

Introduced: 5/13/75
Referred: Commerce

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2 *HCS* SENATE BILL NO. 438 *am (Jud.)*

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to franchising agreements involving
7 gasoline refiners, distributors and dealers; and
8 providing an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. FINDINGS OF THE LEGISLATURE. The legislature finds and
11 declares that since the distribution and sales, through franchise agreements,
12 of gasoline in the state vitally affect the economy of the state, the public
13 interest, welfare, and transportation, it is necessary to define the rela-
14 tionships and responsibilities of the parties to certain agreements pertaining
15 to franchising.

16 * Sec. 2. AS 45.50 is amended by adding a new article to read:

17 ARTICLE 5. ALASKA GASOLINE PRODUCTS FRANCHISE ACT.

18 Sec. 45.50.800. DISCLOSURES TO BE MADE BY DISTRIBUTORS AND
19 REFINERS BEFORE CONCLUSION OF AGREEMENT. Prior to entry into a fran-
20 chise agreement, a refiner or distributor shall disclose to dealer facts
21 which would reasonably be considered material to dealer's decision to
22 enter into the franchise. These facts shall include, but not be limited
23 to:

- 24 (1) ownership of property of the retail outlet;
- 25 (2) if the real property is not owned by a refiner or dis-
26 tributor, then the nature of the relationship between the real property
27 owner and the refiner or distributor and the length of the underlying
28 lease (if applicable);
- 29 (3) the last known addresses of dealers operating the retail

1 outlet for the last five years;

2 (4) the gasoline gallonage history, if any, of the station
3 for the last five years;

4 (5) any sales goals or quotas the refiners or distributors
5 intend to apply to the station;

6 (6) the nearest gasoline outlet owned, controlled or operated
7 by refiner or distributor and any plans distributor or refiner has to
8 open new retail outlets within the trade area of the retail outlet; and

9 (7) any plans the refiner or distributor has for the future
10 of the subject retail outlet.

11 Sec. 45.50.810. VIOLATIONS. (a) No person shall, directly or
12 indirectly, through offices, employees or agents:

13 (1) require the franchisee/dealer at the time of entering
14 into the franchise agreement to assent to release, assignment, novation,
15 waiver or estoppel which would relieve any person from liability imposed
16 by secs. 800 - 850 of this chapter.

17 (2) require the dealer to agree to waive his right to a jury
18 trial or any right of counterclaim he may have;

19 (3) require the dealer to keep his retail outlet open for
20 business more than 16 consecutive hours per day or more than six days a
21 week, provided that this paragraph shall not be construed to prevent any
22 retail outlet from being open when required to be open to conform to any
23 state or federal law or regulation;

24 (4) restrict or inhibit directly or indirectly the right of
25 free association for any lawful purpose of franchisee/dealer;

26 (5) sell, rent or offer to sell to a dealer any product or
27 service for more than a fair and reasonable price;

28 (6) except as to the initial inventory of the franchise,
29 require a dealer to purchase or otherwise lease goods or services of a

1 refiner or distributor or from an approved source of supply unless and
2 to the extent that the refiner or distributor satisfies the burden of
3 proving that such restricted purchasing agreements are reasonably neces-
4 sary for lawful purposes justified on business grounds and do not sub-
5 stantially affect competition; in determining whether a requirement to
6 purchase is lawful, the court shall be guided by the decisions of the
7 courts of the United States in interpreting and applying the antitrust
8 laws and the Federal Trade Commission Act of the United States;

9 (7) impose unreasonable standards of performance on the
10 dealer;

11 (8) unreasonably disapprove the transfer or assignment of a
12 franchise by a dealer to a qualified transferee or assignee;

13 (9) require a dealer to participate financially or to use any
14 premium coupon or giveaway or rebate in the operation of the business;
15 however, a distributor may require the dealer to distribute premiums,
16 coupons or give-aways to customers which are provided to the dealer at
17 the expense of the refiner or distributor or where the promotion is
18 self-liquidating; or

19 (10) fail to deal with the dealer in good faith.

20 (b) No refiner or distributor may, directly or indirectly, through
21 any officer, agent or employee to terminate, cancel or fail to renew a
22 dealer franchise without first giving written notice setting forth all of
23 the reasons for such termination or cancellation or intent not to renew
24 to the franchisee/dealer at least 90 days in advance of the termination,
25 cancellation or failure to renew except:

26 (1) where the alleged grounds are voluntary abandonment by
27 the franchisee/dealer of the franchisee relationship, in which event
28 the above notice may be given five days in advance of the termination,
29 cancellation or failure to renew;

1 (2) where the alleged grounds are the conviction of the
2 franchisee in a court of competent jurisdiction of an indictable offense
3 directly related to the business conducted pursuant to the franchise in
4 which event, the termination, cancellation or failure to renew shall be
5 effective immediately upon the delivery or receipt of written notice of
6 the termination, cancellation or non renewal.

