

Original sponsor: Commerce Committee

Offered: 5/25/76
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 438 (Judiciary)

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 leasing 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 lease agreements, of
12 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 leasing.

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

17 ARTICLE 5. ALASKA GASOLINE PRODUCTS LEASING ACT.

18 Sec. 45.50.800. DISCLOSURES TO BE MADE BY DISTRIBUTORS AND RE-
19 FINERS BEFORE CONCLUSION OF AGREEMENT. Before entry into a lease agree-
20 ment, a refiner or distributor shall disclose to the dealer facts which
21 would reasonably be considered material to the dealer's decision to
22 enter into the lease. These facts shall include, but not be limited to,

23 (1) ownership of property of the retail outlet;

24 (2) if the real property is not owned by a refiner or dis-
25 tributor, then the nature of the relationship between the real property
26 owner and the refiner or distributor and the length of the underlying
27 lease (if applicable);

28 (3) the last known addresses of dealers operating the retail
29 outlet for the last five years;

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

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

5 (6) the nearest gasoline outlet owned, controlled or operated
6 by the refiner or distributor and any plans the distributor or refiner
7 has to open new retail outlets within the trade area of the retail
8 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 dealer at the time of entering into the lease
14 agreement to relieve any person from liability imposed by secs. 800 -
15 850 of this chapter;

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

18 (3) restrict or inhibit directly or indirectly the right of
19 free association for any lawful purpose of the dealer;

20 (4) except as to the initial inventory, require a dealer to
21 purchase or otherwise lease goods or services of a refiner or distri-
22 butor or from an approved source of supply unless and to the extent that
23 the refiner or distributor satisfies the burden of proving that such
24 restricted purchasing agreements are reasonably necessary for lawful
25 purposes justified on business grounds and do not substantially affect
26 competition; in determining whether a requirement to purchase is lawful,
27 the court shall be guided by the decisions of the courts of the United
28 States in interpreting and applying the antitrust laws and the Federal
29 Trade Commission Act of the United States;

1 (5) impose unreasonable standards of performance on the
2 dealer;

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

9 (7) fail to deal with the dealer in good faith;

10 (8) require the dealer to keep his retail outlet open for
11 business more than 12 consecutive hours a day or more than six days a
12 week; however, this paragraph shall not be construed to prevent a retail
13 outlet from being open when required to be open to conform to a state or
14 federal law or regulation;

15 (9) require a dealer to purchase or rent a product or service
16 for more than a fair and reasonable price.

17 (b) No refiner or distributor may, directly or indirectly, through
18 any officer, agent or employee, terminate, cancel or fail to renew a
19 dealer lease without first giving written notice setting out all of the
20 reasons for the termination or cancellation or intent not to renew to
21 the dealer at least 45 days in advance of the termination, cancellation
22 or failure to renew except

23 (1) when the alleged grounds are voluntary abandonment by the
24 dealer of the lessee relationship, then the above notice may be given
25 five days in advance of the termination, cancellation or failure to
26 renew;

27 (2) when the alleged grounds are the conviction of the
28 dealer in a court of competent jurisdiction of a felony;

29 (3) when the lease specifically establishes a period of

1 notice of less than 45 days in which either party may terminate the
2 lease.

3 (c) Except as provided in (d) of this section, no refiner or
4 distributor may terminate, cancel or fail to renew a dealer lease
5 without good cause. Good cause shall include without limitation:

6 (1) the failure of a dealer to comply with the lawful ma-
7 terial provisions of a lease between the distributor or refiner and the
8 dealer and to cure each default after being given written notice and a
9 reasonable opportunity to cure the default;

10 (2) an adjudication that the dealer is a bankrupt or insol-
11 vent or if he makes an assignment for the benefit of creditors or a
12 similar disposition of assets of franchise business or voluntarily
13 abandons the business or is convicted of or pleads guilty or no contest
14 to a charge of violating any law relating to any business;

15 (3) the good faith business decision of the lessor that he no
16 longer requires a retail outlet at that location for the marketing of
17 gasoline; and

18 (4) the dealer's failure to sign the new agreement if at the
19 time of renewal of the lease the distributor or refiner and the dealer
20 cannot agree upon new terms and the terms offered by the refiner or
21 distributor do not violate any other laws of the State of Alaska or of
22 the United States and the terms are essentially the same as those
23 offered to other dealers in similar retail outlets and do not discrimi-
24 nate against the subject dealer.

25 (d) A refiner or distributor shall be permitted to provide in the
26 lease for its termination without cause during a reasonable trial
27 period, not to exceed one year, if the dealer involved has not already
28 been a dealer of a refiner or distributor for that period of time.

29 (e) No refiner or distributor may engage in price discrimination

1 between dealers if the effect of the discrimination may be substantially
2 to lessen competition unless that discrimination is based upon quantity
3 purchased or transportation costs or capital investment of the dealer.
4 Nothing in this section prevents a refiner or distributor from offering
5 a lower price or furnishing a service or facility to a dealer when the
6 offer is made in good faith to meet an equally low price of a competi-
7 tor, or the services or facilities furnished by that competitor.

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

28 Sec. 45.50.825. RIGHT OF FIRST REFUSAL OF SURVIVING SPOUSE.
29 Unless provided otherwise by the lease, upon the death of the lessee the

1 lease shall terminate and the surviving spouse shall have the right of
2 first refusal of the new lease if the surviving spouse has been an
3 active participant in the business and is qualified.

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

17 Sec. 45.50.840. DEFINITIONS. In secs. 800 - 830 of this chapter,
18 unless the context otherwise requires,

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

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

26 (3) "gasoline" means all products commonly or commercially
27 known or sold as gasoline;

28 (4) "dealer" means a person primarily engaged in the sale of
29 gasoline to the motoring public through a retail outlet leased from the

1 refiner or distributor or its agent by the person and operated by the
2 person;

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

9 Sec. 45.50.850. SHORT TITLE. Sections 800 - 850 of this chapter
10 may be cited as the Alaska Gasoline Products Leasing Act.

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

12 (22) failing to comply with the terms of the Alaska Gasoline
13 Products Leasing Act (AS 45.50.800 - 45.50.850).

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