

Original sponsor: Commerce Committee

Offered: 4/15/76
Referred: Judiciary

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 438

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 for 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 pertain-
15 ing 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 RE-
19 FINERS BEFORE CONCLUSION OF AGREEMENT. Before entry into a franchise
20 agreement, a refiner or distributor shall disclose to the dealer facts
21 which would reasonably be considered material to the dealer's decision
22 to enter into the franchise. These facts shall include, but not be
23 limited 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 the refiner or distributor and any plans the distributor or refiner
8 has to open new retail outlets within the trade area of the retail
9 outlet; and

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

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

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

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

20 (3) restrict or inhibit directly or indirectly the right of
21 free association for any lawful purpose of the franchisee-dealer;

22 (4) except as to the initial inventory of the franchise,
23 require a dealer to purchase or otherwise lease goods or services of a
24 refiner or distributor or from an approved source of supply unless and
25 to the extent that the refiner or distributor satisfies the burden of
26 proving that such restricted purchasing agreements are reasonably neces-
27 sary for lawful purposes justified on business grounds and do not sub-
28 stantially affect competition; in determining whether a requirement to
29 purchase is lawful, the court shall be guided by the decisions of the

1 written notice and a reasonable opportunity to cure the default;

2 (2) an adjudication that the franchisee-dealer is a bankrupt
3 or insolvent or if he makes an assignment for the benefit of creditors
4 or a similar disposition of assets of franchise business or voluntarily
5 abandons the franchise business or is convicted of or pleads guilty or
6 no contest to a charge of violating any law relating to any franchise
7 business;

8 (3) the good faith business decision of the franchiser that
9 he no longer requires a retail outlet at that location for the marketing
10 of gasoline; and

11 (4) the dealer's failure to sign the new agreement if at the
12 time of renewal of the franchise the distributor or refiner and the
13 franchisee-dealer cannot agree upon new terms and the terms offered by
14 the refiner or distributor do not violate any other laws of the State of
15 Alaska or of the United States and the terms are essentially the same as
16 those offered to other franchisee-dealers in similar retail outlets and
17 do not discriminate against the subject franchisee-dealer.

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

21 Sec. 45.50.820. OBLIGATION OF DISTRIBUTOR TO REPURCHASE UPON
22 TERMINATION, ETC., OF AGREEMENT. If the refiner or distributor has good
23 cause to terminate, cancel or fail to renew under sec. 810(c)(1) or (2)
24 of this chapter, he shall compensate the franchisee-dealer for the fair
25 market value of the franchise, excluding goodwill. Refiners or distri-
26 butors terminating, cancelling, or failing to renew under sec. 810(c)(3)
27 or (4) of this chapter shall compensate the franchisee-dealer for the
28 fair market value of the franchise. Valuation shall include the fair
29 market value of the franchisee's inventory supplies, equipment and

1 courts of the United States in interpreting and applying the antitrust
2 laws and the Federal Trade Commission Act of the United States;

3 (5) impose unreasonable standards of performance on the
4 dealer;

5 (6) require a dealer to participate financially in the use of
6 any premium coupon or giveaway or rebate in the operation of the busi-
7 ness; however, a distributor may require the dealer to distribute
8 premiums, coupons or give-aways to customers which are provided to the
9 dealer at the expense of the refiner or distributor or when the pro-
10 motion is self-liquidating; or

11 (7) fail to deal with the dealer in good faith.

12 (b) No refiner or distributor may, directly or indirectly, through
13 any officer, agent or employee, terminate, cancel or fail to renew a
14 dealer franchise without first giving written notice setting out all of
15 the reasons for the termination or cancellation or intent not to renew
16 to the franchisee-dealer at least 45 days in advance of the termination,
17 cancellation or failure to renew except

18 (1) when the alleged grounds are voluntary abandonment by the
19 franchisee-dealer of the franchisee relationship, then the above notice
20 may be given five days in advance of the termination, cancellation or
21 failure to renew;

22 (2) when the alleged grounds are the conviction of the
23 franchisee in a court of competent jurisdiction of a felony.

24 (c) No refiner or distributor may terminate, cancel or fail to
25 renew a dealer franchise without good cause. Good cause shall include
26 without limitation:

27 (1) the failure of a franchisee to comply with the lawful
28 material provisions of a franchise between the distributor or refiner
29 and the franchisee-dealer and to cure each default after being given

1 furnishings purchased from the refiner or distributor exclusive of
2 personalized materials which have no value to the refiner or distributor
3 and inventory supplies, equipment and furnishings not reasonably re-
4 quired in the conduct of the franchise business. Compensation shall be
5 made within 60 days from the date of termination unless it is necessary
6 that a lawsuit be filed under sec. 830 of this chapter or the dealer
7 fails to comply with the bulk sales provisions of AS 45.05.510 et seq.
8 The refiner or distributor may offset against accounts owed by the
9 franchisee-dealer under this section any amount owed by the franchisee-
10 dealer to the refiner or distributor.

11 Sec. 45.50.830. COURT TO DETERMINE FAIR MARKET VALUE WHEN PARTIES
12 CANNOT AGREE. If under sec. 820 of this chapter the distributor or
13 refiner has good cause and the distributor or refiner and the dealer
14 cannot agree on the fair market value of the franchise, then either
15 party may initiate an action in the superior court where the franchise
16 retail outlet exists. If the amount awarded to the franchisee by the
17 jury or the court is 10 per cent lower than the final offer, if any,
18 made by the refiner or distributor before the filing of the lawsuit,
19 reasonable attorney fees and the appraiser fees shall be awarded to the
20 refiner or distributor.

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

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

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

1 (3) "gasoline" means all products commonly or commercially
2 known or sold as gasoline;

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

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

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

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

16 (22) failing to comply with the terms of the Alaska Gasoline
17 Products Franchise Act (AS 45.50.800 - 45.50.850).

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