

Chapter 19.120 RCW
GASOLINE DEALER BILL OF RIGHTS ACT

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RCW 19.120.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communication media published in connection with an offer or sale of a franchise.

(2) "Affiliate" means any person, firm, or corporation who controls or is controlled by any motor fuel refiner-supplier, and includes any subsidiary or affiliated corporation in which the motor fuel refiner-supplier or its shareholders, officers, agents, or employees hold or control more than twenty-five percent of the voting shares.

(3) "Community interest" means a continuing financial interest between the motor fuel refiner-supplier and motor fuel retailer in the operation of the franchise business.

(4) "Motor fuel" means gasoline or diesel fuel of a type distributed for use in self-propelled motor vehicles and includes gasohol.

(5) "Motor fuel franchise" means any oral or written contract, either expressed or implied, between a motor fuel refiner-supplier and motor fuel retailer under which the motor fuel retailer is supplied

motor fuel for resale to the public under a trademark owned or controlled by the motor fuel refiner-supplier or for sale on commission or for a fee to the public, or any agreements between a motor fuel refiner-supplier and motor fuel retailer under which the retailer is permitted to occupy premises owned, leased, or controlled by the refiner-supplier for the purpose of engaging in the retail sale of motor fuel under a trademark owned or controlled by the motor fuel refiner-supplier supplied by the motor fuel refiner-supplier.

(6) "Motor fuel refiner-supplier" means any person, firm, or corporation, including any affiliate of the person, firm, or corporation, engaged in the refining of crude oil into petroleum who supplies motor fuel for sale, consignment, or distribution through retail outlets.

(7) "Motor fuel retailer" means a person, firm, or corporation that resells motor fuel entirely at one or more retail motor fuel outlets pursuant to a motor fuel franchise entered into with a refiner-supplier.

(8) "Offer or offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a franchise or an interest in a franchise.

(9) "Person" means a natural person, corporation, partnership, trust, or other entity and in the case of an entity, it shall include any other entity which has a majority interest in such an entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each such entity.

(10) "Price" means the net purchase price, after adjustment for commission, brokerage, rebate, discount, services or facilities furnished, or other such adjustment.

(11) "Publish" means publicly to issue or circulate by newspaper, mail, radio, or television or otherwise to disseminate to the public.

(12) "Retail motor fuel outlet" means any location where motor fuel is distributed for purposes other than resale.

(13) "Sale or sell" includes every contract of sale, contract to sell, or disposition of a franchise.

(14) "Trademark" means any trademark, trade name, service mark, or other identifying symbol or name. [1989 c 11 § 3; 1986 c 320 § 1.]

Severability—1989 c 11: See note following RCW 9A.56.220.

RCW 19.120.020 Sale of franchise to third party.

Notwithstanding the terms of any motor fuel franchise, a motor fuel refiner-supplier shall not absolutely prohibit or unreasonably withhold its consent to any sale, assignment, or other transfer of the motor fuel franchise by a motor fuel retailer to a third party without fairly compensating the motor fuel retailer for the fair market value, at the time of expiration of the franchise, of the motor fuel retailer's inventory, supplies, equipment, and furnishings purchased from the motor fuel refiner-supplier, and good will, exclusive of personalized materials which have no value to the motor fuel refiner-supplier, and inventory, supplies, equipment, and furnishings not reasonably required in the conduct of the franchise business. A motor fuel refiner-supplier may offset against amounts owed to a motor fuel retailer under this section any amounts owed by the motor fuel retailer to the motor fuel refiner-supplier. [1986 c 320 § 3.]

RCW 19.120.030 Sale of franchise to corporation.

Notwithstanding the terms of any motor fuel franchise, no motor fuel refiner-supplier may prohibit or prevent the sale, assignment, or other transfer of the motor fuel franchise to a corporation in which the motor fuel retailer has and maintains a controlling interest if the motor fuel retailer offers in writing personally to guarantee the performance of the obligations under the motor fuel franchise. [1986 c 320 § 4.]