7 (c) No refiner or distributor may terminate, cancel or fail to
8 renew a dealer franchise without good cause. Good cause shall include
9 without limitation: (1) the failure of a franchisee to comply with the
10 lawful material provisions of a franchise between distributor or refiner
11 and the franchisee/dealer and to cure each default after being given
12 written notice and a reasonable opportunity to cure the default; (2)
13 an adjudication that the franchisee/dealer is a bankrupt or insolvent or
14 if he makes an assignment for the benefit of creditors or a similar
15 disposition of assets of franchise business or voluntarily abandons the
16 franchise business or is convicted of or pleads guilty or no contest to
17 a charge of violating any law relating to any franchise business; (3)
18 the good faith business decision of franchisor that he no longer requires
19 a retail outlet at that location for the marketing of gasoline; and (4)
20 if at the time of renewal of the franchise the distributor or refiner
21 and the franchisee/dealer cannot agree upon new terms and the terms
22 offered by the refiner or distributor do not violate any other laws of
23 the State of Alaska or of the United States and the terms are essentially
24 the same as those offered to other franchisee/dealers in similar retail
25 outlets and do not discriminate against the subject franchisee/ dealer,
26 then the dealer's failure to sign the new agreement may be considered
27 good cause.

28 Sec. 45.50.820. OBLIGATION OF DISTRIBUTOR TO REPURCHASE UPON
29 TERMINATION, ETC., OF AGREEMENT. In the event that the refiner or

1 distributor has good cause to terminate, cancel or fail to renew under
2 this Act, he shall compensate the franchisee/dealer for the fair market
3 value of the franchise including goodwill. Valuation other than good-
4 will shall include the fair market value of franchisee's inventory
5 supplies, equipment and furnishing purchased from the refiner or distri-
6 butor exclusive of personalized materials which have no value to the
7 refiner or distributor and inventory supplies equipment and furnishings
8 not reasonably required in the conduct of the franchise business.
9 Compensation shall be made within 60 days from the date of termination
10 unless it is necessary that a lawsuit be filed under sec. 830 of this
11 chapter or the dealer fails to comply with the bulk sales provisions of
12 AS 45.05.510 et seq. The refiner or distributor may offset against
13 accounts owed by franchisee/dealer under this subsection any amount owed
14 by franchisee/dealer to the refiner or distributor.

15 Sec. 45.50.830. COURT TO DETERMINE FAIR MARKET VALUE WHEN PARTIES
16 CANNOT AGREE. If under sec. 820 of this chapter, distributor or refiner
17 has good cause and the distributor or refiner and the dealer cannot
18 agree on the fair market value of the franchise, then either party may
19 initiate an action in the superior court where the franchise retail
20 outlet exists. Reasonable attorney's fees and the appraiser's fees
21 shall be awarded to the franchisee if the amount awarded to the franchisee
22 by the jury or the court is ten per cent higher than the final offer, if
23 any, made by the refiner or distributor prior to the filing of the
24 lawsuit.

25 Sec. 45.50.840. DEFINITIONS. In secs. 800 - 830 of this chapter,
26 unless context otherwise requires,

27 (1) "refiner" is a company, corporation or individual who
28 owns or controls, or controls through a substantially owned subsidiary,
29 partnership, or joint venture, a refinery used for the production of

1 gasoline, diesel or other motor vehicle fuels;

2 (2) "distributor" means any person or corporation other than
3 a refiner engaged in the sale, assignment, or distribution of gasoline
4 to four or more dealer operated retail outlets;

5 (3) "gasoline" means all products commonly or commercially
6 known or sold as gasoline;

7 (4) "dealer" means a person engaged in the sale of gasoline
8 through a retail outlet owned or leased by the person and operated by
9 the person;

10 (5) "franchise" means an oral or written contract or agreement
11 or series of agreements, either express or implied, in which the dealer
12 is required directly or indirectly to purchase 50 per cent or more of
13 his supply of gasoline from a distributor or refiner and in which the
14 dealer is granted authority to occupy premises owned, leased or in any
15 way controlled, directly or indirectly, by the refiner or distributor.

16 Sec. 45.50.850. SHORT TITLE. Sections 800 - 850 of this chapter
17 may be cited as the "Alaska Gasoline Products Franchise Act."

18 * Sec. 3. AS 45.50.471(b) is amended by adding a new subsection to read:

19 (22) failing to comply with the terms of the "Alaska Gasoline
20 Products Franchise Act." (AS 45.50.800 - 850)

21 * Sec. 4. This Act takes effect July 1, 1975.
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