

CHAPTER 323

MOTOR FUEL AND SPECIAL FUEL

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323.1 Definitions.

When used in this chapter, unless the context otherwise requires:

1. “*Dealer*” means a person, other than an employee of a distributor or franchiser, who operates, maintains or conducts a place of business from which motor fuel or special fuel is sold or offered for sale at retail to the ultimate consumer, and who holds a license, issued as provided in chapter 214, for each pump and meter operated upon the retail premises.

2. “*Dealer franchise*” means an agreement or contract, either written or oral, between a franchiser and a dealer or between a distributor and a dealer when all of the following conditions are included:

a. A commercial relationship of definite duration or continuing indefinite duration is involved.

b. The dealer is granted the right to offer and sell motor fuel or special fuel that is imported, refined or distributed by the franchiser or by the distributor.

c. The dealer’s business is substantially reliant on the franchiser or distributor for the continued supply of motor fuel or special fuel.

3. “*Department*” means the department of inspections and appeals.

4. “*Distributor*” means distributor as defined in section 452A.2.

5. “*Distributor franchise*” means a written agreement or contract, either written or oral, between a franchiser and a distributor when all of the following conditions are included:

a. A commercial relationship of definite duration or continuing indefinite duration is involved.

b. The distributor is granted the right to offer and sell motor fuel or special fuel that is imported, refined or distributed by the franchiser.

c. The distributor, as an independent business, constitutes a component of the franchiser’s distribution system.

d. The distributor’s business, or a portion of it which is related to motor fuel or special fuel purchased from the franchiser is substantially reliant on the franchiser for the continued supply of motor fuel or special fuel.

e. The distributor’s business or a portion of it which is related to motor fuel or special fuel purchased from the franchiser is substantially associated with the franchiser’s trademark, service mark, trade name, advertising or other commercial symbol designating the franchiser.

6. “*Franchiser*” means a person who is engaged in the importation, refining or distribution of motor fuel or special fuel and who has entered into a distributor franchise or a dealer franchise.

7. “*Motor fuel*” means motor fuel as defined in chapter 452A.

8. “*Retail premises*” means real estate either owned or leased by the dealer and used primarily for the sale at retail to the ultimate consumer of motor fuel or special fuel.

9. “*Retaliatory action*” means action contrary to the purpose or intent of this chapter and may include a refusal to continue to sell or lease, a reduction in the quality or quantity of services or products customarily available for sale or lease, a violation of privacy, or an inducement of others to retaliate.

10. “*Special fuel*” means special fuel as defined in chapter 452A.

[C75, 77, 79, 81, §323.1]

88 Acts, ch 1158, §68; 95 Acts, ch 155, §1; 96 Acts, ch 1034, §28

323.2 Discontinuing distributor franchise.

Notwithstanding the terms, provisions or conditions of any distributor franchise, a franchiser shall not terminate or refuse to renew a distributor franchise except as provided in this chapter. A franchiser shall not terminate or refuse to renew a distributor franchise unless the franchiser gives to the distributor thirty days’ written notice of franchiser’s intent to terminate or not renew. Notice shall be given by restricted certified mail, as defined in section 618.15. If a distributor, within thirty days after the date of delivery of the notice from the franchiser, applies to the department for a hearing under this chapter, the distributor franchise shall remain in effect pending a final order by the department. The application filed by the distributor shall state, under oath, that the distributor has not filed a petition in bankruptcy or been declared bankrupt within six months preceding the filing of the application, that the franchiser has not withdrawn entirely from the sale for resale of motor fuel and special fuel in this state, that there are no past due sums owing by the distributor to the franchiser, and that the distributor has not consented in writing to the termination or nonrenewal of the distributor franchise.

