

HOUSE BILL No. 4244

February 21, 1989, Introduced by Reps. Hertel, Palamara, Gagliardi, DeMars, Harrison, O'Neill, Richard A. Young, Brown, Porreca, Jondahl, Wallace, Hoffman, Kosteva, Bartnik, Griffin, Leland, Hunter, Bankes, Van Singel, Varga, Stupak, Dunaskiss, Hillegonds, Scott, DeBeaussiaert, Gubow, Saunders, Murphy, Kilpatrick, Ciaramitaro, Maynard, Jonker, Hood, Niederstadt, Rocca, Dutko, Sofio, Jacobetti, Pitoniak, Profit, Berman, Hart, Stopczynski, Weeks and Knight and referred to the Committee on Transportation.

A bill to regulate the termination and transfer of motor fuel franchises; and to provide for certain remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "motor fuel distribution act".

3 Sec. 2. As used in this act:

4 (a) "Contract" means any oral or written agreement. For
5 supply purposes, delivery levels during the same month of the
6 previous year shall be prima facie evidence of a contract to
7 deliver the same levels.

8 (b) "Control" means the direct or indirect ownership of or
9 the right to exercise a direct influence over the interest in a
10 business.

11 (c) "Franchise" means a contract between a refiner and a
12 distributor, between a refiner and a retailer, between a

1 distributor and another distributor, or between a distributor and
2 a retailer, under which a refiner or distributor authorizes or
3 permits a retailer or distributor to use, in connection with the
4 sale, consignment, or distribution of gasoline, diesel, gasohol,
5 or aviation fuel, a trademark which is owned or controlled by a
6 refiner, or by a refiner which supplies fuel to the distributor
7 which authorizes or permits such use. Franchise includes, but is
8 not limited to, the following:

9 (i) A contract under which a retailer or distributor is
10 authorized or permitted to occupy leased marketing premises,
11 which premises are to be employed in connection with the sale,
12 consignment, or distribution of fuel under a trademark which is
13 owned or controlled by a refiner, or by a refiner which supplies
14 fuel to the distributor which authorizes or permits the
15 occupancy.

16 (ii) A contract pertaining to the supply of fuel which is to
17 be sold, consigned, or distributed under a trademark owned or
18 controlled by a refiner.

19 (iii) The unexpired portion of a franchise, which is sold,
20 transferred, or assigned as authorized by the franchise contract
21 or by a provision of state law which permits the sale, transfer,
22 or assignment without regard to the provisions of the franchise
23 contract.

24 (d) "Franchisee" means a retailer or distributor who is
25 authorized or permitted, under a franchise, to use a trademark in
26 connection with the sale, consignment, or distribution of fuel.

1 (e) "Franchisor" means a refiner or distributor who
2 authorizes or permits, under a franchise, a retailer or
3 distributor to use a trademark in connection with the sale, con-
4 signment, or distribution of fuel.

5 (f) "Marketing premises" means, in the case of any fran-
6 chise, premises which, under the franchise, are to be employed by
7 the franchisee in connection with the sale, consignment, or dis-
8 tribution of motor fuel.

9 (g) "Motor fuel" means gasoline and diesel fuel of a type
10 distributed for use as a fuel in self-propelled vehicles designed
11 primarily for use on public streets, roads, and highways.

12 Sec. 3. (1) Notwithstanding the terms of a franchise, a
13 franchisor shall not prohibit or unreasonably withhold its con-
14 sent to any sale, assignment, or other transfer of the franchise
15 by a franchisee to a qualified third party, unless the franchisor
16 can demonstrate for reasons supported by objective facts that the
17 proposed new franchisee is unable to adequately function as a
18 franchisee or would otherwise not be granted a franchise if the
19 party was an applicant for a new franchise.

20 (2) Except as provided in subsection (1), a qualified third
21 party becomes the franchisee immediately upon the sale, assign-
22 ment, or other transfer of the franchise.

23 Sec. 4. (1) Notwithstanding the terms of the franchise,
24 following the death of a motor fuel retailer franchisee of a
25 leased marketing premises, the franchisor shall enter into a new
26 franchise with the designee of the motor fuel retailer franchisee
27 on the terms and conditions then generally being extended by the

1 franchisor to similarly situated motor fuel retailers, if both of
2 the following apply:

3 (a) Prior to the death of the franchisee, the franchisee
4 notifies the franchisor of the designee, in writing on a form
5 provided by the franchisor, 90 days prior to the renewal of the
6 lease. The designee shall be the surviving spouse, adult child,
7 adult stepchild, son-in-law, or daughter-in-law of the motor fuel
8 retailer franchisee.

9 (b) The designee is a qualified third party who cannot be
10 refused a franchise except as provided in section 3.

11 (2) Except as provided in subsection (1), the designee
12 becomes the franchisee immediately upon the death of the designa-
13 tor franchisee.

14 Sec. 5. Notwithstanding the terms of any franchise, a fran-
15 chisor shall not prohibit or prevent the sale, assignment, or
16 other transfer of a franchise to a corporation in which the fran-
17 chisee has and maintains a controlling interest if the franchisee
18 offers in writing to personally guarantee the performance of the
19 obligations under the franchise. If a sale, assignment, or
20 transfer occurs under this section, the franchisor may require
21 the corporation to assume in writing all of the franchisee's
22 obligations to the franchisor under the franchise and may require
23 the franchisee to maintain a controlling interest in the corpora-
24 tion and actively operate the marketing premises during the time
25 that the franchise with the corporation continues.

26 Sec. 6. A franchisor shall not prohibit a franchisee from
27 closing on Sunday or the Sabbath, Christmas eve after 9:00 p.m.;

1 Christmas day; New Year's eve; New Year's day; Thanksgiving day
2 after 4:00 p.m.; Easter Sunday; or Yom Kippur.

3 Sec. 7. A person injured in the person's business or prop-
4 erty by reason of a violation of this act may bring an action in
5 any court having jurisdiction in the county where the defendant
6 resides or is found, or any agent of the defendant resides or is
7 found, or where service may be obtained, for injunctive relief or
8 to recover the damages sustained by the person, and may be
9 awarded attorney fees and costs of the action.