

No: 558

APPROVED AND SIGNED BY THE GOVERNOR

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Date 3-16-83

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1983

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**ENROLLED**  
*Committee Substitute for*  
**SENATE BILL NO. 558**

(By Mr. *Gelston*)

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PASSED *March 3,* 1983  
In Effect *ninety days from* Passage



# ENROLLED

## COMMITTEE SUBSTITUTE

### FOR

## Senate Bill No. 558

(MR. NELSON, *original sponsor*)

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[Passed March 3, 1983; in effect ninety days from passage.]

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AN ACT to amend and reenact section two, article eleven-c, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section five-a, relating to petroleum products franchise agreements; permitting franchise dealer to designate certain successors to his interests in the franchise under certain conditions; defining certain terms; establishing the conditions under which such succession may occur; and permitting change of the designated successor.

*Be it enacted by the Legislature of West Virginia:*

That section two, article eleven-c, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article eleven-c be further amended by adding thereto a new section, designated section five-a, all to read as follows:

### **ARTICLE 11C. WEST VIRGINIA PETROLEUM PRODUCTS FRANCHISE ACT.**

#### **§47-11C-2. Definitions.**

- 1 As used in this article:
- 2 (1) "Adult" means any person who is not a minor;
- 3 (2) "Dealer" means any person, other than an agent or
- 4 employee of a producer, who is engaged in the retail sale

5 of petroleum products under a franchise agreement as  
6 defined by this section;

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

17 (4) "Franchise" or "franchise agreement" means a  
18 written agreement between a producer and a dealer un-  
19 der which the dealer is granted the right to use a trade-  
20 mark, trade name, service mark, or other identifying  
21 symbol or name owned by the producer, or a written  
22 agreement between a producer and a dealer by which the  
23 dealer is granting<sup>ed</sup> the right to occupy premises owned,  
24 leased or controlled by the producer, for the purpose of  
25 engaging in the retail sale of petroleum products of the  
26 producer;

27 (5) "Good cause" means failure of the dealer to make  
28 good faith effort to comply with any material require-  
29 ment of a franchise agreement;

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

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

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

1 (a) Effective the first day of July, one thousand nine  
2 hundred eighty-three, every franchise agreement entered  
3 into between a producer and dealer shall contain provi-  
4 sions comply with this section.

5 (b) A dealer shall have the right, effective upon his  
6 death or retirement, to have his interests under a fran-

7 chise agreement assigned to a designated family member  
8 who has been approved by the producer in accordance  
9 with the producer's reasonable standards for personal  
10 and financial condition unless the producer shows that  
11 the designated family member no longer meets the rea-  
12 sonable standards set at the time of the previous approv-  
13 al. All franchise agreements shall contain a provision  
14 identifying the designated family member who is entitled  
15 to succeed to the interests of the dealer under the agree-  
16 ment upon his death or retirement. The foregoing shall  
17 not prohibit a producer from requiring as a condition to  
18 honoring the succession that the designated family mem-  
19 ber accept a trial franchise within thirty days of the  
20 dealer's death or retirement and that the designated fam-  
21 ily member attend a training program offered by the  
22 producer. As used herein, the term "trial franchise" shall  
23 have the same meaning as the same is defined in the  
24 federal petroleum marketing practices act (15 USC, para-  
25 graph 2801, et seq.).

26 (c) A dealer and producer may mutually agree to  
27 change the designated family member entitled to succeed  
28 to the dealer's interests under a franchise agreement. The  
29 designated family member shall provide, upon the re-  
30 quest of the producer, personal and financial data that is  
31 reasonably necessary to determine whether the succession  
32 should be honored. The producer shall not be obligated  
33 to accept a designated family member under this subsec-  
34 tion who does not meet the producer's reasonable stand-  
35 ards but any refusal to accept the designated family  
36 member as a successor dealer shall be given by the  
37 producer in writing to the dealer and shall fairly state  
38 the reason therefor.

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

James L. Davis  
Chairman Senate Committee

Arnold A. Miller  
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Todd C. Wells  
Clerk of the Senate

Donald L. Kopp  
Clerk of the House of Delegates

Walter R. McHale  
President of the Senate

W. M. Lee, Jr.  
Speaker House of Delegates

The within is approved this the 16  
day of March, 1983.

John R. Rhymer  
Governor

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SECY. OF STATE