection 2, paragraph A; or [PL 2013, c. 219, §6 (AMD).]

C. Seven days when the asserted cause is specified in subsection 2, paragraph C, D, E, F or G. [PL 2013, c. 219, §6 (AMD).]

[PL 2013, c. 219, §6 (AMD).]

4. Compensation on termination of franchise. Upon the termination of any franchise, the franchisee 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 except that compensation is not allowed for personalized items that have no value to the franchisor.

[PL 2013, c. 219, §7 (AMD).]

SECTION HISTORY

PL 1975, c. 549 (NEW). PL 1975, c. 623, §§6-C,6-D (AMD). PL 2013, c. 219, §§4-7 (AMD).

§1455. 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. [PL 1975, c. 549 (NEW).]

SECTION HISTORY

PL 1975, c. 549 (NEW).

§1456. Legal and equitable remedies

1. Suit. 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.

[PL 1975, c. 549 (NEW).]

2. Court action. The court shall grant such equitable relief as is necessary to remedy the effects of conduct prohibited under this chapter 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 when indicated, in suits under this chapter and may direct that costs, reasonable 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.

[PL 2013, c. 219, §8 (AMD).]

SECTION HISTORY

PL 1975, c. 549 (NEW). PL 2013, c. 219, §8 (AMD).

§1457. Ethanol enhanced motor fuel

1. Prohibition. No distributor, franchisor or refiner may impose any condition, restriction, agreement or understanding that unreasonably discriminates against or unreasonably limits the sale, resale, transfer or purchase of ethanol or other synthetic motor fuel of equivalent usability in any case in which synthetic or conventional motor fuel is sold for use, consumption or resale.
[PL 1983, c. 852, §1 (NEW).]

2. Exception. This section does not apply to any distributor, franchisor or refiner which makes available sufficient supplies of ethanol or other synthetic motor fuels of equivalent usability to satisfy its customers' needs for those products, if those synthetic motor fuels are made available on terms and conditions which are equivalent to the terms and conditions on which conventional motor fuel products are made available.
[PL 1983, c. 852, §1 (NEW).]

3. Reasonable conditions. A motor fuel distributor, franchisor or refiner which does not make available sufficient supplies of ethanol or other synthetic motor fuels of equivalent usability may:

A. Require reasonable labeling of pumps dispensing the ethanol or other synthetic motor fuels to indicate, as appropriate, that the ethanol or other synthetic motor fuel was not manufactured, distributed or sold by that distributor, franchisor or refiner; [PL 1983, c. 852, §1 (NEW).]

B. Issue disclaimers, as appropriate, of product liability for damage from use of ethanol or other synthetic motor fuels; [PL 1983, c. 852, §1 (NEW).]

C. Refuse to provide advertising support for ethanol or other synthetic motor fuels; or [PL 1983, c. 852, §1 (NEW).]

D. Refuse to furnish or provide any additional pumps, tanks or other related facilities required for the sale of ethanol or other synthetic motor fuels. [PL 1983, c. 852, §1 (NEW).]
[PL 1983, c. 852, §1 (NEW).]

4. Ethanol-free motor fuel. A motor fuel distributor, franchisor or refiner may not impose any condition, restriction, agreement or understanding that prohibits or limits the sale, resale, transfer or purchase of conventional, ethanol-free motor fuel products in the State. This subsection applies to contracts entered into or renewed after the effective date of this subsection.
[PL 2015, c. 143, §1 (NEW).]

SECTION HISTORY

PL 1983, c. 852, §1 (NEW). PL 2015, c. 143, §1 (AMD).

§1457-A. Liability for use of ethanol-enhanced motor fuel

A distributor, blender or retail dealer is not liable for damages caused by the use of motor fuel containing more than 10% ethanol sold, consigned or distributed by that distributor, blender or retail dealer if the sale, consignment or distribution of that motor fuel is in accordance with federal law and the fuel is a transportation fuel or fuel additive that has received a waiver for introduction into interstate commerce by the Administrator of the United States Environmental Protection Agency pursuant to 42 United States Code, Section 7545(f)(4) (2011). [PL 2011, c. 632, §2 (NEW).]

SECTION HISTORY

PL 2011, c. 632, §2 (NEW).

§1457-B. Prohibition on sale, consignment or distribution of motor fuel containing corn-based ethanol; contingent effective date

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE ON CONTINGENCY: See T. 10, §1457-B, sub-§2)

1. Prohibition on sale of motor fuel containing corn-based ethanol. A distributor, blender or retail dealer may not sell, consign or distribute motor fuel containing corn-based ethanol.
[PL 2013, c. 249, §1 (NEW).]

2. Contingent effective date. This section does not take effect until at least 10 other states or a number of states with a collective population of 30,000,000 have enacted laws that prohibit the sale of motor fuel containing corn-based ethanol. The Commissioner of Agriculture, Conservation and Forestry shall notify the Revisor of Statutes when 10 other states or a number of states having a collective population of 30,000,000 have adopted laws that prohibit the sale of motor fuel containing corn-based ethanol.
[PL 2013, c. 249, §1 (NEW).]

SECTION HISTORY

PL 2013, c. 249, §1 (NEW).

§1458. Emergency Petroleum Products Supply Act

(REPEALED)

SECTION HISTORY

PL 1981, c. 3 (NEW). PL 1985, c. 506, §A10 (RP).

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