WEST VIRGINIA CODE CHAPTER 47 ARTICLE 11C

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§47-11C-1. Short title.

This article shall be known and may be cited as the "West Virginia Petroleum Products Franchise Act."

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§47-11C-2. Definitions.

As used in this article:

(1) "Adult" means any person who is not a minor;

(2) "Dealer" means any person, other than an agent or employee of a producer, who is engaged in the retail sale of petroleum products under a franchise agreement as defined by this section;

(3) "Designated family member" means the adult spouse or the adult child or stepchild of the dealer or any other adult person related to the dealer by either the half or whole blood or the adult spouse of any other adult person, who has experience in the service station business and who, in the case of the dealer's death or retirement, is designated in the franchise agreement for a service station as the successor to the dealer's interest under the agreement and who shall become the dealer upon the completion of the succession;

(4) "Franchise" or "franchise agreement" means a written agreement between a producer and a dealer under which the dealer is granted the right to use a trademark, trade name, service mark or other identifying symbol or name owned by the producer, or a written agreement between a producer and a dealer by which the dealer is granted the right to occupy premises owned, leased or controlled by the producer, for the purpose of engaging in the retail sale of petroleum products of the producer;

(5) "Good cause" means failure of the dealer to make good faith effort to comply with any material requirement of a franchise agreement;

(6) "Producer" means every person who produces, refines, manufactures, processes or otherwise alters any motor fuel and other petroleum products for sale or use in this state; and

(7) "Service station" means any filling station, store, garage or other place of business in this state for the retail sale of motor fuel and other petroleum products.

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§47-11C-3. Franchise agreement.

Every franchise agreement between a producer and a dealer shall be subject to the following provisions whether or not they are expressly set forth in the agreement:

(1) The term of the initial agreement between the producer and the dealer relating to specific premises shall not be less than one year; the term of the second agreement between the producer and the dealer, relating to the same premises, shall also be for not less than one year; and the term of all subsequent agreements between the producer and the dealer, relating to the same premises, shall be of not less than two years. This subdivision shall not be construed to require a term of greater duration than the remainder of the term to which the producer is entitled under its lease without regard to any renewal rights which the producer may have;

(2) No producer shall require a dealer to keep his station open for business more than seventy-two hours per week;

(3) The dealer alone shall determine his retail sale price of the products listed in the franchise agreement;

(4) In the absence of any express agreement, the dealer shall not be required to participate financially in the use of any premium, coupon, giveaway or rebate in the operation of his retail outlet: Provided, That the producer may require the dealer to distribute to customers premiums, coupons or giveaways which are furnished to the dealer at the expense of the producer;

(5) In the event of any termination, cancellation or failure to renew, whether by mutual agreement or otherwise, a producer shall, within thirty days, tender to the dealer, for the products he sold to the dealer which the dealer has been unable to sell, except to the extent that such may be damaged or not resalable, the full price originally paid by the dealer for the products: Provided, That the producer shall have the right to apply the proceeds against any existing indebtedness owed to him by the dealer and that such repurchase obligation is conditioned upon there being no other claims or liens against such products by or on behalf of other creditors of the dealer. Such repurchase shall not constitute a waiver of the dealer's other rights and remedies under this article. If the producer does not make such tender within thirty days, the dealer may sell the products for a price which is not less than the full price originally paid by the dealer for such products, and shall have a cause of action against the producer for the balance;

(6) The right of either party to a trial by jury or to the interposition of counterclaims or cross claims shall not be waived;

(7) Liability imposed on, and rights granted to, any person by this article shall not be waived;

(8) The dealer shall not be required to forego his right of free association with other dealers

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for any lawful purpose;

(9) No transfer or assignment of a franchise by a dealer to a qualified transferee or assignee shall be unreasonably disapproved by the producer;

(10) No producer shall require any dealer to sell exclusively any products, other than petroleum products, that such producer offers for sale.

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§47-11C-4. Disclosures to prospective dealers.

A producer shall disclose in writing to any prospective dealer the following information, before any franchise is concluded:

(1) The gallonage volume history, if any, of the location under negotiation for and during the three-year period immediately past or for the entire period which the location has been supplied by the producer, whichever is shorter;

(2) The name and last-known home address of the previous dealer or dealers for the last three years, or for and during the entire period for which the location has been supplied by the producer, whichever is shorter, and the reason or reasons for the termination of each dealer franchise;

(3) Any legally binding commitments for the sale, demolition or other disposition of the location;

(4) The training programs, if any, and the specified goods and services the producer will provide for and to the dealer;

(5) Full disclosure of any and all obligations which will be required of the dealer, including, but not limited to, any obligation to exclusively deal in any of the products of the producer, its subsidiaries, any other company or any advertising and promotional items that the dealer must accept;

(6) Full disclosure of all restrictions on the sale, transfer, renewal and termination of the agreement.

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§47-11C-5. Termination of or refusal to renew franchise; notice; grounds.

