



General Assembly

February Session, 2006

Raised Bill No. 5673

LCO No. 2457

02457 _____ GL_

Referred to Committee on General Law

Introduced by:
(GL)

AN ACT EXTENDING GASOLINE FRANCHISE CONTRACT TERMS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42-133l of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2006*):

3 (a) No franchisor shall, directly, or through any officer, agent or
4 employee, terminate, cancel or fail to renew a franchise, except for
5 good cause shown which shall include, but not be limited to the
6 franchisee's refusal or failure to comply substantially with any material
7 and reasonable obligation of the franchise agreement except such
8 obligations under subsection (e) of this section or for the reasons stated
9 in subsection (d) of this section. The franchisor shall give the franchisee
10 written notice of such termination, cancellation or intent not to renew,
11 at least [sixty] ninety days in advance of such termination, cancellation
12 or failure to renew with the cause stated thereon; provided, in the
13 event the franchisor elects not to renew a franchise pursuant to
14 subsection (d) of this section, the franchisor shall give the franchisee
15 written notice of such intent not to renew at least six months prior to
16 the expiration of the current franchise agreement. The provisions of
17 this section shall not apply (1) where the alleged grounds are

18 voluntary abandonment by the franchisee of the franchise relationship,
19 in which event, such notice may be given fifteen days in advance of
20 such termination, cancellation or failure to renew, or (2) where the
21 alleged grounds are the conviction of the franchisee in a court of
22 competent jurisdiction of an offense punishable by a term of
23 imprisonment in excess of one year and directly related to the business
24 conducted pursuant to the franchise, in which event, such notice may
25 be given at any time following such conviction and shall be effective
26 upon delivery and written receipt of such notice, subject to the
27 requirements of subdivision (10) of subsection (f) of this section.

28 (b) Upon termination of any franchise for whatever cause or reason,
29 except voluntary relinquishment or abandonment of the franchise by
30 the franchisee, the franchisor shall fairly compensate the franchisee or
31 the franchisee's estate for the fair market value, at the time of
32 termination of the franchise, of the franchisee's inventory, supplies,
33 equipment and furnishings purchased by the franchisee from the
34 franchisor or its approved sources and good will, if any, exclusive of
35 personalized items which have no value to the franchisor and
36 inventory, supplies, equipment and furnishings not reasonably
37 required in the conduct of the franchise business; provided that
38 compensation need not be made to a franchisee for good will if (1) the
39 franchisee has been given one year's notice of nonrenewal, and (2) the
40 franchisor agrees in writing not to enforce any covenant which
41 restrains the franchisee from competing with the franchisor, and
42 provided further, that a franchisor may offset against amounts owed to
43 a franchisee under this subsection any amount owed by such
44 franchisee to the franchisor.

45 (c) Notwithstanding the provisions of section 52-550, no franchise
46 entered into or renewed on or after October 1, 1973, whether oral or
47 written, shall be for a term of less than [three] ten years and for
48 successive terms of not less than [three] ten years thereafter unless
49 cancelled, terminated or not renewed pursuant to subsections (a) and
50 (d) of this section.

51 (d) A franchisor may elect not to renew a franchise which involves
52 the lease by the franchisor to the franchisee of real property and
53 improvement, in the event the franchisor (1) sells or leases such real
54 property and improvements to other than a subsidiary or affiliate of
55 the franchisor for any use; or (2) sells or leases such real property to a
56 subsidiary or affiliate of the franchisor, except such subsidiary or
57 affiliate shall not use such real property for the operation of the same
58 business of the franchisee; or (3) converts such real property and
59 improvements to a use not covered by the franchise agreement; or (4)
60 has leased such real property from a person not the franchisee and
61 such lease from such person is terminated or not renewed.

