

SENATE BILL No. 336

May 29, 1991, Introduced by Senators DUNASKISS, PRIDNIA, WARTNER, DE GROW, CHERRY, V. SMITH, MILLER, KOIVISTO, O'BRIEN, WELBORN and HART and referred to the Committee on Technology and Energy.

A bill to amend the title and section 6 of Act No. 134 of the Public Acts of 1990, entitled "Motor fuel distribution act," being section 445.1806 of the Michigan Compiled Laws; and to add sections 6a, 6b, 6c, 6d, and 6e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and section 6 of Act No. 134 of the
2 Public Acts of 1990, being section 445.1806 of the Michigan
3 Compiled Laws, are amended and sections 6a, 6b, 6c, 6d, and 6e
4 are added to read as follows:

5 TITLE

6 An act to regulate the termination and transfer of motor
7 fuel franchises; TO PROVIDE FOR THE ARBITRATION OF CERTAIN MOTOR
8 FUEL FRANCHISE DISPUTES; and to provide for certain OTHER
9 remedies AND PENALTIES.

1 Sec. 6. ~~—A—~~ EXCEPT AS PROVIDED IN SECTION 6B(5), A person
2 injured in the person's business or property by reason of a vio-
3 lation of this act may bring an action in the court having juris-
4 diction in the county ~~—where—~~ IN WHICH the defendant resides or
5 is found, ~~—where—~~ IN WHICH the agent of the defendant resides or
6 is found, or ~~—where—~~ IN WHICH service may be obtained, for
7 injunctive relief or to recover the damages sustained by the
8 person, or both, and shall be awarded reasonable attorney fees
9 and costs of the action.

10 SEC. 6A. IF A DISPUTE BETWEEN A FRANCHISEE AND A FRANCHISOR
11 ARISES UNDER A FRANCHISE OR THIS ACT, THE FRANCHISEE MAY REQUEST
12 A MEETING WITH THE OTHER PARTY OR HIS OR HER DESIGNEE TO RESOLVE
13 THE DISPUTE. UNLESS THE PARTIES MUTUALLY AGREE TO ANOTHER LOCA-
14 TION, THE MEETING SHALL BE CONDUCTED WITHIN THE COUNTY IN WHICH
15 THE FRANCHISE IS OPERATED NOT LATER THAN 30 DAYS AFTER THE SUB-
16 MISSION OF THE REQUEST FOR THE MEETING.

17 SEC. 6B. (1) IF THE PARTIES TO A DISPUTE DESCRIBED IN SEC-
18 TION 6A ARE NOT ABLE TO RESOLVE THE DISPUTE THROUGH DISCUSSIONS
19 OR IF THE FRANCHISOR FAILS TO MEET WITH THE FRANCHISEE WITHIN THE
20 30-DAY REQUIRED TIME PERIOD, THE FRANCHISEE MAY DEMAND ARBITRA-
21 TION OF THE DISPUTE BY SERVING UPON THE FRANCHISOR WRITTEN NOTICE
22 OF THE DEMAND FOR ARBITRATION.

23 (2) THE NOTICE SHALL CONTAIN ALL OF THE FOLLOWING
24 INFORMATION:

25 (A) THE NAME, BUSINESS ADDRESS, AND MAIN BUSINESS TELEPHONE
26 NUMBER OF THE FRANCHISEE.

1 (B) A DESCRIPTION OF THE DISPUTE IN TERMS SUFFICIENT TO
2 NOTIFY THE FRANCHISOR OF THE NATURE OF THE DISPUTE BEING
3 SUBMITTED TO ARBITRATION.

4 (3) THE FRANCHISEE MAY SERVE NOTICE OF ARBITRATION UPON THE
5 FRANCHISOR BY DOING ANY OF THE FOLLOWING:

6 (A) PERSONALLY DELIVERING OR MAILING THE NOTICE BY CERTIFIED
7 MAIL, RETURN RECEIPT REQUESTED, TO ANY OFFICE OF THE FRANCHISOR
8 MAINTAINED IN THIS STATE.

9 (B) MAILING THE NOTICE BY CERTIFIED MAIL, RETURN RECEIPT
10 REQUESTED, TO A REGISTERED AGENT OF THE FRANCHISOR.

11 (C) PERSONALLY DELIVERING THE NOTICE TO ANY EMPLOYEE OF THE
12 FRANCHISOR WITH WHOM THE FRANCHISEE HAS REGULAR CONTACT, EXCLUD-
13 ING A PERSON RESPONSIBLE FOR THE PHYSICAL DELIVERY OF MOTOR
14 FUEL.

