

VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

CHAPTER 222

An Act 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 59.1-21.15:2, relating to the Virginia Petroleum Products Franchise Act; right of first refusal on leased marketing premises.

[H 1065]

Approved March 7, 2014

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 59.1-21.15:2 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 § 59.1-21.15:2, 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.*

§ 59.1-21.15:2. 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 approximates 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 to purchase the marketing premises 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 unfairly or improperly established by either the franchisor or the third party offer; or

2. In the case of service station premises that the franchisor leases from a third party, and providing the lease allows the assignment of such lease by the franchisor, the franchisor's lease rights in the station premises shall be transferred or assigned to the dealer, 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.

If 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, unless freely negotiated by the dealer, 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 shall be conducted as are customary in such transactions.

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

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

B. In the case of leased marketing premises owned by a franchisor, or in which a franchisor owns a leasehold interest, which premises are occupied by a dealer, 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 dealer the franchisor's interest in the premises, other than signs displaying the refiner's insignia and any other trademarked, service marked, copyrighted, or patented items of the franchisor, or, if applicable, offered to the dealer a right of first refusal of any bona fide offer acceptable to the franchisor made by another person to acquire the franchisor's interest in the premises.

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

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

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

1. Be in writing;

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

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

4. In the case of leased marketing premises that the franchisor leases from a third party or parties, also contain a full copy of the underlying lease, including all schedules, attachments, addenda, or their equivalent.

F. After receipt of the bona fide offer from the franchisor, the dealer shall have a period of not less than 60 days within which to exercise the dealer's rights as established under this section, which exercise shall be effective upon delivering written notice of such exercise to the franchisor. After exercise of the dealer's rights, the closing on, and transfer of, the leased marketing premises shall occur (i) within 60 days after the dealer's exercise of such rights or (ii) on or before the closing date established within the bona fide offer regarding which the dealer has exercised the dealer's right of first refusal under this section, whichever date occurs later.

G. The provisions of this section shall apply only to the sale, assignment, or transfer of a franchisor's interest in or to any leased marketing premises located only in Planning District 8, and shall not apply to leased marketing premises owned or controlled by a jobber/distributor.