RCW 19.120.040 Franchise considered personal property—

Designated successor in interest. Notwithstanding the terms of any motor fuel franchise, the interest of a motor fuel retailer under such an agreement shall be considered personal property and shall devolve on the death of the motor fuel retailer to a designated successor in interest of the retailer, limited to the retailer's spouse, adult child, or adult stepchild or, if no successor in interest is designated, to the retailer's spouse, if any. The designation shall be made, witnessed in writing by at least two persons, and delivered to the motor fuel refiner-supplier during the term of the franchise. The designation may be revised at any time by the motor fuel retailer and shall be substantially in the following form:

"I (motor fuel retailer name) at the service station located at, in the City of, Washington, designate as my successor in interest under RCW 19.120.030 and as my alternate successor if the originally designated successor is unable or unwilling so to act.

I so specify this day of, (year)"

The motor fuel refiner-supplier shall assist the designated successor in interest temporarily in the day-to-day operation of the service station to insure continued operation of the service station. [2016 c 202 § 22; 1986 c 320 § 5.]

RCW 19.120.050 Purchase of real estate and improvements owned by refiner-supplier—Retailer given right of first refusal—Notice to retailer.

Notwithstanding the terms of any motor fuel franchise, the motor fuel retailer shall be given the right of first refusal to purchase the real estate and/or improvements owned by the refiner-supplier at the franchise location, and at least thirty days' advance notice within which to exercise this right, prior to any sale thereof to any other buyer. [1986 c 320 § 6.]

RCW 19.120.060 Refiner-suppliers—Prohibited conduct.

Notwithstanding the terms of any motor fuel franchise, no motor fuel refiner-supplier may:

- (1) Require any motor fuel retailer to meet mandatory minimum sales volume requirements for fuel or other products unless the refiner-supplier proves that its price to the motor fuel retailer has been sufficiently low to enable the motor fuel retailer reasonably to meet the mandatory minimum;

(2) Alter, or require the motor fuel retailer to consent to the alteration of, any provision of the motor fuel franchise during its effective term without mutual consent of the motor fuel retailer;

(3) Interfere with any motor fuel retailer's right to assistance of counsel on any matter or to join or be active in any trade association; and

(4) Set or compel, directly or indirectly, the retail price at which the motor fuel retailer sells motor fuel or other products to the public. [1986 c 320 § 7.]

RCW 19.120.070 Offers, sales, or purchases of franchises—Unlawful acts. It is unlawful for any person in connection with the offer, sale, or purchase of any motor fuel franchise directly or indirectly:

(1) To sell or offer to sell a motor fuel franchise in this state by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made not misleading.

(2) To employ any device, scheme, or artifice to defraud.

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. [1986 c 320 § 8.]

RCW 19.120.080 Refiner-supplier and retailer relationship—Rights and prohibitions. Without limiting the other provisions of this chapter, the following specific rights and prohibitions shall govern the relation between the motor fuel refiner-supplier and the motor fuel retailers:

(1) The parties shall deal with each other in good faith.

(2) For the purposes of this chapter and without limiting its general application, it shall be an unfair or deceptive act or practice or an unfair method of competition and therefore unlawful and a violation of this chapter for any person to:

(a) Require a motor fuel retailer to purchase or lease goods or services of the motor fuel refiner-supplier or from approved sources of supply unless and to the extent that the motor fuel refiner-supplier satisfies the burden of proving that such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds, and do not substantially affect competition: PROVIDED, That this provision shall not apply to the initial inventory of the motor fuel franchise. In determining whether a requirement to purchase or lease goods or services constitutes an unfair or deceptive act or practice or an unfair method of competition the courts shall be guided by the decisions of the courts of the United States interpreting and applying the anti-trust laws of the United States.

(b) Discriminate between motor fuel retailers in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any other business dealing, unless and to the extent that the motor fuel refiner-supplier satisfies the burden of proving that any classification of or discrimination between motor fuel retailers is reasonable, is based on motor fuel franchises granted at materially different times and such discrimination is

reasonably related to such difference in time or on other proper and justifiable distinctions considering the purposes of this chapter, and is not arbitrary.

(c) Sell, rent, or offer to sell to a motor fuel retailer any product or service for more than a fair and reasonable price.

(d) Require a motor fuel retailer to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by this chapter. [2000 c 171 § 72; 1986 c 320 § 9.]

