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Consumer Protection; franchising automobile service stations

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letter of credit or certificate of deposit is obtained, a statement that the buyer has a right to proceed against the fund;¹⁶ and (3) a statement that the buyer may cancel the contract for the services within 5 days after its execution by written notice mailed or delivered to the organization.¹⁷

A violation of Chapter 649 or a breach of the contract by the organization will result in the buyer being able to recover actual damages plus reasonable attorney's fees and costs.¹⁸ Chapter 649 adds that any waiver of the provisions of this act is contrary to public policy.¹⁹ Further, any attempt by an organization to have a buyer waive those rights is an unlawful act.²⁰

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16. *Id.*

17. *Id.* secs. 4, at ____; 5, at ____ (enacting NEV. REV. STAT. § 598.____). If notice is mailed, it must be postmarked not later than 5 days after the execution of the contract. *Id.*

18. *Id.* sec. 8, at ____ (enacting NEV. REV. STAT. § 598.____). The court also may award punitive damages. *Id.*

19. *Id.* sec. 7, at ____ (enacting NEV. REV. STAT. § 598.____) (provision is void and unenforceable).

20. *Id.* sec. 9, at ____ (enacting NEV. REV. STAT. § 598.____) (punishable as a misdemeanor).

Consumer Protection; franchising automobile service stations

NEV. REV. STAT. § 598.____ (new); §§ 598.650, 598.655, 598.660, 598.665, 598.670, 598.675, 598.680 (amended).
AB 420 (Nevin); 1987 STAT. Ch 796

Existing law regulates business dealings between suppliers¹ and service station operators.² Under Chapter 796, a refiner³ must not

1. See NEV. REV. STAT. § 598.650 3 (amended by 1987 Nev. Stat. ch. 796, sec. 16, at ____) (definition of a supplier).

2. NEV. REV. STAT. §§ 598.655 1-10 (amended by 1987 Nev. Stat. ch. 796, sec. 17, at ____). Suppliers are banned from: (1) interfering with the lawful exercise of the right to free association among service station operators and wholesale purchasers; (2) failing to act in good faith in performing or complying with any term or condition of a franchise agreement or contract with a wholesale purchaser; (3) terminating or cancelling a franchise or wholesale purchaser's contract without good cause; (4) using undue influence to compel a service station operator to surrender a right under a franchise agreement; (5) terminating or threatening to terminate a franchise because the operator failed to comply with a requirement to exclusively sell the supplier's product or goods when such a requirement would violate a United States or Nevada law, regulation, or rule; (6) changing or modifying restrictions on non-petroleum

directly or indirectly: (1) interfere with the lawful exercise of the right to free association among retailers⁴ and wholesale purchasers;⁵ (2) change or modify restrictions on a retailer's business activities during the period of a franchise agreement that are not associated with selling motor vehicle fuel or other petroleum products; (3) unreasonably reduce, limit, or curtail the supply of motor vehicle fuel or other petroleum products to any retailer or wholesale purchaser; or (4) place unreasonable restrictions on business activities of a retailer that are not unrelated to the selling of motor vehicle fuel or other petroleum products.⁶ Except as provided in Chapter 796, a refiner must not commence the direct operation of a service station or the sale of motor vehicle fuel at a service station⁷ after July 1, 1987.⁸ Furthermore, a refiner cannot engage in the direct operation of more than 15 service stations in Nevada after July 1, 1988.⁹

business activities during the period of a franchise agreement; (7) unreasonably reducing, limiting, or curtailing the supply of petroleum to operators and wholesale purchasers; (8) terminating a franchise for the sole reason of obtaining a profitable or successful service station for the supplier; (9) unreasonably restricting the non-petroleum business activities of an operator or purchaser; and (10) requiring all franchise agreements to be in writing and signed by all parties or their agents. *See id.* § 598.650 2 (amended by 1987 Nev. Stat. ch. 796, sec. 16, at ___) (definition of a service station). *See id.* § 598.650 4 (amended by 1987 Nev. Stat. ch. 796, sec. 16, at ___) (definition of a wholesale purchaser). *See id.* § 598.650 1 (amended by 1987 Nev. Stat. ch. 796, sec. 16, at ___) (definition of a franchise and franchise agreement).

3. A refiner is a person or affiliate who produced over 30 percent of the crude oil processed into motor vehicle fuel at a person's or an affiliate's refinery which has a total refinery capacity of over 175,000 barrels a day. 1987 Nev. Stat. ch. 796, sec. 8, at ___ (enacting NEV. REV. STAT. § 598.____). An affiliate is a person who controls, is controlled by, or is under common control with any other person. *Id.* sec. 2, at ___ (enacting NEV. REV. STAT. § 598.____). Control is the direct or indirect ownership or right to exercise a directing influence over more than 50 percent of the beneficial interest in any other person. *Id.* sec. 3, at ___ (enacting NEV. REV. STAT. § 598.____).

4. A retailer is a wholesale purchaser or a person operating a service station under a franchise agreement with a wholesale purchaser or a refiner. *Id.* sec. 10, at ___ (enacting NEV. REV. STAT. § 598.____ 1, 2). *Compare id. with* 1975 Nev. Stat. ch. 650, sec. 2, at 1280 (enacting NEV. REV. STAT. § 598.650 3).

5. Wholesale purchaser is any person who purchases motor vehicle fuel or other petroleum products from a refiner or other wholesaler for distribution to service stations or to individual or business consumers. 1987 Nev. Stat. ch. 796, sec. 12, at ___ (enacting NEV. REV. STAT. § 598.____). *Compare id. with* 1975 Nev. Stat. ch. 650, sec. 2, at 1280 (enacting NEV. REV. STAT. § 598.650 4).

6. 1987 Nev. Stat. ch. 796, sec. 17, at ___ (amending NEV. REV. STAT. § 598.655).

7. Chapter 796 expands the definition of a service station by requiring only that an establishment sell motor vehicle fuel to the general public. *Id.* sec. 11, at ___ (enacting NEV. REV. STAT. § 598.____). *Compare id. with* 1975 Nev. Stat. ch. 650, sec. 2, at 1280 (enacting NEV. REV. STAT. § 598.650 2).

8. 1987 Nev. Stat. ch. 796, sec. 13, at ___ (enacting NEV. REV. STAT. § 598.____).

9. *Id.* (enacting NEV. REV. STAT. § 598.____) (this limitation includes service stations operated not only by the refiner but the refiner's employees, subsidiaries, commissioned agents, or a person working for a fee).

Chapter 796, however, permits a refiner to operate a service station for a limited period if the retailer voluntarily terminates or agrees not to renew the franchise, or if the refiner terminates the franchise.¹⁰ In addition, Chapter 796 prohibits a refiner from directly or indirectly acting in bad faith during the performance of a franchise agreement or wholesale purchaser contract.¹¹ Similarly, Chapter 796 prevents the use of undue influence to induce a retailer to surrender rights contained in the franchise.¹²

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10. *Id.* (enacting NEV. REV. STAT. § 598.____) (not longer than ninety days). A refiner is permitted to sell motor vehicle fuel to other retailers within the marketing area of the temporarily operated service station but the price of the motor vehicle fuel may not be less than four cents below the retail price charged at the refiner's service station. *See id.* sec. 14, at ____ (enacting NEV. REV. STAT. § 598.____). A marketing area is the zone within a five mile radius of a franchise service station. *Id.* sec. 5, at ____ (enacting NEV. REV. STAT. § 598.____).

11. *Id.* sec. 15, at ____ (amending NEV. REV. STAT. § 598.____).

12. *Id.*