[C75, 77, 79, 81, §323.2]

95 Acts, ch 155, §2

323.3 Discontinuing dealer franchise.

Notwithstanding the terms, provisions, or conditions of any dealer franchise, a distributor or franchiser shall not terminate or refuse to renew a dealer franchise except as provided in this chapter. A distributor or franchiser shall not terminate or refuse to renew a dealer franchise unless the distributor or franchiser gives to the dealer thirty days’ written notice of distributor’s or franchiser’s intent to terminate or not renew. Notice shall be given by restricted certified mail, as defined in section 618.15. If a dealer, within thirty days after the date of delivery of the notice from the distributor or franchiser, applies to the department for a hearing under this chapter, the dealer franchise shall remain in effect pending a final order by the department. The application filed by the dealer shall state, under oath, that the dealer’s license, issued pursuant to chapter 214, for pumps and meters located on the retail premises occupied by the dealer has not been canceled, that the dealer has not filed a petition in bankruptcy or been declared bankrupt within six months preceding the filing of the application, that the franchiser or distributor has not withdrawn entirely from the sale for resale of motor fuel and special fuel in this state, that there are no past due sums owing by the dealer to the franchiser or distributor, and that the dealer has not consented in writing to the termination or nonrenewal of the dealer franchise.

[C75, 77, 79, 81, §323.3]

323.4 Continuance.

The department may continue the date of hearing for a period of thirty days, and may upon application, but not ex parte, continue the date of hearing for an additional period of thirty days.

[C75, 77, 79, 81, §323.4]

323.5 Burden of proof.

Upon hearing, if the department finds the statements contained in the application are true, then the franchiser or distributor that intends to terminate or not renew the distributor franchise or dealer franchise shall have the burden of proof to establish that the franchiser or distributor, as the case may be, has good cause for terminating or not renewing the franchise.

If the department finds the statements contained in the application are not true, the application shall be denied. Nothing contained in this chapter shall be construed to require or authorize any investigation by the department of any matter before the department under this chapter. Upon hearing the department shall hear the evidence introduced by the

parties and shall make its decision solely upon the record made. If the department denies the termination or nonrenewal of the franchise, it may make such further order as may be necessary to require compliance with the terms of the franchise and to prevent retaliatory action.

[C75, 77, 79, 81, §323.5]

323.6 Conditions barring change in distributor franchise.

Notwithstanding the terms, provisions or conditions of a distributor franchise, the following shall not constitute good cause for the termination or refusal to renew a distributor franchise:

1. The sole fact that the franchiser desires further penetration of the market.
2. The change of executive management of the distributor, unless the franchiser, having the burden of proof, proves that the change of executive management will be substantially detrimental to the distribution of the franchiser's motor fuels or special fuels in the area served by the distributor.
3. The sale or change of ownership of the distributor's business.

[C75, 77, 79, 81, §323.6]

95 Acts, ch 155, §3

323.7 Department's guidelines.

In determining whether good cause has been established for terminating or not renewing a distributor franchise or dealer franchise, the department shall take into consideration the existing circumstances, including, but not limited to:

1. Amount of business transacted by the distributor or dealer.
2. Investments made and obligations incurred by the distributor or dealer in performance of the franchise.
3. Permanency of the investment.
4. Whether it is injurious to the public welfare for the business of the distributor or dealer to be disrupted.
5. Ability of the distributor or dealer to timely pay financial obligations.
6. Whether the distributor or dealer has adequate equipment and qualified personnel to reasonably provide for the distribution and marketing of the motor fuel or special fuel sold to the distributor or dealer.
7. Except as provided in section 323.6, failure of the distributor to substantially comply with those requirements of the distributor franchise that are determined by the department to be reasonable and material.
8. Failure of the dealer to substantially comply with those requirements of the dealer franchise that are determined by the department to be reasonable and material.

[C75, 77, 79, 81, §323.7]

323.8 Compulsory attendance at hearings.

The department may issue subpoenas, administer oaths, compel the attendance of witnesses and production of books, papers, documents and other evidence. The department may apply to the district court of the county in which the hearing is to be held for a court order to enforce actions taken under this section.

[C75, 77, 79, 81, §323.8]

323.9 Violations.

Any person violating the provisions of this chapter is guilty of a simple misdemeanor.

