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SENATE BILL NO. 1061

Offered January 20, 1999

A *BILL to amend and reenact §§ 59.1-21.10 and 59.1-21.16:2 of the Code of Virginia, relating to the Petroleum Products Franchise Act.*

Patrons—Watkins, Hanger, Hawkins, Ticer and Williams

Referred to Committee on Agriculture, Conservation and Natural Resources

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.

"Newly remodeled facility" means a retail outlet, marketing premises, or leased marketing premises which, within an eighteen-month period, has been rebuilt, renovated, or reconstructed at a cost of \$350,000 or more.

"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.

"Person" means person as defined in § 1-13.19.

"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.

"Private brand retailer" means a dealer (i) who has never entered into a franchise agreement with a refiner for any retail outlet and (ii) whose retail outlets have, at all times, been operated by him or his employees.

"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, exception; apportionment of fuels during periods of shortage; rules and regulations.

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60 A. After July 1, 1979, no refiner of petroleum products shall operate any major brand, secondary
61 brand, or unbranded retail outlet in the Commonwealth of Virginia with company personnel, a parent
62 company, or under a contract with any person, firm, or corporation, managing a service station on a fee
63 arrangement with the refiner; however, such refiner may operate such retail outlet with the aforesaid
64 personnel, parent, person, firm, or corporation if such outlet is located not less than one and one-half
65 miles, as measured by the most direct surface transportation route, from the nearest retail outlet operated
66 by any franchised dealer; and provided, that once in operation, no refiner shall be required to change or
67 cease operation of any retail outlet by the provisions of this section. *The provisions of this subsection*
68 *shall not apply to the sale and subsequent operation of a retail outlet owned by any private brand*
69 *retailer operating in the Commonwealth on July 1, 1979, provided that the retail outlet has been in*
70 *operation for more than one year.*

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

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

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

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

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