



General Assembly

February Session, 2004

Amendment

LCO No. 3202

SB0021903202SRO

Offered by:

SEN. SMITH, 14th Dist.

To: Senate Bill No. 219

File No. 135

Cal. No. 138

"AN ACT REDUCING THE SULFUR CONTENT OF HOME HEATING OIL AND OFF-ROAD DIESEL FUEL."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Subsection (f) of section 42-133l of the general statutes is
4 repealed and the following is substituted in lieu thereof (*Effective*
5 *October 1, 2004*):

6 (f) No franchisor, directly or indirectly, through any officer, agent or
7 employee, shall do any of the following: (1) Require a franchisee at the
8 time of entering into an agreement to assent to a release, assignment,
9 novation, waiver, or estoppel which would relieve any person from
10 liability imposed by sections 42-133j to 42-133n, inclusive; (2) prohibit,
11 directly or indirectly, the right of free association among franchisees
12 for any lawful purpose; (3) prohibit the transfer by will of any
13 franchise and the rights of any franchisee under any franchise
14 agreement to a spouse or child of such franchisee; (4) require or
15 prohibit any change in management of any franchise unless such

16 requirement or prohibition of such change shall be for good cause,
17 which cause shall be stated in writing by the franchisor; (5) impose
18 unreasonable standards of performance upon a franchisee; (6) fail to
19 deal in good faith with a franchisee; (7) sell, rent or offer to sell to a
20 franchisee any product or service for more than a fair and reasonable
21 price; (8) impose on a franchisee by contract, rule or regulation,
22 whether written or oral, any standard of conduct unless the franchisor,
23 his agents or representatives sustain the burden of proving such to be
24 reasonable and necessary; (9) discriminate between franchisees in the
25 charges offered or made for royalties, goods, services, equipment,
26 rentals, advertising services, or in any other business dealing, unless
27 (A) any such type of discrimination between franchisees would be
28 necessary to allow a particular franchisee to fairly meet competition in
29 the open market, or (B) to the extent that the franchisor satisfies the
30 burden of proving that any classification of or discrimination between
31 franchisees is reasonable, is based on franchises granted at materially
32 different times and such discrimination is reasonably related to such
33 difference in time or on other proper and justifiable distinctions
34 considering the purposes of sections 42-133j to 42-133n, inclusive, and
35 is not arbitrary; [Nothing shall be construed under this subsection,
36 however, as granting to any franchisor any right which may be limited
37 by any other state or federal statutes;] (10) notify the franchisee of a
38 claimed breach of franchise agreement for good cause later than one
39 hundred eighty days from the date said good cause arises or one
40 hundred eighty days after the franchisor knew or in the exercise of
41 reasonable care should have known of said claimed good cause; or (11)
42 require or coerce a gasoline franchisee to sell gasoline at a specific price
43 or in a specific price range.

44 Sec. 502. Section 42-133mm of the general statutes is repealed and
45 the following is substituted in lieu thereof (*Effective October 1, 2004*):

46 (a) When a franchisor intends to sell, transfer or assign to another
47 person the franchisor's interest in a single marketing premises that is
48 not part of two or more marketing premises marketed as a package to
49 sell, transfer or assign more than a single marketing premises, that the

50 franchisee has occupied under a lease, sublease or other grant of
51 authority to occupy such premises, such franchisor shall first: (1) Make
52 a bona fide offer to sell, transfer or assign to the franchisee such
53 franchisor's interests in such single marketing premises; or (2) if
54 applicable, offer the franchisee a right of first refusal of a bona fide
55 offer made by another acceptable to the franchisor, to purchase such
56 franchisor's interest in such single marketing premises. The franchisee
57 shall have forty-five days in which to accept or reject such offer made
58 under subdivision (1) or (2) of this subsection.

59 (b) When a franchisor [sells, transfers or assigns] intends to sell,
60 transfer or assign to another person the franchisor's interest in two or
61 more marketing premises marketed as a package to a successor owner,
62 such franchisor shall first: (1) Make a bona fide offer to sell, transfer or
63 assign such franchisor's interests in such marketing premises to each
64 franchisee affected by such sale, transfer or assignment; or (2) if
65 applicable, offer each franchisee affected by such sale a right of first
66 refusal of a bona fide offer made by another entity, acceptable to the
67 franchisor, to purchase such franchisor's interest in such marketing
68 premises. Any such franchisee may accept such an offer. If more than
69 one franchisee accepts such an offer, the franchisor shall offer the
70 marketed premises to the franchisee that offers the highest price for
71 such marketed premises.

72 (c) In the event of any sale, transfer or assignment, any change in the
73 terms and conditions of the franchise agreement in effect at the time of
74 the sale, transfer or assignment shall be by mutual agreement of the
75 franchisee and the successor owner. Such successor owner shall, at the
76 expiration of the franchise agreement in effect at the time of the sale,
77 transfer or assignment renew the franchise agreement of each
78 franchisee for the same number of years as the agreement in effect at
79 the time of the sale, transfer or assignment, provided such renewal
80 shall not exceed five years. Any changes to the franchise agreement
81 shall be submitted in good faith by the successor owner and negotiated
82 in good faith by the successor owner and franchisee. The successor
83 owner shall not require the franchisee to do the following: (1) Take

84 part in promotional campaigns of the successor owner's products; (2)
85 meet sales quotas; (3) sell any product at a price suggested by the
86 successor owner or supplier; (4) keep the premises open and operating
87 during hours which are documented by the franchisee to be
88 unprofitable to the franchisee or during the hours after [10] 10:00 p.m.
89 and prior to [6] 6:00 a.m.; or (5) disclose to the successor owner or
90 supplier financial records of the operation of the franchise which are
91 not related or necessary to the franchisee's obligations under the
92 franchise agreement. Nothing in this subsection shall affect the
93 successor owner's ability to terminate, cancel or fail to renew a
94 franchise agreement for good cause shown.

95 [(c)] (d) If such successor owner intends to sell, transfer or assign to
96 another person such successor owner's interest in the marketing
97 premises that the franchisee has occupied under a lease, sublease or
98 other grant of authority to occupy such premises, the new owner shall
99 first (1) make a bona fide offer to sell, transfer or assign to the
100 franchisee such successor owner's interest in the marketing premises;
101 or (2) if applicable, offer the franchisee a right of first refusal of a bona
102 fide offer made by another acceptable to the successor, to purchase
103 such successor owner's interest in such marketing premises. The
104 franchisee shall have forty-five days in which to accept or reject such
105 offer made under subdivision (1) or (2) of this subsection.

106 [(d)] (e) For the purposes of this section, "marketing premises"
107 means premises which, under a franchise agreement, are to be
108 employed by a franchisee in connection with the sale, consignment or
109 distribution of motor fuel.

110 [(e)] (f) The provisions of this section shall apply to any franchise
111 agreement in effect on or after July 1, 2000."