

# VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

## CHAPTER 351

*An Act to amend and reenact §§ 59.1-21.10 and 59.1-21.16:2 of the Code of Virginia, relating to the Virginia Petroleum Products Franchise Act; operation of retail outlets.*

[S 533]

Approved March 22, 2012

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 59.1-21.10 and 59.1-21.16:2 of the Code of Virginia are amended and reenacted as follows:**

§ 59.1-21.10. Definitions.

As used in this chapter, the following terms shall have the following meanings unless the context requires otherwise:

"Dealer" means any person who purchases motor fuel for sale to the general public for ultimate consumption. "Dealer" shall not mean any person, including any affiliate of such person, who (i) purchases motor fuel for sale, consignment, or distribution to another; (ii) receives motor fuel on consignment for consignment or distribution to his own motor fuel accounts or to accounts of his supplier; or (iii) who is an employee of, or merely serves as a common carrier providing transportation service, for such person.

"Designated family member" means the adult spouse, adult child or stepchild, or adult brother or sister of the dealer who is designated in the franchise agreement as the successor to the dealer's interest under the agreement and who shall become the dealer upon the completion of the succession.

"Franchise" or "franchise agreement" means any agreement, express or implied, between a refiner and a dealer under which a refiner authorizes or permits a dealer to use, in connection with the sale, consignment, or distribution of motor fuel, a trademark which is owned or controlled by such refiner. "Franchise" or "franchise agreement" shall also mean any agreement, express or implied, under which a dealer is granted the right to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by such refiner.

"Franchise fee" means any fee or charge that a dealer is required to pay or agrees to pay for the right to enter into a franchise agreement or to become a dealer at the premises to which the franchise agreement relates. The term "franchise fee" shall not include reasonable actual costs and expenses incurred by the refiner in effecting the assignment, transfer, or sale.

"Franchisor" means a refiner who authorizes or permits, under a franchise, a dealer to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

*"Jobber/distributor" means any person, including any affiliate of such person, who (i) purchases motor fuel for sale, consignment, or distribution to another; or (ii) receives motor fuel on consignment for consignment or distribution to his own motor fuel accounts or to accounts of his supplier, but shall not include a person who is an employee of, or merely serves as a common carrier providing transportation service for, such supplier.*

"Newly remodeled facility" means a retail outlet, marketing premises, or leased marketing premises which, within an 18-month period, has been rebuilt, renovated, or reconstructed at a cost of (i) for facilities remodeled before January 1, 2004, a minimum of \$560,000; or (ii) for facilities remodeled on or after January 1, 2004, a minimum of \$560,000 plus an amount reflecting the annual rate of inflation, such amount to be calculated on January 1 of each year by the Commissioner of the Department of Agriculture and Consumer Services by referring to the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics.

"Operation of a retail outlet" means the ownership or option to buy a properly zoned parcel of property for which a permit to build a retail outlet has been granted.

"Petroleum products" or "motor fuel" means gasoline and diesel fuel of a type distributed for use as a fuel in self-propelled vehicles designed primarily for use on public streets, roads, and highways.

"Profit" means the net gain, for income tax purposes, realized by the dealer upon the assignment, transfer, or sale of the franchise agreement.

"Refiner" means any person engaged in the refining of crude oil to produce motor fuel and includes any affiliate of such person.

"Retail" means the sale of petroleum products for purposes other than resale.

"Retail outlet," "marketing premises," or "leased marketing premises" means the premises at which petroleum products are sold to the general public.

"Trial franchise" means the same as provided in the Petroleum Marketing Practices Act (15 U.S.C. § 2803 et seq.).

§ 59.1-21.16:2. Operation of retail outlet by refiner; apportionment of fuels during periods of shortage; rules and regulations.

A. After July 1, 1979, no refiner of petroleum products shall operate any major brand, secondary brand, or unbranded retail outlet in the Commonwealth of Virginia with company personnel, a parent company, or under a contract with any person, firm, or corporation, managing a service station on a fee arrangement with the refiner; however, such refiner may operate such retail outlet with the aforesaid personnel, parent, person, firm, or corporation if such outlet is located not less than one and one-half miles from the nearest retail outlet operated by any ~~franchised~~ dealer *or jobber/distributor*, as measured by the most direct surface transportation route from the gas pump at the refiner's facility that is nearest a gas pump at the dealer's *or jobber/distributor's* facility; and provided, that once in operation, no refiner shall be required to change or cease operation of any retail outlet by the provisions of this section.

During the period July 1, 1990, through June 30, 1991, no refiner may construct and operate with company personnel as defined in this section any new major brand, secondary brand, or unbranded retail outlet in the Commonwealth of Virginia, except on any property purchased or under option to purchase by March 1, 1990.

B. Every refiner of petroleum products shall apportion all gasoline and diesel fuel among their purchasers during periods of shortages on an equitable basis.

C. No new lease, lease renewal, new supply contract, or new supply contract renewal under this chapter shall impose purchase or sales quotas.

D. ~~The Commissioner of Agriculture and Consumer Services shall adopt regulations~~ (i) ~~defining the circumstances under which a refiner may temporarily operate a previously dealer-operated retail outlet;~~ (ii) ~~providing for the rebuilding or relocation of retail outlets which were producer or refiner operated on July 1, 1979;~~ (iii) ~~requiring each refiner to file a list of retail outlets operated by such refiner and to keep such listing current;~~ (iv) ~~requiring each franchise dealer to file a listing of any retail outlets operated by such franchise dealer, and to keep such list current.~~

E. The provisions of this section shall not be applicable to retail outlets operated by producers or refiners on July 1, 1979.