CHAPTER 323A

PURCHASING FUEL FROM ALTERNATE SOURCES

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323A.1 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"E-85 gasoline"* means the same as defined in section 214A.1.

2. *"Ethanol blended gasoline"* means the same as defined in section 214A.1.

3. *"Franchise"* means a contract between a refiner and a distributor, a refiner and a retailer, a distributor and another distributor, or a distributor and a retailer under which a refiner or distributor authorizes a retailer or distributor to use, in connection with the sale, consignment, or distribution of motor fuel, a trademark which is owned or controlled by the refiner or by a refiner which supplies motor fuel to the distributor which authorizes the use. *"Franchise"* includes any contract under which a retailer or distributor is permitted to occupy leased premises, which premises are to be used in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by a refiner or a refiner which supplies motor fuel to the distributor and permits the occupancy of the leased premises.

4. *"Franchisor"* means a refiner or distributor who authorizes or permits, under a franchise, a retailer or distributor to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

5. *"Franchisee"* means a retailer or distributor who is authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

6. *"Motor fuel"* means the same as motor fuel as defined in section 214A.1, which is of a type distributed for use as a fuel in self-propelled vehicles designed primarily for use on public streets, roads, and highways.

[C81, §323A.1]

2006 Acts, ch 1142, §21, 22, 27

323A.2 Purchase from other source.

1. The orderly flow of an adequate supply of motor fuel is declared to be essential to the economy and to the welfare of the people of this state. Therefore, in the public interest and notwithstanding the terms, provisions, or conditions of any franchise, a franchisee unable to obtain motor fuel from the franchisor may purchase the fuel from another available source, subject to subsections 2 to 5 and provided the franchisee has done all of the following:

a. At least forty-eight hours prior to entering into an agreement to purchase motor fuel from another source, the franchisee has requested delivery of motor fuel from the franchisor and the requested motor fuel has not been delivered and the franchisor has given the franchisee notice that the franchisor is unable to provide the requested motor fuel, or prior to entering into an agreement the franchisor has stated to the franchisee that the requested motor fuel will not be delivered. The request to the franchisor for delivery shall be for a type of fuel normally provided by the franchisor to the franchisee and for a quantity of fuel not exceeding the average amount sold by the franchisee in one week, based upon average weekly sales in the three months preceding the request, except that this provision shall not restrict a franchisee from purchasing ethanol blended gasoline from a source other than the franchisor or limit the quantity to be purchased when the franchisor does not normally supply the franchisee with ethanol blended gasoline. A franchisee may also purchase E-85 gasoline as provided in section 323A.2A.

b. The franchisee has requested and has been denied delivery of motor fuel sold or distributed under the trademark named in the franchise from a person other than the franchisor.

c. The director of the economic development authority determines that the franchisee has demonstrated that a special hardship exists in the community served by the franchisee relating to the public health, safety, and welfare, as specified under the rules of the authority.

2. The quantity of motor fuel requested or purchased from another source including the source listed in subsection 1, paragraph *"b"*, shall not exceed the quantity requested from the franchisor.

3. At the time a franchisee enters into an agreement to purchase motor fuel from a source other than the franchisor, the franchisee shall inform the franchisor by the quickest available means.

4. If the franchisee sells motor fuel supplied from a source other than the franchisor, the franchisee shall prominently post a sign disclosing this fact to the public on each motor fuel pump used for dispensing the motor fuel. The size of the sign shall not be less than eight inches by ten inches and the letters on the sign shall be at least three inches in height.

5. A franchisee who sells motor fuel supplied from a source other than the franchisor shall also fully indemnify the franchisor against any claims asserted by a user on which the claimant prevails and in which the court determines that motor fuel not acquired from the franchisor was the proximate cause of the injury.

6. Purchases of motor fuel in accordance with this section are not good cause for termination of a franchise.

[C81, §323A.2]

89 Acts, ch 83, §47; 91 Acts, ch 87, §2; 2006 Acts, ch 1142, §23, 27; 2009 Acts, ch 108, §15, 41; 2011 Acts, ch 25, §32; 2011 Acts, ch 118, §50, 87, 89

323A.2A Purchase of E-85 gasoline from other source.

1. *a.* When on and after May 30, 2006, a franchise is entered into or renewed, the franchisor shall provide for the delivery of volumes of E-85 gasoline at times demanded by the franchisee or shall allow the franchisee to purchase those volumes of E-85 gasoline at those times from another source.

b. If a franchise is in effect on May 30, 2006, and does not have an expiration date, the franchisor shall provide for the delivery of volumes of E-85 gasoline at times demanded by the franchisee or shall allow the franchisee to purchase those volumes of E-85 gasoline at those times from another source.

2. If the franchisee sells E-85 gasoline delivered from a source other than the franchisor, the franchisee shall prominently post a sign disclosing this fact to the public on each motor fuel pump used for dispensing the E-85 gasoline. The size of the sign shall not be less than eight inches by ten inches and the letters on the sign shall be at least three inches in height.

3. A franchisee who sells E-85 gasoline delivered from a source other than the franchisor shall also fully indemnify the franchisor against any claims asserted by a user on which the claimant prevails and in which the court determines that E-85 gasoline not acquired from the franchisor was the proximate cause of the injury.

4. *a.* A purchase of E-85 gasoline in accordance with this section is not good cause for the termination of a franchise.

b. A term of a franchise that is inconsistent with this section is void and unenforceable.

2006 Acts, ch 1142, §24, 27

Referred to in §323A.2

323A.3 Effective date.

The provisions of this chapter shall be applicable only to franchise agreements entered into or renewed after July 1, 1980.

[C81, §323A.3]