

**Calendar No. 693**

103D CONGRESS  
2D SESSION

**S. 338**

**[Report No. 103-387]**

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**A BILL**

To amend the Petroleum Marketing Practices Act to clarify the Federal standards governing the termination and nonrenewal of franchises and franchise relationships for the sale of motor fuel, and for other purposes.

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SEPTEMBER 29 (legislative day, SEPTEMBER 12), 1994  
Reported with amendments

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 4 (legislative day, JANUARY 5), 1993

Mr. FORD (for himself and Mr. KRUEGER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

SEPTEMBER 29 (legislative day, SEPTEMBER 12), 1994

Reported by Mr. JOHNSTON, with amendments

[Omit the part struck through and insert the part printed in italic]

**A BILL**

To amend the Petroleum Marketing Practices Act to clarify the Federal standards governing the termination and nonrenewal of franchises and franchise relationships for the sale of motor fuel, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Petroleum Marketing  
3 Practices Act Amendments of 1993”.

4 **SEC. 2. CONVERSION TO COMPANY OPERATION.**

5 Section 102(b)(3)(A)(ii) of the Petroleum Marketing  
6 Practices Act (15 U.S.C. 2802(b)(3)(A)(ii)) is amended  
7 by inserting after “purpose of” the following: “converting  
8 the leased marketing premises to operation by employees  
9 or agents of the franchisor for the benefit of the franchisor  
10 or otherwise”.

11 **SEC. 3. UNDERLYING LEASES.**

12 Section 102(c)(4) of the Petroleum Marketing Prac-  
13 tices Act (15 U.S.C. 2802(c)(4)) is amended—

14 (1) by striking “lease, if” and all that follows  
15 through “(B) of” and inserting the following: “lease,  
16 if—

17 “(A) the franchisee was notified in writing,  
18 prior to the commencement of the term of the  
19 then existing franchise—

20 “(i) of the duration of the underlying  
21 lease; and

22 “(ii) of”; and

23 (2) by adding at the end the following new sub-  
24 paragraphs:

25 “(B) during the 90-day period after notifi-  
26 cation was given pursuant to section 104, the

1 franchisor offers to assign to the franchisee any  
2 option to extend the underlying lease or option  
3 to purchase the marketing premises that is held  
4 by the franchisor, except that the franchisor  
5 may condition the assignment upon receipt by  
6 the franchisor of—

7 “(i) an unconditional release executed  
8 by both the landowner and the franchisee  
9 releasing the franchisor from any and all  
10 liability accruing after the date of the as-  
11 signment for—

12 “(I) financial obligations under  
13 the option (or the resulting extended  
14 lease or purchase agreement);

15 “(II) environmental contamina-  
16 tion to (or originating from) the mar-  
17 keting premises; or

18 “(III) the operation or condition  
19 of the marketing premises; and

20 “(ii) an instrument executed by both  
21 the landowner and the franchisee that en-  
22 sures the franchisor and the contractors of  
23 the franchisor reasonable access to the  
24 marketing premises for the purpose of test-  
25 ing for and remediating any environmental

1           contamination that may be present at the  
2           premises; and

3           “(C) in a situation in which the franchisee  
4           acquires possession of the leased marketing  
5           premises effective immediately after the loss of  
6           the right of the franchisor to grant possession  
7           (through an assignment pursuant to subpara-  
8           graph (B) or by obtaining a new lease or pur-  
9           chasing the marketing premises from the land-  
10          owner), the franchisor (if requested in writing  
11          by the franchisee not later than 30 days after  
12          notification was given pursuant to section 104),  
13          during the 90-day period after notification was  
14          given pursuant to section 104—

15                 “(i) made a bona fide offer to sell,  
16                 transfer, or assign to the franchisee the in-  
17                 terest of the franchisor in any improve-  
18                 ments or equipment located on the prem-  
19                 ises; or

20                 “(ii) if applicable, offered the  
21                 franchisee a right of first refusal (for at  
22                 least 45 days) of an offer, made by another  
23                 person, to purchase the interest of the  
24                 franchisor in the improvements and equip-  
25                 ment.”.

1 **SEC. 4. WAIVER OF RIGHTS.**

2 Section 105 of the Petroleum Marketing Practices  
3 Act (15 U.S.C. 2805) is amended by adding at the end  
4 the following new subsection:

5 “(f)(1) No franchisor shall require, as a condition of  
6 entering into or renewing the franchise relationship, a  
7 franchisee to release or waive—

8 “(A) any right that the franchisee has under  
9 this title or other Federal law; or

10 “(B) any right that the franchisee may have  
11 under any valid and applicable State law.

12 “(2) No provision of any franchise shall be valid or  
13 enforceable if the provision specifies that the interpreta-  
14 tion or enforcement of the franchise shall be governed by  
15 the law of any State other than the State in which the  
16 franchisee has the principal place of business of the  
17 franchisee.”.

18 **SEC. 5. PREEMPTION.**

19 Section 106 of the Petroleum Marketing Practices  
20 Act (15 U.S.C. 2806) is amended—

21 (1) in subsection (a)—

22 (A) by inserting “(1)” after “(a)”; and

23 (B) by adding at the end the following new  
24 paragraphs:

1       ~~“(2) Nothing in this title shall limit the ability of a~~  
 2 ~~State or any political subdivision of a State to regulate~~  
 3 ~~any specific provision of a franchise.~~

4       ~~“(3) (2) No State or political subdivision of a State~~  
 5 ~~may adopt, enforce, or continue in effect any provision of~~  
 6 ~~law (including a regulation) that requires a payment for~~  
 7 ~~the goodwill of a franchisee on the termination of a fran-~~  
 8 ~~chise or nonrenewal of a franchise relationship authorized~~  
 9 ~~by this title.”; and~~

10               (2) in subsection (b)—

11                       (A) by inserting “(1)” after “(b)”; and

12                       (B) by adding at the end the following new  
 13 paragraph:

14       “(2) Nothing in this title shall prohibit any State  
 15 from specifying the terms and conditions under which any  
 16 franchise or franchise relationship may be transferred to  
 17 the designated successor of a franchisee upon the death  
 18 of the franchisee.”.

19 **SEC. 6. DEFINITION OF FAILURE.**

20       *Section 101(13) of the Petroleum Marketing Practices*  
 21 *Act (15 U.S.C. 2901(13)), is amended—*

22                       (1) by striking “or” at the end of (A);

23                       (2) by deleting “.” and inserting “; or” at the  
 24 end of (B); and adding the following new subsection:

1                   “(C) any failure based on a provision of the  
2                   franchise which is illegal or unenforceable under  
3                   the law of any State (or subdivision thereof).”.