

CHAPTER 63

AN ACT concerning the assignment of certain franchise interests and supplementing P.L.1971, c.356 (C.56:10-1 et seq.).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.56:10-6.1 Violations of the "Franchise Practices Act."

1. It shall be a violation of the "Franchise Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.):

a. For a franchisor to transfer, assign, or sell an interest in one or more franchise premises which a franchisee who purchases motor fuels and engages in the retail sale thereof has occupied under a lease agreement or agreements for a period of at least three consecutive years, or occupies under a lease agreement for a term of at least three years, unless the franchisor:

(1) makes a bona fide offer to transfer, assign, or sell to the franchisee all of the franchisor's interest in the franchise premises, which offer the franchisee shall have 60 days to accept or reject; and

(2) if applicable, offers the franchisee a right of first refusal on any offer for the transfer, assignment, or sale of the franchise premises presented by another person acceptable to the franchisor as a successor to the franchisor's interest, which offer the franchisee shall have 60 days to accept or reject. If the franchisee accepts an offer by the franchisor made pursuant to this paragraph, the franchisor, as a condition for entering into the contract for the accepted offer, may request as a good faith acknowledgement of the contract, a deposit by the franchisee of up to 10% of the total amount payable under the terms of the contract, which shall be non-refundable if the franchisee willfully defaults on the contract. A franchisor shall not be prohibited from exercising other contractual provisions, and nothing in this paragraph shall be construed to hinder the rights of the franchisor to recover additional damages as provided under the law. Any modification of the offer presented to the franchisor by the other person acceptable to the franchisor as a successor shall require that offer, as modified, to be resubmitted to the franchisee in accordance with the foregoing provisions of this paragraph; except that nothing contained herein shall require the franchisor, having made a bona fide offer or offer under a right of first refusal to transfer, assign, or sell to the franchisee the franchisor's interest in the premises pursuant to paragraph (1) or paragraph (2), respectively, of this subsection, which offer the franchisee has rejected or failed to accept timely, to make a new offer upon the occurrence of a legitimate subsequent change at closing.

b. For any successor owner, following a transfer, assignment, or sale subsequent to the franchisee's rejection of, or failure to accept timely, an offer made by the franchisor pursuant to paragraph (1) or paragraph (2) of subsection a. of this section:

(1) not to maintain the requirements of the franchise arrangement in effect at the time of the transfer, assignment, or sale for each premises, unless that arrangement is changed only by mutual agreement of the franchisee and the successor owner;

(2) not to renew, at the expiration of the franchise arrangement in effect at the time of the transfer, assignment, or sale, the franchise arrangement of the franchisee for the same number of years as the franchise arrangement in effect at the time of the transfer, assignment, or sale, provided the renewal shall not exceed five years; and

(3) to require the franchisee to:

(a) participate in promotional campaigns of the successor owner's products;

(b) meet sales quotas;

(c) sell any product at a price suggested by the successor owner or successor owner's supplier;

(d) keep the premises open and operating during hours which are documented by the franchisee to be unprofitable to the franchisee; or

(e) disclose to the successor owner or successor owner's supplier any financial records of the operation of the franchisee's premises which are not related or necessary to the franchisee's obligations under the franchise arrangement.

Nothing in this subsection shall affect the successor owner's ability to terminate, cancel, or fail to renew a franchise arrangement for good cause shown in accordance with the provisions of the "Franchise Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.).

c. For any successor owner, as set forth in subsection b. of this section, to transfer, assign, or sell an interest in a single franchise premises where a franchisee has engaged in the retail sale of motor fuel that is not part of two or more franchise premises, presented by the successor owner as a package to transfer, assign, or sell, and that the franchisee has occupied under a lease agreement or agreements for a period of three consecutive years, or occupies under a lease agreement for a term of at least three years, unless the successor owner makes an offer to transfer, assign, or sell to the franchisee the successor owner's interest, or offers the franchisee a right of first refusal on an offer presented by another person acceptable to the successor owner as a new successor to the interest, in accordance with the provisions of subsection a. of this section.

C.56:10-6.2 Inapplicability of act to certain distributors.

2. The provisions of P.L.2009, c.63 (C.56:10-6.1 et seq.) pertaining to franchisors shall not apply to any distributor which owns or otherwise controls through lease, fewer than 40 premises. For purposes of this section, "distributor" means any person, including any affiliate of such person, who: (1) purchases motor fuel for sale, consignment, or distribution to another; or (2) receives motor fuel for consignment or distribution to the person's or affiliate's own motor fuel accounts, but shall not include a person who merely serves as a common carrier providing transportation services for another.

C.56:10-6.3 Inapplicability of act relative to family members.

3. The provisions of P.L.2009, c.63 (C.56:10-6.1 et seq.) shall not apply to the sale, transfer, or assignment of one or more franchise premises from one family member to another family member. For the purposes of this section, "family member" means a spouse, child, parent, sibling, aunt, uncle, niece, nephew, first cousin, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother, or half sister, whether the individual is related by blood, marriage, or adoption.

C.56:10-6.4 Severability.

4. If any provision of P.L.2009, c.63 (C.56:10-6.1 et seq.) or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of P.L.2009, c.63 (C.56:10-6.1 et seq.) and the application of its provisions to persons or circumstances other than those with respect to whom or which it is held invalid shall not be affected thereby.

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5. This act shall take effect upon enactment, and shall apply to any franchise arrangement in effect on February 2, 2009 or becoming effective thereafter.

Approved June 10, 2009.