RCW 19.120.090 Action for damages, rescission, or other relief.

(1) Any person who sells or offers to sell a motor fuel franchise in violation of this chapter shall be liable to the motor fuel retailer or motor fuel refiner-supplier who may sue at law or in equity for damages caused thereby for rescission or other relief as the court may deem appropriate. In the case of a violation of RCW 19.120.070 rescission is not available to the plaintiff if the defendant proves that the plaintiff knew the facts concerning the untruth or omission or that the defendant exercised reasonable care and did not know or if he or she had exercised reasonable care would not have known of the untruth or omission.

(2) The suit authorized under subsection (1) of this section may be brought to recover the actual damages sustained by the plaintiff: PROVIDED, That the prevailing party may in the discretion of the court recover the costs of said action including a reasonable attorneys' fee.

(3) Any person who becomes liable to make payments under this section may recover contributions as in cases of contracts from any persons who, if sued separately, would have been liable to make the same payment.

(4) A final judgment, order, or decree heretofore or hereafter rendered against a person in any civil, criminal, or administrative proceedings under the United States anti-trust laws, under the federal trade commission act, or this chapter shall be regarded as evidence against such persons in any action brought by any party against such person under subsection (1) of this section as to all matters which said judgment or decree would be an estoppel between the parties thereto. [2011 c 336 § 567; 1986 c 320 § 10.]

RCW 19.120.100 Limitation period tolled. The pendency of any civil, criminal, or administrative proceedings against a person brought by the federal or Washington state governments or any of their agencies under the anti-trust laws, the Federal Trade Commission Act, or any federal or state act related to anti-trust laws or to franchising, or under this chapter shall toll the limitation of this action if the action is then instituted within one year after the final judgment or order in such proceedings: PROVIDED, That said limitation of actions shall in any case toll the law so long as there is actual concealment on the part of the person. [1986 c 320 § 11.]

RCW 19.120.110 Civil actions by retailers—Attorneys' fees. Any motor fuel retailer who is injured in his or her business by the commission of any act prohibited by this chapter, or any motor fuel retailer injured because of his or her refusal to accede to a proposal

for an arrangement which, if consummated, would be in violation of this chapter may bring a civil action in superior court to enjoin further violations, to recover the actual damages sustained by him or her, or both, together with the costs of the suit, including reasonable attorney's fees. [1986 c 320 § 12.]

RCW 19.120.120 Civil actions by attorney general—Attorneys' fees—Criminal actions not limited by chapter. (1) The attorney general may bring an action in the name of the state against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful. The prevailing party may in the discretion of the court recover the costs of such action including a reasonable attorneys' fee.

(2) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law. [1986 c 320 § 13.]

RCW 19.120.130 Exception or exemption—Burden of proof—Waiver of provisions of chapter void. In any proceeding under this chapter, the burden of proving an exception or an exemption from definition is upon the person claiming it. Any condition, stipulation or provision purporting to bind any person acquiring a motor fuel franchise at the time of entering into a motor fuel franchise or other agreement to waive compliance with any provision of this chapter or any rule or order hereunder is void. [1986 c 320 § 14.]

RCW 19.120.900 Short title. This chapter shall be known as the "gasoline dealer bill of rights act." [1986 c 320 § 19.]

RCW 19.120.901 Application of chapter. The provisions of this chapter apply to any motor fuel franchise or contract entered into or renewed on or after June 30, 1986, between a motor fuel refiner-supplier and a motor fuel retailer. [1986 c 320 § 15.]

RCW 19.120.902 Intent—Interpretation consistent with chapter 19.100 RCW. It is the intent of the legislature that this chapter be interpreted consistent with chapter 19.100 RCW. [1986 c 320 § 17.]

RCW 19.120.903 Liberal construction. This chapter shall be liberally construed to effectuate its beneficial purposes. [1986 c 320 § 18.]

RCW 19.120.905 Effective date—1986 c 320. (1) Sections 20 and 21 are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect immediately.

(2) Sections 1 through 19, 22 and 23 of this act shall take effect June 30, 1986. [1986 c 320 § 24.]

RCW 19.120.906 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 57.]