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SENATE BILL NO. 714

Offered January 17, 2008

A BILL to amend and reenact § 59.1-21.9 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 59.1-21.16:3, relating to the Virginia Petroleum Products Franchise Act; obligation to offer premises to dealer.

Patrons—Howell, Barker, Colgan, Petersen, Puckett, Puller, Saslaw, Ticer and Whipple; Delegates: Albo, Amundson, Brink, Bulova, Hugo, Marsden, Moran, Nichols, Rust, Shannon, Sickles, Vanderhye and Watts

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 59.1-21.9 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 59.1-21.16:3 as follows:

§ 59.1-21.9. Findings of General Assembly.

The General Assembly finds and declares that since the distribution and sales through franchise arrangements of petroleum products in the Commonwealth of Virginia vitally affect the economy of the Commonwealth, the public interest, welfare, and transportation, and since the preservation of the rights, responsibilities, and independence of the small businesses in the Commonwealth is essential to economic vitality, it is necessary to define the relationships and responsibilities of the parties to certain agreements pertaining thereto. *Consistent with these findings and declarations, the provisions of § 59.1-21.16:3, which do not relate to the termination or nonrenewal of petroleum franchises governed by federal law, advance the interests of the Commonwealth, and its citizens, by facilitating the purchase of retail service stations by their occupying lessee-franchisees, thereby insuring the motoring public greater access to service stations and petroleum products and furthering a more dynamic and full-service-oriented retail marketplace, while also considering the interests of the franchisor and, if applicable, the property owner, with regard to such service station premises.*

§ 59.1-21.16:3. Franchisor's obligation to offer leased marketing premises to occupying dealer .

A. As used in this section, unless the context requires otherwise:

"Bona fide offer" means an offer by the franchisor to the dealer that approaches the fair market value of the leased marketing premises under an objectively reasonable analysis, and:

1. In the case of the franchisor offering to the dealer a right of first refusal regarding an offer that has been made to the franchisor by a third party regarding the leased marketing premises, the offer made by such third party shall be a bona fide offer acceptable to the franchisor, and may not be an offer that has been manipulated by either the franchisor or the third party offeror; or

2. In the case of service station premises that the franchisor leases from a third party, the franchisor's lease rights in the station premises shall be transferred or assigned to the dealer without cost, with the franchisor making a bona fide offer with regard to the sale of structures located on the station's premises, including all pumps, dispensers, storage tanks, piping, and all other equipment located upon the premises necessary for the continued operation of a service station.

Where the leased marketing premises occupied by a dealer are to be part of a sale of multiple properties owned or controlled by the franchisor, a bona fide offer shall reasonably allocate a portion of the total price for the multiple properties intended to be sold to the leased marketing premises occupied by the dealer in order to allow the dealer to exercise the dealer's right of first refusal regarding the leased marketing premises occupied by the dealer. In making such allocation the purpose shall be to determine the fair market value of the leased marketing premises under an objectively reasonable analysis.

A bona fide offer shall: (i) include the sale of all structures located on the leased marketing premises, including all pumps, dispensers, storage tanks, piping, and all other equipment located upon the premises necessary for the continued operation of a service station if the dealer exercises the dealer's right to buy; (ii) not include a requirement that the dealer enter into a supply agreement with the selling franchisor, or with any other party, and, to the extent that a bona fide offer acceptable to the franchisor from a third party contains such a supply agreement, it shall not be applicable to the dealer; and (iii) not release the continuing obligations of the franchisor with regard to any environmental obligations regarding the service station premises, nor require the dealer to assume such obligations of the franchisor with regard to the dealer's purchase of the premises or acquisition of the franchisor's rights in the premises. In conjunction with the dealer's acquisition of the rights of the franchisor in the leased marketing premises, such environmental tests, surveys, and other due diligence investigations

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57 shall be conducted as are customary in such transactions.

58 "Leased marketing premises" means marketing premises owned, leased, or in any way controlled by
59 a franchisor and that the dealer is authorized or permitted, under the petroleum franchise, to employ, to
60 occupy, or both in connection with the sale, consignment, or distribution of petroleum products.

61 "Supply agreement" means an agreement, oral or written, under which a party is to supply, and a
62 dealer is required to buy, petroleum products.

63 B. In the case of leased marketing premises owned by a franchisor, or in which a franchisor owns a
64 leasehold interest, which premises are occupied by a dealer, the franchisor shall not sell, transfer, or
65 assign to another person the franchisor's interest in the premises unless the franchisor has first either
66 made a bona fide offer to sell, transfer, or assign to the dealer the franchisor's interest in the premises,
67 other than signs displaying the refiner's insignia and any other trademarked, servicemarked, copyrighted
68 or patented items of the franchisor, or, if applicable, offered to the dealer a right of first refusal of any
69 bona fide offer acceptable to the franchisor made by another person to purchase the franchisor's interest
70 in the premises.

71 C. Nothing in this section shall be deemed to require a franchisor to continue an existing franchise
72 relationship, or to renew a franchise relationship, if not otherwise required by federal law.

73 D. Nothing in this section shall be deemed to require a franchisor to continue to supply petroleum
74 products to a dealer if the dealer exercises its right to acquire the interests of the franchisor in the
75 premises.

76 E. The bona fide offer required to be made to the dealer by the franchisor shall:

77 1. Be in writing;

78 2. Set forth fully and completely all terms and conditions of the offer being made by the franchisor;

79 3. In the case of a bona fide offer being made by a third party to acquire the interests of the
80 franchisor in the property, which offer is acceptable to the franchisor, also contain a full copy of the
81 proposal of the third party, or the contract or its equivalent between the franchisor and the third party
82 if such a contract exists, to include all schedules, attachments, addenda, or their equivalent; and

83 4. In the case of leased marketing premises that the franchisor leases from a third party or parties,
84 also contain a full copy of the underlying lease, and any amendments or additions thereto.

85 F. After receipt of the bona fide offer from the franchisor, the dealer shall have a period of not less
86 than 60 days within which to exercise the dealer's rights as established hereunder by informing the
87 franchisor, in writing, of the dealer's intent to exercise such rights.

88 G. The provisions of this section shall apply to the sale, assignment, or transfer of any leased
89 marketing premises intended to occur after July 1, 2008.