

Chapter 12 Gasoline Products Marketing Act

13-12-1 Citation.

This act shall be known and may be cited as the "Gasoline Products Marketing Act."

Enacted by Chapter 6, 1975 Special Session 1

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13-12-2 Definitions.

As used in this act:

- (1) "Distributor" means any person engaged in the refining of gasoline or motor fuels, who is engaged in the sale, consignment, or distribution of gasoline and oil products through retail outlets which it owns, leases, or otherwise controls, and who maintains an oral or written contractual relationship with a dealer for the sale of the products.
- (2) "Dealer" means any person engaged in the retail sale of gasoline products under a marketing agreement entered into with a distributor, other than a person who is an employee of a distributor.
- (3) "Refiner" means a person engaged in the refining of oil products.
- (4) "Marketing agreement" means any agreement or contract between a refiner or a distributor or a distributor and or retailer or between a refiner and a distributor, under which such retailer or distributor is granted authority to use a trade mark, trade name, service mark, or other identifying symbol or name owned by such refiner or distributor, or any agreement or contract between such parties under which a retailer or distributor is granted authority to occupy premises owned, leased, or in any way controlled by a party to such agreement or contract, for the purpose of engaging in the distribution or sale of petroleum products for purposes other than resale.
- (5) "Engaged in the retail sale of gasoline products" means that at least 30% of the dealer's gross revenue is derived from the retail sale of gasoline products.
- (6) "Retail" means the sale of products for purposes other than resale.

Enacted by Chapter 6, 1975 Special Session 1

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13-12-3 Refiners or distributors -- Unlawful practices -- Marketing agreements with dealers.

No refiner or distributor, directly or indirectly or through any office, agent, or employee, shall engage in any of the following practices:

- (1) requiring a dealer, at the time of entering into a marketing agreement, to agree to a release, assignment, novation, waiver or estoppel which would relieve any person from any provision of this act;
- (2) prohibiting, directly or indirectly, the right of free association among dealers for any lawful purpose;
- (3) requiring a dealer to keep his retail outlet open for business for any specified number of hours per day, or days per week, unless those requirements are set forth in writing at the time of entering into the marketing agreement;
- (4) fixing or maintaining the price at which the dealer must sell products, or attempting to fix or maintain those prices, through any form of coercion whatsoever; provided, that nothing herein

- shall be construed to prohibit a distributor or refiner from suggesting prices or counseling with dealers concerning those prices;
- (5) requiring a dealer to use or utilize any promotion, premium, coupon, give-away, sales promotion or rebate in the operation of the business; provided that nothing herein shall be construed to prohibit a dealer from participating financially in a promotion, premium, coupon, give-away, sales promotion or rebate sponsored by the distributor or refiner if agreed to voluntarily by the parties;
 - (6) terminating, canceling or failing to renew any marketing agreement without having first given written notice setting forth all the reasons for such termination, cancellation, or intent not to renew the dealer at least 90 days in advance of such termination, cancellation, or failure to renew, except:
 - (a) where the alleged grounds are voluntary abandonment by the dealer of the marketing agreement relationship in which event the aforementioned written notice shall be given five business days in advance of such termination, cancellation, or failure to renew; and
 - (b) where the alleged grounds are caused by the conviction of the dealer or distributor in a court of competent jurisdiction of a criminal offense directly related to the business conducted pursuant to the marketing agreement, or the bankruptcy of the dealer or distributor, in which event the aforementioned termination, cancellation, or failure to renew may be effective immediately following such conviction or bankruptcy;
 - (c) where the alleged grounds are:
 - (i) failure of the dealer to substantially comply with the requirements of the marketing agreement;
 - (ii) action of the dealer fraudulently advising members of the motoring public of the necessity for unneeded automotive repairs, parts or accessories;
 - (iii) action of the dealer fraudulently representing either expressly or impliedly the trade mark or brand of product being sold by the dealer;
 - (iv) failure of the dealer to maintain the premises in a sufficiently clean and healthful manner to avoid constituting a nuisance to members of the motoring public or adjoining property owners as determined by the local board of health authority;
in which event the distributor shall provide the dealer with written notice of his intent to terminate, cancel or fail to renew, following which the dealer shall be allowed 10 days in which to comply, correct or respond to said allegations before further action can be taken by the distributor.

Amended by Chapter 378, 2010 General Session

13-12-4 Cancellation provisions -- Dealer or distributor -- Time limit to exercise.

- (1) Every dealer or distributor shall have the right, which may not be waived, to cancel his marketing agreement until midnight of the seventh business day after the day on which the buyer signs the marketing agreement or, if that agreement is oral, after the day on which the buyer agrees thereto.
- (2) Notice of cancellation shall be deemed to have been given when it is addressed to the distributor's or refiner's last known address, postage prepaid, and certified with a return receipt requested.
- (3) Unless within 10 days after delivery of that notice of cancellation the dealer returns to the distributor or refiner any money, equipment or merchandise loaned, sold or delivered to the dealer and delivers up full possession of the business location to the distributor or refiner, that notice of cancellation shall be null and void ab initio.

- (4)
- (a) Except as provided in this subsection, within 10 days after notice of cancellation is delivered to him, the distributor or refiner shall tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.
 - (b) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the distributor or refiner. If the distributor or refiner fails to tender the goods as provided by this subsection, the dealer may elect to recover an amount equal to the allowance established by their agreement.
 - (c) Notwithstanding the provisions of Subsection (3) until the distributor or refiner has complied with the obligations imposed by this subsection, the dealer may retain possession of goods delivered to him by the distributor or refiner and has a lien on the goods in his possession or control for any recovery to which he is entitled.

Amended by Chapter 378, 2010 General Session

13-12-5 Death of dealer or lessee -- Distributor to cooperate with heirs -- Offer to purchase -- Reasonable access to premises.

Upon the death of a dealer or lessee who operates under a marketing agreement, the distributor shall cooperate with the heirs or successors. Such cooperation shall include, but not be limited to, an offer to repurchase salable merchandise and equipment owned by the dealer at the fair market value not to exceed original invoice price and to permit the heirs or successors reasonable access to the premises for a reasonable period of time.

Enacted by Chapter 6, 1975 Special Session 1

Enacted by Chapter 6, 1975 Special Session 1

13-12-6 Distributor electing not to continue doing business in state -- Repurchase merchandise.

If a distributor elects to discontinue doing business in the state of Utah during the term of a marketing agreement with the dealer, the distributor shall repurchase merchandise in salable condition at a fair wholesale market value not to exceed original invoice price which the dealer has purchased from the distributor.

Enacted by Chapter 6, 1975 Special Session 1

Enacted by Chapter 6, 1975 Special Session 1

13-12-7 District court's jurisdiction over violations -- Equitable relief -- Attorney's fees and costs -- Action for failure to renew -- Damages limited.

The district courts for the district wherein the dealer resides or wherein the dealership was to be established shall have jurisdiction over any action involving a violation of this act. In addition to such relief as may be available at common law, the courts may grant such equitable relief, both interim and final, as may be necessary to remedy those violations including declaratory judgments, injunctive relief, and punitive damages as well as actual damages. The prevailing party may, in the court's sole discretion, be awarded attorney's fees and expert witness fees in addition to such other relief as the court may deem equitable. In any action for failure to renew an agreement, damages shall be limited to actual damages, including the value of the dealer's equity in the dealership, together with reasonable attorney's fees and costs.

Amended by Chapter 378, 2010 General Session

13-12-8 Marketing agreements applicable after effective date.

This act shall apply to all marketing agreements made, renewed, or amended after the effective date of this act.

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