

AN ACT

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Columbia
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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Retail Service Station Act of 1976 to further restrict conversion from full service retail stations to gas-and-go, provide for a right of first refusal to service station dealers or jobbers when the retail service station which they lease, operate, or otherwise control is offered for sale and to require good faith in negotiation for lease terms.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Retail Service Station Amendment Act of 2009".

Sec. 2. The Retail Service Station Act of 1976, effective April 19, 1977 (D.C. Law 1-123; D.C. Official Code § 36-301.01 *et seq.*), is amended as follows:

(a) Section 5-301(d)(2) (D.C. Official Code § 36-304.01(d)(2)) is amended to read as follows:

Amend
§ 36-304.01

“(2)(A) Before recommending approval for exemption, the Board shall find the following:

“(i) That the operator of the full service retail service station is experiencing extreme financial hardship; and

“(ii) The existence of another full service retail service station within one mile of the station which provides equivalent service facilities.

“(B) In addition to the requirements in subparagraph (A) of this paragraph, the Board shall give due weight to the views of the community and the affected Advisory Neighborhood Commission.”.

(b) A new Title III-A is added to read as follows:

“TITLE III-A

“FRANCHISEE PURCHASE RIGHTS

“Sec. 5A-301. Definitions.

“For the purposes of this title, the term:

“(1) “Franchise” means any contract between a refiner and a distributor or between a refiner and a retailer, under which a refiner authorizes or permits a retailer or distributor to use, in connection with the sale, consignment, or distribution of gasoline, diesel, gasohol, or aviation fuel, a trademark which is owned or controlled by such refiner or by a refiner which supplies fuel to the distributor which authorizes or permits such use. The term

“franchise” includes the following:

“(A) Any contract under which a retailer or distributor is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of fuel under a trademark which is owned or controlled by such refiner or by a refiner which supplies fuel to the distributor which authorizes or permits such occupancy;

“(B) Any contract pertaining to the supply of fuel which is to be sold, consigned, or distributed under a trademark owned or controlled by a refiner; and

“(C) The unexpired portion of any franchise, as defined by this paragraph, which is transferred or assigned as authorized by the provisions of such franchise or by any applicable provision of District law which permits such transfer or assignment without regard to any provision of the franchise.

“(2) “Franchisee” means a retailer or distributor who is authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of fuel.

“(3) “Franchise relationship” means the respective fuel marketing or distribution obligations and responsibilities of a franchisor and a franchisee that result from the marketing of fuel under a franchise.

“(4) “Franchisor” means a refiner that authorizes or permits, under a franchise, a retailer or distributor to use a trademark in connection with the sale, consignment, or distribution of fuel.

“(5) “Leased marketing premises” means marketing premises owned by a franchisor and which the franchisee is authorized or permitted, under the franchise, to employ in connection with the sale, consignment, or distribution of fuel.

“(6) “Refiner” means any person engaged in the refining of crude oil to produce fuel, and includes any affiliate of such person.

“(7) “Retailer” means any person who purchases fuel for sale to the general public for ultimate consumption.

“Sec. 5A-302. Franchisee’s right of first refusal.

“(a) In the case of leased marketing premises as to which the franchisor owns a fee interest, the franchisor shall not sell, transfer, or assign to another person the franchisor’s interest in the premises unless the franchisor has first either made a bona fide offer to sell, transfer, or assign to the franchisee the franchisor’s interest in the premises, other than signs displaying the franchisor’s insignia and any other trademarked, servicemarked, copyrighted, or patented items of the franchisor, or, if applicable, offered to the franchisee a right of first refusal of any bona fide offer acceptable to the franchisor made by another person to purchase the franchisor’s interest in the premises. A franchisee shall have 60 days in which to accept or reject a bona fide offer.

“(b) This section shall not require a franchisor to continue an existing franchise agreement or to renew a franchise relationship if not otherwise required by federal law.

“(c) In the event of the sale, transfer, or assignment of the franchisor’s interest in more

than one leased marketing premises, a bona fide offer made under this section for each leased marketing premises shall be determined based upon the fair market value that is reasonably attributable to it.

“Sec. 5A-303. Duty of good faith in negotiating lease terms.

“If a franchisor sells, transfers, or assigns to another person the franchisor’s interest in the leased marketing premises to a distributor or other third party, that person shall be required to negotiate in good faith reasonable lease terms with the franchisee when renewing the franchise. It shall be *prima facie* evidence of good faith for a distributor to calculate a franchisee’s rent using a formula based upon a percentage of the return on the property’s value plus fixed costs and use that formula to calculate rents for all of the distributor’s franchise relationships in a single geographical market area.

“Sec. 5A-304. Remedy for violation of title.

“(a) Any person who violates any provision of this title may be sued in the Superior Court of the District of Columbia for temporary and permanent injunctive relief and damages, if any, and the costs of suit.

“(b) No action shall be maintained to enforce any liability created under any provision of this title unless brought before the expiration of 2 years after the violation upon which it is based or the expiration of one year after the discovery of the facts constituting such violation, whichever occurs first.

“Sec. 5A-305. Applicability.

“This title shall not apply to any sale of leased marketing premises made pursuant to a contract which has been executed by duly authorized representatives of the parties prior to April 1, 2009.”

Sec. 3. Sunset.

Section 2(b) shall expire on January 1, 2011.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

ENROLLED ORIGINAL

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia