

No. 126

AN ACT

SB 536

Regulating the practices of suppliers, distributors and dealers of gasoline, petroleum products and accessories for motor vehicles and providing remedies for violations.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Legislative Findings and Purposes.—The General Assembly of this Commonwealth finds and declares that the distribution and sales of gasoline and petroleum products in the Commonwealth of Pennsylvania, including the rights and obligations of suppliers and dealers, vitally affects its general economy. In order to promote the public interest and public welfare of this Commonwealth; to avoid undue control of the dealer by suppliers; to foster and keep alive vigorous and healthy competition for the benefit of the public by prohibiting practices through which fair and honest competition is destroyed or prevented; to promote the public safety; to prevent deterioration of facilities for servicing motor vehicles on the highways of this Commonwealth; and to prevent dealers from unnecessarily going out of business, thereby resulting in unemployment with loss of tax revenue to the Commonwealth and its inevitable train of undesirable consequences; it is necessary to legislate standards pursuant to the exercise of the police power of this Commonwealth governing the relationship between suppliers and distributors of gasoline and petroleum products and the dealers who sell the products to the public.

Section 2. Definitions.—The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Agreement.” A contract or lease, or combination of both, or any other terminology used to describe the contractual relationship between the lessor supplier and the lessee dealer.

“Lessee dealer.” Any person, firm, corporation or association who leases from and enters into an agreement with a lessor supplier for the purpose of operating a gasoline service station.

“Lessor supplier.” Any person, firm, corporation or association, resident or non-resident, who leases real estate and the improvements thereon for use as a gasoline service station and who also enters into an agreement with a lessee dealer to supply the lessee dealer with gasoline, petroleum products and accessories necessary to the proper operation of a motor vehicle.

Section 3. Cancellation, Termination or Failure to Renew an Agreement.—(a) The lessor supplier shall not cancel, terminate or fail to renew an agreement unless it furnishes prior notification, pursuant to this subsection, to the other party. The notification shall be in writing and sent to the lessee dealer by certified mail not less than 90 days prior to the date on which the franchise will be cancelled, terminated or not renewed. The notification shall contain a statement of intention to cancel, terminate or not renew, together with the reasons therefor, which reasons shall be limited to those set forth in subsection (b) and the date on which such action shall take effect.

(b) It shall be a violation of this act for any lessor supplier to directly or indirectly terminate, cancel or fail to renew an agreement with the lessee dealer unless the termination, cancellation or failure to renew is for one of the following reasons:

(1) The lessee dealer has abandoned or has given notice of its intention to abandon the leased premises, in which event the requirement of 90 days' notice need not be given.

(2) The lessee dealer has filed for or has been declared bankrupt or has petitioned for a reorganization, creditor arrangement or insolvency under the applicable statutes.

(3) A dissolution of a partnership or corporation or other entity carrying on the business.

(4) The lessor supplier has lost its right to grant possession of the premises.

(5) Wilful or malicious destruction of the property of the lessor supplier by the lessee dealer or someone over whom he has control or should have exercised control.

(6) Failure to pay financial obligations to the lessor supplier when due including, but not limited to, rents or payment for gasoline, petroleum products or accessories supplied to the lessee dealer by the lessor supplier.

(7) Adulteration, commingling, or mislabeling or misbranding of products supplied by the lessor supplier.

(8) Failure by the lessee dealer to comply with Federal, State or local laws or regulations which are related to the operation of the gasoline service station business and which may affect the relationship between the lessor supplier and the lessee dealer and such failure to comply therewith has or may have an adverse effect on the lessor supplier.

(9) Conviction of the lessee dealer of a criminal offense which is related to the operation of the business or would effect the ability of the lessee dealer to operate the business or would tend to defame the reputation of the lessor supplier.

(c) Nothing in subsection (b) shall prohibit termination, cancellation or failure to renew:

(1) if there is a failure on the part of the lessor supplier and the lessee dealer to agree upon the terms of a renewal agreement where both parties have acted in good faith in trying to effect such a renewal;

(2) if there is a mutual termination executed by the parties; or

(3) where there is such cause for termination as a court of competent jurisdiction might find to be reasonable and just under all of the circumstances.

(d) In determining whether or not an agreement shall be terminated, cancelled or not renewed the failure or refusal of the lessee dealer to do any of the following shall not be grounds for such action:

(1) Refusal by the lessee dealer to take part in promotional campaigns of the lessor supplier's products.

(2) Failure by the lessee dealer to meet sales quotas suggested by the lessor supplier.

(3) Refusal by the lessee dealer to sell gasoline or other products at a price suggested by the lessor supplier.

(4) Refusal by the lessee dealer to keep the premises operating and open during those hours which are proven by the lessee dealer to be unprofitable.

(5) Refusal by the lessee dealer to give the lessor supplier financial records of the operation which are not related or necessary to the lessee dealer's obligations under the agreement.

Section 4. Prohibited Practices.—It shall be a violation of this act for any lessor supplier, directly or indirectly, through any officer, agent or employee to engage in the following practices:

(1) To require a lessee dealer at the time of entering into an agreement to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this act.

(2) To prohibit, directly or indirectly, the right of free association among lessee dealers for any lawful purpose.

(3) To prohibit the transfer by will of the gasoline service station business and the right of the lessee dealer under the agreement to a spouse, child or children.

(4) To require a lessee dealer to accept a lease for the premises of a term less than one year.

(5) To provide any term or condition in any lease or other agreement which term or condition directly or indirectly violates this act.

Section 5. Application of Act to Prior Agreements.—This act shall not apply to any agreement entered into prior to the effective date of this act, except that a renewal of such agreement shall not be excluded from the application of this act.

Section 6. Action Against Lessor Supplier; Damages; Injunction; Costs.—Any lessee dealer may bring an action against its lessor supplier for violation of this act in the respective court of common pleas wherein

the business is located to recover damages sustained by reason of a wilful and intentional violation of this act and, where appropriate, shall be entitled to injunctive relief. Such lessee dealer, if successful and if it be adjudged that such violation was wilful and intentional, shall also be entitled to the costs of the action including, but not limited to, reasonable attorneys' fees.

Section 7. Action Against Lessor Supplier; Defenses.—It shall be a defense for a lessor supplier in any action brought under this act by a lessee dealer, that said lessee dealer has failed to be in reasonable compliance considering all of the circumstances with the requirements imposed by the agreement and other agreements ancillary or collateral thereto.

Section 8. Limitation of Liability of Lessor Supplier, Its Officers, Agent or Employees for Furnishing Information.—No liability on the part of and no cause of action of any nature shall arise against any lessor supplier, its officers, agents or employees furnishing information as to reasons for termination, cancellation, intent not to renew, failure to renew, unacceptability of a proposed transferee, or relating to the character, financial ability or business experience of a proposed transferee, or for statements made or evidence submitted at any hearing or trial conducted in connection therewith.

Section 9. Saving Provision.—This act shall not be deemed to repeal, suspend, modify or revoke any of the provisions of the act of September 9, 1965 (P.L.499, No.254), known as the "Motor Vehicle Manufacturer's, Dealer's and Salesmen's License Act."

Section 10. Severability.—The provisions of this act are severable and if any provision or part hereof shall be held invalid or unconstitutional or inapplicable to any person or circumstances, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of the act. It is hereby declared to be the legislative intent that this act would have been adopted if such invalid, unconstitutional or inapplicable provisions had not been included therein.

Section 11. Effective Date.—This act shall take effect in 90 days.

APPROVED—The 26th day of November, A. D. 1975.

MILTON J. SHAPP