62 (e) No franchisor shall [~~terminate, cancel or fail to renew a franchise~~
63 ~~for the failure or refusal of the~~] require a franchisee to do any of the
64 following: (1) [~~Refusal to take~~] Take part in promotional campaigns of
65 the franchisor's products; (2) [~~failure to~~] meet sales quotas suggested
66 by the franchisor; (3) [~~refusal to~~] sell any product at a price suggested
67 by the franchisor or supplier; (4) [~~refusal to~~] keep the premises open
68 and operating during those hours which are documented by the
69 franchisee to be unprofitable to the franchisee or to preclude franchisee
70 from establishing his own hours of operation beyond the hour of
71 [~~10:00~~] ten o'clock p.m. and prior to [~~6:00~~] six o'clock a.m.; (5) [~~refusal~~
72 ~~to~~] give the franchisor or supplier financial records of the operation of
73 the franchise which are not related or necessary to the franchisee's
74 obligations under the franchise agreement. Subdivisions (1) to (5),
75 inclusive, shall not be deemed material and reasonable obligations,
76 substantial failure to comply with franchise terms, or good cause
77 under subsection (a) of this section.

78 (f) No franchisor, directly or indirectly, through any officer, agent or
79 employee, shall do any of the following: (1) Require a franchisee at the
80 time of entering into an agreement to assent to a release, assignment,
81 novation, waiver, or estoppel which would relieve any person from
82 liability imposed by sections 42-133j to 42-133n, inclusive; (2) prohibit,
83 directly or indirectly, the right of free association among franchisees

84 for any lawful purpose; (3) prohibit the transfer by will of any
85 franchise and the rights of any franchisee under any franchise
86 agreement to a spouse or child of such franchisee; (4) require or
87 prohibit any change in management of any franchise unless such
88 requirement or prohibition of such change shall be for good cause,
89 which cause shall be stated in writing by the franchisor; (5) impose
90 unreasonable standards of performance upon a franchisee; (6) fail to
91 deal in good faith with a franchisee; (7) sell, rent or offer to sell to a
92 franchisee any product or service for more than a fair and reasonable
93 price; (8) impose on a franchisee by contract, rule or regulation,
94 whether written or oral, any standard of conduct unless the franchisor,
95 his agents or representatives sustain the burden of proving such to be
96 reasonable and necessary; (9) discriminate between franchisees in the
97 charges offered or made for royalties, goods, services, equipment,
98 rentals, advertising services, or in any other business dealing, unless
99 (A) any such type of discrimination between franchisees would be
100 necessary to allow a particular franchisee to fairly meet competition in
101 the open market, or (B) to the extent that the franchisor satisfies the
102 burden of proving that any classification of or discrimination between
103 franchisees is reasonable, is based on franchises granted at materially
104 different times and such discrimination is reasonably related to such
105 difference in time or on other proper and justifiable distinctions
106 considering the purposes of sections 42-133j to 42-133n, inclusive, and
107 is not arbitrary; (10) notify the franchisee of a claimed breach of
108 franchise agreement for good cause later than one hundred eighty
109 days from the date said good cause arises or one hundred eighty days
110 after the franchisor knew or in the exercise of reasonable care should
111 have known of said claimed good cause; or (11) require or coerce a
112 gasoline franchisee to sell gasoline at a specific price or in a specific
113 price range.

114 (g) Any franchisee or franchisor, upon request, shall have the right
115 to have the question of good cause submitted to arbitration in
116 accordance with the rules of the American Arbitration Association.
117 Any franchisee or franchisor, upon the rendering of a decision in

118 arbitration, shall have the right to apply to the superior court in the
119 county wherein such franchisee or franchisor is doing business or
120 resides for confirmation, modification, correction or vacation of any
121 arbitration decision.

122 (h) Every franchisor shall protect and save harmless its franchisee
123 from financial loss and expense, including legal fees and costs, if any,
124 arising out of any claim, demand, suit or judgment by reason of defect
125 in merchandise or methods or procedures prescribed by the franchisor
126 and performed by such franchisee, except for alleged negligence or
127 wilful misconduct of such franchisee.

