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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1976



ENROLLED

Committee Substitute for
SENATE BILL NO. 279

(By Mr. *Beutler, Mr. Lunsford, & Mr. Benson* &
original sponsors)



PASSED March 16, 1976

In Effect thirty days from Passage

FILE IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/29/76

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 279

(MR. BROTHERTON, MR. PRESIDENT, and MR. BENSON,
original sponsors)

[Passed March 16, 1976; in effect ninety days from passage.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-c, relating to the West Virginia Petroleum Products Franchise Act; providing for definitions; providing certain provisions to which franchise agreements are subject; providing for certain disclosures relating to such agreements; providing how such agreements may be terminated or canceled; providing when options to renew need not be honored and providing for damages and remedies for violations.

Be it enacted by the Legislature of West Virginia:

That chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eleven-c, to read as follows:

ARTICLE 11C. WEST VIRGINIA PETROLEUM PRODUCTS FRANCHISE ACT.

§47-11C-1. Short title.

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

§47-11C-2. Definitions.

1 As used in this article:
2 (1) "Dealer" means any person, other than an

3 agent or employee of a producer, who is engaged in
4 the retail sale of petroleum products under a franchise
5 agreement as defined by this act;

6 (2) "Franchise" or "Franchise Agreement" means a
7 written agreement between a producer and a dealer
8 under which the dealer is granted the right to use
9 a trademark, trade name, service mark, or other
10 identifying symbol or name owned by the producer,
11 or a written agreement between a producer and a
12 dealer by which the dealer is granted the right to
13 occupy premises owned, leased or controlled by the
14 producer, for the purpose of engaging in the retail
15 sale of petroleum products of the producer;

16 (3) "Good Cause" means failure of the dealer to make
17 good faith effort comply with any material requirement
18 of a franchise agreement;

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

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

§47-11C-3. Franchise agreement.

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

5 (1) The term of the initial agreement between the
6 producer and the dealer relating to specific premises
7 shall not be less than one year; the term of the
8 second agreement between the producer and the
9 dealer, relating to the same premises, shall also be
10 for not less than one year; and the term of all subsequent
11 agreements between the producer and the dealer,
12 relating to the same premises, shall be of not less
13 than two years. This subsection shall not be con-
14 strued to require a term of greater duration than the
15 remainder of the term to which the producer is entitled

16 under its lease without regard to any renewal rights
17 which the producer may have;

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

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

23 (4) In the absence of any express agreement, the
24 dealer shall not be required to participate financially
25 in the use of any premium, coupon, giveaway or rebate
26 in the operation of his retail outlet: *Provided*, That the
27 producer may require the dealer to distribute to cus-
28 tomers premiums, coupons or giveaways which are
29 furnished to the dealer at the expense of the producer;

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

49 (6) The right of either party to a trial by jury or to
50 the interposition of counterclaims or crossclaims shall not
51 be waived;

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

54 (8) The dealer shall not be required to forego his

55 right of free association with other dealers for any lawful
56 purpose;

57 (9) No transfer or assignment of a franchise by a
58 dealer to a qualified transferee or assignee shall be un-
59 reasonably disapproved by the producer;

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

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

1 A producer shall disclose in writing to any pros-
2 pective dealer the following information, before any
3 franchise is concluded:

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

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

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

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

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

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

§47-11C-5. Termination of franchise; notice; grounds.

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

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

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

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

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

32 (d) Where there has been willfull or malicious de-
33 struction of the property of the producer by the
34 dealer;

35 (e) Where there has been failure to pay financial
36 obligations to the lessor producer when due, includ-
37 ing, but not limited to, rents or payment for gasoline,

38 petroleum products or accessories supplied to the lessee
39 dealer by the lessor producer;

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

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

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

55 (i) Where there has been the death or other inca-
56 pacity of the dealer to manage his station;

57 (j) Where the producer totally withdraws from mar-
58 keting in the state in which the leased property is located;

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

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

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

69 (3) Nothing in subsection two shall prohibit termina-
70 tion, cancellation or failure to renew:

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

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

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

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

§47-11C-6. Damages; remedies.

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

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

§47-11C-7. Application.

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

§47-11C-8. Effective date.

1 This article shall take effect on the first day of July,
2 one thousand nine hundred seventy-six.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Clarence C. Christensen
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

J. S. Sillan, Jr.
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

H. B. Burkholder
President of the Senate

Lewis T. McManus
Speaker House of Delegates

The within *approved* this the *26th*
day of *March*, 1976

Anna P. Phares, Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 3/22/76

Time 11:40 a.m.