[C75, 77, 79, 81, §323.9]

323.10 Intent.

The provisions of this chapter are enacted in the exercise of the police powers of this state for the purpose of protecting the health, safety and general welfare of the people of this state and because methods and practices in the marketing and distribution of motor fuel and special fuel have impaired the availability to the public of the fuel and the services supplied

by distributors and dealers who have entered into a franchise agreement with their respective suppliers.

[C75, 77, 79, 81, §323.10]

323.11 Hearing.

Upon receiving an application, the department shall order a hearing. The hearing shall be held within thirty days of receipt of the application and in accordance with the Iowa administrative procedure Act, chapter 17A. The department shall notify the franchiser or distributor of the time and place of the hearing. The department may also give notice of the application to any other party the department deems an interested person. The notice shall be in the form and substance and given in the manner determined by the department.

Any person who can show an interest in the application may become a party to the hearing, whether or not the person receives notice; but a party not receiving notice shall be limited to participation at the hearing on the question of the public interest in the termination or continuation of the franchise.

[C75, 77, 79, 81, §323.11]

2003 Acts, ch 44, §114

323.12 Appeal.

Appeal may be taken from the final order of the department by either the distributor, franchiser or dealer, to the district court of the county where the distributor or dealer either resides or maintains the principal place of business, within thirty days from the time the decision is filed with the department, by giving at least ten days' notice to the department to be served on its chairperson or secretary in the same manner as original notices are now served, and by filing with the clerk of court a bond for costs in the sum of not less than five hundred dollars. Appeal shall be taken in accordance with the provisions of the Iowa administrative procedure Act, chapter 17A.

[C75, 77, 79, 81, §323.12]

2003 Acts, ch 44, §114

323.13 Waiver.

Any provision of a dealer franchise or distributor franchise which is an attempted waiver of the benefits of this chapter shall be void and unenforceable.

[C75, 77, 79, 81, §323.13]

323.14 Death of franchisee — successor — penalty.

1. It is unlawful to include in any distributor franchise or dealer franchise agreement a term which provides for the termination of the franchise by the franchiser upon the death of the franchisee if the franchisee, prior to the franchisee's death, designates a successor-in-interest in a form prescribed by and delivered to the franchiser. For the purposes of this section, "successor-in-interest" is restricted to either a surviving spouse or adult child of the franchisee who, at the time of the franchisee's death, is able to meet reasonable qualifications then being required of distributors or dealers by the franchiser.

2. The successor-in-interest designated as provided in subsection 1 shall have twenty-one days after the death of the franchisee to give written notice of an election to assume and operate the franchise. The notification shall contain such information regarding business experience and credit worthiness as is reasonably required by the franchiser. The successor-in-interest must offer to assume and commence operation of the franchise within ten days after the franchiser approves the assumption.

3. The franchise available to the successor-in-interest pursuant to this section shall be the same as that which existed in the name of the deceased franchisee at the time of the franchisee's death.

4. A franchisee may designate a primary and one alternate successor-in-interest. The alternate, if one is designated, has no rights under this section in the event of an exercise of rights by the primary successor-in-interest. If an alternate desires to assume and operate the

franchise in the event the primary successor-in-interest fails to do so, the alternate must give notice of such election and otherwise comply with subsection 2.

5. Unless otherwise specifically provided in this section, actions to be performed by the franchiser or by the successor-in-interest under this section shall be performed within a reasonable time.

6. Following the death of a franchisee, and prior to the operation of the franchise by the successor-in-interest as provided in this section, the executor or administrator of the estate of the deceased franchisee may operate the franchise.

7. If the successor-in-interest assumes the franchise, the successor-in-interest shall account to the heirs or estate of the deceased franchisee for the value of personal property of the franchisee located at or related to the franchise.

8. If the successor-in-interest does not assume the franchise, the franchiser shall account to the heirs or the estate of the deceased franchisee for the value of branded products purchased directly from the franchiser.

9. A franchisee or successor-in-interest may commence a civil action to compel compliance by a franchiser with this section, or to obtain damages caused by a failure to comply with this section, or both, within two years after the date the franchiser fails to comply with the requirements of this section.

[81 Acts, ch 114, §1, 2]