128 (i) Every franchisor shall reimburse its franchisee at the prevailing
129 retail price for any services rendered or parts supplied by such
130 franchisee in satisfaction of any warranty issued by such franchisor,
131 and no franchisor shall restrict a franchisee from rendering services or
132 providing parts in accordance with standards of good workmanship in
133 satisfaction of any such warranty.

134 (j) Any waiver of the rights of a franchisee under sections 42-133m,
135 42-133n and this section which is contained in any franchise agreement
136 entered into or amended on or after October 1, 1977, shall be void.

137 Sec. 2. Section 42-133mm of the general statutes is repealed and the
138 following is substituted in lieu thereof (*Effective October 1, 2006*):

139 (a) When a franchisor intends to sell, transfer or assign to another
140 person the franchisor's interest in a single marketing premises that is
141 not part of two or more marketing premises marketed as a package to
142 sell, transfer or assign more than a single marketing premises, that the
143 franchisee has occupied under a lease, sublease or other grant of
144 authority to occupy such premises, such franchisor shall first: (1) Make
145 a bona fide offer to sell, transfer or assign to the franchisee such
146 franchisor's interests in such single marketing premises; or (2) if
147 applicable, offer the franchisee a right of first refusal of a bona fide
148 offer made by another acceptable to the franchisor, to purchase such

149 franchisor's interest in such single marketing premises. The franchisee
150 shall have forty-five days in which to accept or reject such offer made
151 under subdivision (1) or (2) of this subsection.

152 (b) When a franchisor sells, transfers or assigns the franchisor's
153 interest in two or more marketing premises marketed as a package to a
154 successor owner, any change in the terms and conditions of the
155 franchise agreement in effect at the time of the sale, transfer or
156 assignment shall be by mutual agreement of the franchisee and the
157 successor owner. Such successor owner shall, at the expiration of the
158 franchise agreement in effect at the time of the sale, transfer or
159 assignment renew the franchise agreement of each franchisee for [the
160 same number of years as the agreement in effect at the time of the sale,
161 transfer or assignment, provided such renewal shall not exceed five] a
162 period of ten years. Any changes to the franchise agreement shall be
163 submitted in good faith by the successor owner and negotiated in good
164 faith by the successor owner and franchisee. The successor owner shall
165 not require the franchisee to do the following: (1) Take part in
166 promotional campaigns of the successor owner's products; (2) meet
167 sales quotas; (3) sell any product at a price suggested by the successor
168 owner or supplier; (4) keep the premises open and operating during
169 hours which are documented by the franchisee to be unprofitable to
170 the franchisee or during the hours after [10] ten o'clock p.m. and prior
171 to [6] six o'clock a.m.; or (5) disclose to the successor owner or supplier
172 financial records of the operation of the franchise which are not related
173 or necessary to the franchisee's obligations under the franchise
174 agreement. Nothing in this subsection shall affect the successor
175 owner's ability to terminate, cancel or fail to renew a franchise
176 agreement for good cause shown.

177 (c) If such successor owner intends to sell, transfer or assign to
178 another person such successor owner's interest in the marketing
179 premises that the franchisee has occupied under a lease, sublease or
180 other grant of authority to occupy such premises, the new owner shall
181 first (1) make a bona fide offer to sell, transfer or assign to the

182 franchisee such successor owner's interest in the marketing premises;
183 or (2) if applicable, offer the franchisee a right of first refusal of a bona
184 fide offer made by another acceptable to the successor, to purchase
185 such successor owner's interest in such marketing premises. The
186 franchisee shall have forty-five days in which to accept or reject such
187 offer made under subdivision (1) or (2) of this subsection.

188 (d) For the purposes of this section, "marketing premises" means
189 premises which, under a franchise agreement, are to be employed by a
190 franchisee in connection with the sale, consignment or distribution of
191 motor fuel.

192 (e) The provisions of this section shall apply to any franchise
193 agreement in effect on or after July 1, 2000.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2006</i>	42-133l
Sec. 2	<i>October 1, 2006</i>	42-133mm

Statement of Purpose:

To extend gasoline franchisor contract terms from three to ten years.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]