

Public Law 103-371
103d Congress

An Act

Oct. 19, 1994

[H.R. 1520]

Petroleum
Marketing
Practices Act
Amendments of
1994.
15 USC 2801
note.

To amend the Petroleum Marketing Practices Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Petroleum Marketing Practices Act Amendments of 1994".

SEC. 2. CONVERSION TO COMPANY OPERATION.

Section 102(b)(3)(A)(ii) of the Petroleum Marketing Practices Act (15 U.S.C. 2802(b)(3)(A)(ii)) is amended by inserting after "purpose of" the following: "converting the leased marketing premises to operation by employees or agents of the franchisor for the benefit of the franchisor or otherwise".

SEC. 3. UNDERLYING LEASES.

Section 102(c)(4) of the Petroleum Marketing Practices Act (15 U.S.C. 2802(c)(4)) is amended—

(1) by striking "lease, if" and all that follows through "(B) of" and inserting the following: "lease, if—

"(A) the franchisee was notified in writing, prior to the commencement of the term of the then existing franchise—

"(i) of the duration of the underlying lease; and
"(ii) of"; and

(2) by adding at the end the following new subparagraphs:
"(B) during the 90-day period after notification was given pursuant to section 104, the franchisor offers to assign to the franchisee any option to extend the underlying lease or option to purchase the marketing premises that is held by the franchisor, except that the franchisor may condition the assignment upon receipt by the franchisor of—

"(i) an unconditional release executed by both the landowner and the franchisee releasing the franchisor from any and all liability accruing after the date of the assignment for—

"(I) financial obligations under the option (or the resulting extended lease or purchase agreement);

"(II) environmental contamination to (or originating from) the marketing premises; or

"(III) the operation or condition of the marketing premises; and

“(ii) an instrument executed by both the landowner and the franchisee that ensures the franchisor and the contractors of the franchisor reasonable access to the marketing premises for the purpose of testing for and remediating any environmental contamination that may be present at the premises; and

“(C) in a situation in which the franchisee acquires possession of the leased marketing premises effective immediately after the loss of the right of the franchisor to grant possession (through an assignment pursuant to subparagraph (B) or by obtaining a new lease or purchasing the marketing premises from the landowner), the franchisor (if requested in writing by the franchisee not later than 30 days after notification was given pursuant to section 104), during the 90-day period after notification was given pursuant to section 104—

“(i) made a bona fide offer to sell, transfer, or assign to the franchisee the interest of the franchisor in any improvements or equipment located on the premises; or

“(ii) if applicable, offered the franchisee a right of first refusal (for at least 45 days) of an offer, made by another person, to purchase the interest of the franchisor in the improvements and equipment.”.

SEC. 4. WAIVER OF RIGHTS.

Section 105 of the Petroleum Marketing Practices Act (15 U.S.C. 2805) is amended by adding at the end the following new subsection:

“(f)(1) No franchisor shall require, as a condition of entering into or renewing the franchise relationship, a franchisee to release or waive—

“(A) any right that the franchisee has under this title or other Federal law; or

“(B) any right that the franchisee may have under any valid and applicable State law.

“(2) No provision of any franchise shall be valid or enforceable if the provision specifies that the interpretation or enforcement of the franchise shall be governed by the law of any State other than the State in which the franchisee has the principal place of business of the franchisee.”.

SEC. 5. PREEMPTION.

Section 106 of the Petroleum Marketing Practices Act (15 U.S.C. 2806) is amended—

(1) in subsection (a)—

(A) by inserting “(1)” after “(a)”; and

(B) by adding at the end the following new paragraph:

“(2) No State or political subdivision of a State may adopt, enforce, or continue in effect any provision of law (including a regulation) that requires a payment for the goodwill of a franchisee on the termination of a franchise or nonrenewal of a franchise relationship authorized by this title.”; and

(2) in subsection (b)—

(A) by inserting “(1)” after “(b)”; and

(B) by adding at the end the following new paragraph:

“(2) Nothing in this title shall prohibit any State from specifying the terms and conditions under which any franchise or franchisee

relationship may be transferred to the designated successor of a franchisee upon the death of the franchisee.”.

SEC. 6. DEFINITION OF FAILURE.

Section 101(13) of the Petroleum Marketing Practices Act (15 U.S.C. 2801(13)) is amended—

- (1) by striking “or” at the end of subparagraph (A);
- (2) by striking the period at the end of subparagraph (B) and inserting in lieu thereof “; or”; and
- (3) by adding at the end the following new subparagraph:
“(C) any failure based on a provision of the franchise which is illegal or unenforceable under the law of any State (or subdivision thereof).”.

Approved October 19, 1994.

LEGISLATIVE HISTORY—H.R. 1520 (S. 338):

HOUSE REPORTS: No. 103-737 (Comm. on Energy and Commerce).

SENATE REPORTS: No. 103-387 accompanying S. 338 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 140 (1994):

Oct. 3, 4, considered and passed House.

Oct. 5, considered and passed Senate.