

A Bill for an Act Relating to Provisions for Fair Competitive Practices in the Termination of Gasoline Dealers Franchise Agreements.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
GASOLINE DEALERS**

Sec. -1 Definitions. As used in this part:

(1) “Franchise” means:

(A) Any agreement or related agreements between a petroleum distributor and a gasoline dealer under which the gasoline dealer is granted the right to use a trademark, trade name, service mark, or other identifying symbol or name owned by the distributor in connection with the retail sale of petroleum products supplied by the petroleum distributor; or

(B) Any agreement or related agreements described in subparagraph (A) and any agreement between a petroleum distributor and a gasoline dealer under which the gasoline dealer is granted the right to occupy the premises owned, leased, or controlled by the distributor, for the purpose of engaging in the retail sale of petroleum products supplied by the distributor.

(2) “Gasoline dealer” means any person engaged in the retail sale of petroleum products in the United States under a franchise agreement entered into with a petroleum distributor.

(3) “Good faith” means the duty of a gasoline dealer and a petroleum distributor to act in a fair and equitable manner in the performance and in the demanding of performance of the terms and provisions of the franchise.

(4) “Petroleum distributor” means any person engaged in the sale, consignment, or distribution of petroleum products to retail outlets which it owns, leases or otherwise controls.

(5) “Retail” means the sale of a product for purposes other than resale.

Sec. -2 Wrongful or illegal termination; unreasonable nonrenewal; damages; defenses. (a) Except as provided in section -3, a petroleum distributor shall be liable to a gasoline dealer who sells the products of the petroleum distributor under a franchise from the distributor for damages and such equitable relief as the court deems proper resulting from the wrongful or illegal termination or cancellation of the franchise during its term or the petroleum distributor’s unreasonable refusal to renew the franchise.

(b) A gasoline dealer suffering damages as a result of the termination or cancellation of, or failure to renew, his franchise may bring an action under this section against the petroleum distributor who wrongfully or illegally terminated, canceled, or unreasonably refused to renew his franchise in the court

of general jurisdiction in which such petroleum distributor has his principal place of business, is found, or has an agent. The action may be brought without regard to the amount in controversy. If the gasoline dealer prevails in the action, he may recover actual damages sustained, the costs of the suit, including reasonable attorneys' fees, and such equitable relief as the court deems proper.

The court may also grant such temporary relief as it may deem necessary and proper.

(c) It shall be a defense to any action brought under this section that the franchise was terminated, canceled, or not renewed because:

- (1) The gasoline dealer failed to comply substantially with essential and reasonable requirements of the franchise agreement;
- (2) The gasoline dealer failed to act in good faith in carrying out the terms and provisions of the franchise; or
- (3) Of any of the reasons enumerated in section -3; or
- (4) Of other legitimate business reasons; provided that a termination, cancellation, or failure to renew a franchise for the purpose of enabling the petroleum distributor to assume operation of the gasoline dealer's business shall not be considered to be a legitimate business reason unless the gasoline dealer is paid reasonable compensation for the value of his franchise, including good will.

(d) No action may be brought under this section for a cause of action which arose more than two years prior to the date on which the action is brought.

Sec. -3 Notice of termination, cancellation, or nonrenewal. A petroleum distributor shall not terminate, cancel, or refuse to renew a franchise with a gasoline dealer without first giving him written notice by certified mail at least ninety days in advance of the effective date of such action as set forth in the notice. Notwithstanding any provision to the contrary contained in this section, a petroleum distributor may terminate, cancel, or refuse to renew a franchise with a gasoline dealer effective five days after the posting of written notice by certified mail to the gasoline dealer at his last known address, if such action is based on any of the following reasons:

- (1) Citation of the gasoline dealer by the division of weights and measures for adulteration, substitution, contamination, or other degradation of petroleum products sold under the trademark of the petroleum distributor; provided such adulteration, substitution, contamination, or other degradation is caused by the wilful or negligent act of the gasoline dealer; or
- (2) Voluntary abandonment of the franchise relationship by the gasoline dealer; or
- (3) Conviction of the gasoline dealer of a crime involving the business conducted pursuant to the franchise; or
- (4) Adjudication of bankruptcy of the gasoline dealer, or his becoming insolvent in the sense that the dealer cannot meet his financial obligations when due.

Sec. -4 Exceptions. No action may be brought under section -2

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in connection with the termination, cancellation, or nonrenewal of a franchise if the franchise agreement provides for the binding arbitration of disputes arising under the agreement, including disputes related to the termination, cancellation, or nonrenewal of the franchise, in accordance with the rules of the American Arbitration Association.”

SECTION 2. This Act shall take effect upon its approval and shall apply to all disputes covered thereby arising after its effective date.

(Approved May 27, 1975.)