

Introduced: 5/13/75  
Referred: Commerce

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2 SENATE BILL NO. 438 am

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND 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 new sections 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 12 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 in the use  
14 of any premium coupon or giveaway or rebate in the operation of the  
15 business; however, a distributor may require the dealer to distribute  
16 premiums, coupons or give-aways to customers which are provided to the  
17 dealer at the expense of the refiner or distributor or where the  
18 promotion is 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:

10 (1) the failure of a franchisee to comply with the lawful  
11 material provisions of a franchise between distributor or refiner and  
12 the franchisee/dealer and to cure each default after being given written  
13 notice and a reasonable opportunity to cure the default;

14 (2) an adjudication that the franchisee/dealer is a bankrupt  
15 or insolvent or if he makes an assignment for the benefit of creditors  
16 or a similar disposition of assets of franchise business or voluntarily  
17 abandons the franchise business or is convicted of or pleads guilty or  
18 no contest to a charge of violating any law relating to any franchise  
19 business;

20 (3) the good faith business decision of franchisor that he no  
21 longer requires a retail outlet at that location for the marketing of  
22 gasoline; and

23 (4) if at the time of renewal of the franchise the distri-  
24 butor or refiner and the franchisee/dealer cannot agree upon new terms  
25 and the terms offered by the refiner or distributor do not violate any  
26 other laws of the State of Alaska or of the United States and the terms  
27 are essentially the same as those offered to other franchisee/dealers in  
28 similar retail outlets and do not discriminate against the subject  
29 franchisee/dealer, then the dealer's failure to sign the new agreement

1 may be considered good cause.

2 (d) No refiner or distributor may engage in price discrimination  
3 between dealers unless that discrimination is based upon quantity  
4 purchased or transportation costs.

5 Sec. 45.50.820. OBLIGATION OF DISTRIBUTOR TO REPURCHASE UPON  
6 TERMINATION, ETC., OF AGREEMENT. In the event that the refiner or  
7 distributor has good cause to terminate, cancel or fail to renew under  
8 sec. 810(c)(1) or (2) of this chapter, he shall compensate the  
9 franchisee/dealer for the fair market value of the franchise, excluding  
10 goodwill. Refiners or distributors terminating, cancelling, or failing  
11 to renew under sec. 810(c)(3) or (4) of this chapter shall compensate  
12 the franchisee/dealer for the fair market value of the franchise in-  
13 cluding goodwill. Valuation other than goodwill shall include the fair  
14 market value of franchisee's inventory supplies, equipment and furnishings  
15 purchased from the refiner or distributor exclusive of personalized  
16 materials which have no value to the refiner or distributor and inventory  
17 supplies equipment and furnishings not reasonably required in the conduct  
18 of the franchise business. Compensation shall be made within 60 days  
19 from the date of termination unless it is necessary that a lawsuit be  
20 filed under sec. 830 of this chapter or the dealer fails to comply with  
21 the bulk sales provisions of AS 45.05.510 et seq. The refiner or  
22 distributor may offset against accounts owed by franchisee/dealer under  
23 this subsection any amount owed by franchisee/dealer to the refiner or  
24 distributor.

25 Sec. 45.50.830. COURT TO DETERMINE FAIR MARKET VALUE WHEN PARTIES  
26 CANNOT AGREE. If under sec. 820 of this chapter, distributor or refiner  
27 has good cause and the distributor or refiner and the dealer cannot  
28 agree on the fair market value of the franchise, then either party may  
29 initiate an action in the superior court where the franchise retail

1 outlet exists. Reasonable attorney's fees and the appraiser's fees  
2 shall be awarded to the franchisee if the amount awarded to the  
3 franchisee by the jury or the court is ten per cent higher than the  
4 final offer, if any, made by the refiner or distributor prior to the  
5 filing of the lawsuit.

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

8 (1) "refiner" is a company, corporation or individual who  
9 owns or controls, or controls through a substantially owned subsidiary,  
10 partnership, or joint venture, a refinery used for the production of  
11 gasoline, diesel or other motor vehicle fuels;

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

15 (3) "gasoline" means all products commonly or commercially  
16 known or sold as gasoline;

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

20 (5) "franchise" means an oral or written contract or agree-  
21 ment or series of agreements, either express or implied, in which the  
22 dealer is required directly or indirectly to purchase 50 per cent or  
23 more of his supply of gasoline from a distributor or refiner and in  
24 which the dealer is granted authority to occupy premises owned, leased  
25 or in any way controlled, directly or indirectly, by the refiner or  
26 distributor.

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

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

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

\* Sec. 4. This Act takes effect July 1, 1976.