15 (4) ARBITRATION MAY NOT BE DEMANDED MORE THAN 6 MONTHS AFTER
16 THE MEETING REQUIRED BY SECTION 6A OR MORE THAN 7 MONTHS AFTER
17 THE REQUEST FOR THE MEETING IF THE FRANCHISOR IS UNWILLING TO
18 MEET WITH THE FRANCHISEE.

19 (5) A FRANCHISEE WHO DEMANDS ARBITRATION UNDER THIS ACT
20 WAIVES HIS OR HER RIGHT TO SUE A FRANCHISOR REGARDING THE DISPUTE
21 THAT IS THE SUBJECT OF THE ARBITRATION.

22 SEC. 6C. (1) THE ARBITRATION OF A DISPUTE ARISING UNDER
23 THIS ACT SHALL BE CONDUCTED PURSUANT TO THE COMMERCIAL ARBITRA-
24 TION RULES OF THE AMERICAN ARBITRATION ASSOCIATION.

25 (2) THE ARBITRATOR SHALL BE A PERSON WITH A BACKGROUND SUIT-
26 ABLE TO UNDERSTANDING AND RESOLVING PROBLEMS IN THE PETROLEUM
27 INDUSTRY, BUT SHALL NOT PREVIOUSLY HAVE BEEN EMPLOYED BY A

1 FRANCHISOR OR FRANCHISEE AS AN ATTORNEY OR EXECUTIVE OR IN ANY
2 POLICY MAKING POSITION.

3 (3) THE ARBITRATOR MAY SUBPOENA WITNESSES OR DOCUMENTS UPON
4 THE REQUEST OF ANY PARTY OR INDEPENDENTLY. A SUBPOENA ISSUED
5 PURSUANT TO THIS SUBSECTION MAY BE ENFORCED IN THE CIRCUIT COURT
6 IN WHICH THE WITNESS RESIDES OR HAS HIS OR HER PRINCIPAL PLACE OF
7 BUSINESS OR IN WHICH THE DOCUMENT IS BELIEVED TO BE LOCATED. THE
8 PARTY REQUESTING THE SUBPOENA MAY APPLY TO THE CHIEF JUDGE OF
9 THAT COUNTY FOR AN ORDER DIRECTING THE WITNESS TO APPEAR OR FOR A
10 DOCUMENT TO BE PRODUCED IN ACCORDANCE WITH THE ARBITRATOR'S
11 SUBPOENA. FAILURE TO HONOR THE ORDER IS PUNISHABLE AS CONTEMPT.

12 SEC. 6D. (1) THE DECISION OF AN ARBITRATOR RENDERED PURSU-
13 ANT TO THIS ACT IS FINAL AND BINDING UPON THE PARTIES.

14 (2) EITHER PARTY MAY ENFORCE THE DECISION OF THE ARBITRATOR
15 IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE DISPUTE AROSE OR
16 IN WHICH THE FRANCHISEE RESIDES OR HAS HIS OR HER PRINCIPAL PLACE
17 OF BUSINESS.

18 (3) A DECISION OF THE ARBITRATOR IS REVIEWABLE BY THE CIR-
19 CUIT COURT FOR THE COUNTY IN WHICH THE DISPUTE AROSE OR IN WHICH
20 THE FRANCHISEE RESIDES OR HAS HIS OR HER PRINCIPAL PLACE OF BUSI-
21 NESS, BUT ONLY FOR REASONS THAT THE ARBITRATOR WAS WITHOUT OR
22 EXCEEDED HIS OR HER JURISDICTION; THE DECISION WAS NOT SUPPORTED
23 BY COMPETENT, MATERIAL, AND SUBSTANTIAL EVIDENCE ON THE WHOLE
24 RECORD; OR THE DECISION WAS PROCURED BY FRAUD, COLLUSION, OR
25 OTHER SIMILAR AND UNLAWFUL MEANS. THE PENDENCY OF A PROCEEDING
26 FOR REVIEW DOES NOT AUTOMATICALLY STAY THE DECISION OF THE
27 ARBITRATOR.

1 SEC. 6E. (1) A WAIVER OF A FRANCHISEE'S RIGHTS UNDER THIS
2 ACT IS VOID.

3 (2) A FRANCHISOR MAY NOT REQUIRE THAT A FRANCHISEE WAIVE OR
4 SURRENDER ANY RIGHTS GUARANTEED UNDER THIS ACT, OR WAIVE OR SUR-
5 RENDER A RIGHT TO DEMAND ARBITRATION UNDER THIS ACT AS A CONDI-
6 TION OF RECEIPT OF A NEW FRANCHISE.