(1) No producer directly or indirectly through any officer, agent or employee shall terminate, cancel, or refuse to renew a franchise without good cause or other grounds as provided in this section, and without having first given written notice to the dealer. Such notice shall contain a statement of the producer's intention to terminate, cancel, or refuse to renew, the reasons therefor, the date on which such action shall take effect, and a reference to this article and the remedies available to such dealer. Such notice must be given at least sixty days in advance of the action to be taken, except where the premises have been abandoned by the dealer for five consecutive days or where the producer and dealer mutually agree in writing to a shorter notice period. In circumstances where it would not be reasonable to provide advance notice of sixty days, the franchiser shall provide notice at the earliest date as is reasonably practicable. In no event shall any such notice period be less than thirty days.

(2) It shall be a violation of this article for any producer to directly or indirectly terminate, cancel or fail to renew an agreement with the dealer unless the termination, cancellation or failure to renew is for good cause. Good cause includes but is not limited to:

(a) Where the dealer has filed for or has been declared bankrupt or has petitioned for a reorganization, creditor arrangement or insolvency under the applicable statutes;

(b) Where there has been dissolution of a partnership or corporation or other entity carrying on the business;

(c) Where the producer has lost its right to grant possession of the premises;

(d) Where there has been willful or malicious destruction of the property of the producer by the dealer;

(e) Where there has been failure to pay financial obligations to the lessor producer when due, including, but not limited to, rents or payment for gasoline, petroleum products or accessories supplied to the lessee dealer by the lessor producer;

(f) Where there has been adulteration, commingling, mislabeling or misbranding of products supplied by the producer;

(g) Where there has been failure by the dealer to comply with federal, state or local laws or regulations which are related to the operation of the gasoline service station business and which may affect the relationship between the producer and the dealer and such failure to comply therewith has or may have an adverse effect on the producer;

(h) Where there has been a conviction of the dealer of a criminal offense which is related to the operation of the business or would affect the ability of the dealer to operate the business or would tend to defame the reputation of the producer;

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(i) Where there has been the death or other incapacity of the dealer to manage his station;

(j) Where the producer totally withdraws from marketing in the state in which the leased property is located;

(k) Where there has been the receipt by the producer of twenty-four written bona fide customer complaints concerning the dealer's quality of service or unsanitary restrooms within any twelve-month period;

(l) Where there has been expropriation, appropriation, condemnation, or other taking of the premises, in whole or in part, pursuant to the power of eminent domain; or

(m) Where there has been substantial damage to or loss of the premises covered by the agreement.

(3) Nothing in subsection two shall prohibit termination, cancellation or failure to renew:

(a) If there is a failure on the part of the producer and the dealer to agree upon the terms of a renewal agreement where both parties have acted in good faith in trying to effect such a renewal;

(b) If there is a mutual termination executed by the parties;

(c) Where there is such cause for termination as a court of competent jurisdiction might find to be reasonable and just under all of the circumstances; or

(d) If the producer intends to use the premises for purposes other than the sale of motor fuel: Provided, That motor fuel may not be sold for a period of two years following the date of termination, cancellation or failure to honor the option to renew.

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§47-11C-5a. Motor fuel franchise agreements.

(a) Effective July 1, 1983, every franchise agreement entered into between a producer and dealer shall contain provisions which comply with this section.

(b) A dealer shall have the right, effective upon his death or retirement, to have his interests under a franchise agreement assigned to a designated family member who has been approved by the producer in accordance with the producer's reasonable standards for personal and financial condition unless the producer shows that the designated family member no longer meets the reasonable standards set at the time of the previous approval. All franchise agreements shall contain a provision identifying the designated family member who is entitled to succeed to the interests of the dealer under the agreement upon his death or retirement. The foregoing shall not prohibit a producer from requiring as a condition to honoring the succession that the designated family member accept a trial franchise within thirty days of the dealer's death or retirement and that the designated family member attend a training program offered by the producer. As used herein, the term "trial franchise" shall have the same meaning as the same is defined in the federal petroleum marketing practices act (15 U.S.C., paragraph 2801, et seq.).

(c) A dealer and producer may mutually agree to change the designated family member entitled to succeed to the dealer's interests under a franchise agreement. The designated family member shall provide, upon the request of the producer, personal and financial data that is reasonably necessary to determine whether the succession shall be honored. The producer shall not be obligated to accept a designated family member under this subsection who does not meet the producer's reasonable standards, but any refusal to accept the designated family member as a successor dealer shall be given by the producer in writing to the dealer and shall fairly state the reason therefor.

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§47-11C-6. Damages; remedies.

(1) Any producer or dealer, aggrieved by a violation of this article may bring an action for legal or equitable relief, including reasonable attorney fees, in the circuit court of the county in which the franchised premises are located.

(2) No action may be brought under the provisions of this article for a cause of action which arises more than two years prior to the date on which such action is brought.

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§47-11C-7. Application.

This article shall not apply to a franchise granted prior to the effective date of this article provided that a renewal or extension of such a franchise shall not be excluded from the application of this article.

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§47-11C-8. Effective date.

This article shall take effect on July 1, 1976.

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