

BUSINESS AND COMMERCE CODE

TITLE 5. REGULATION OF BUSINESSES AND SERVICES

SUBTITLE C. BUSINESS OPERATIONS

CHAPTER 104. RESTRICTIONS ON CHARGES BY MOTOR FUEL FRANCHISORS

Sec. 104.001. DEFINITIONS. In this chapter:

(1) "Franchise":

(A) includes:

(i) a contract under which a distributor or retailer is authorized to occupy marketing premises in connection with the sale, consignment, or distribution of motor fuel under a trademark owned or controlled by a franchisor-refiner or by a refiner who supplies motor fuel to a distributor who authorizes the occupancy;

(ii) a contract relating to the supply of motor fuel to be sold, consigned, or distributed under a trademark owned or controlled by a refiner; and

(iii) the unexpired portion of any franchise transferred or assigned under the franchise provisions or any applicable provision of state or federal law authorizing the transfer or assignment regardless of the franchise provisions; and

(B) does not include a contract:

(i) that is made in the distribution of motor fuels through a card-lock or key-operated pumping system; and

(ii) to which a refiner or producer of the motor fuel is not a party.

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

(3) "Franchisor" means a refiner or distributor who authorizes under a franchise the use of a trademark in connection with the sale, consignment, or distribution of motor fuel.

(4) "Motor fuel" includes diesel fuel and gasoline:

(A) delivered to a service station by a franchisor; and

(B) usable as a propellant of a motor vehicle.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.01,

eff. April 1, 2009.

Sec. 104.002. PROHIBITED FEES, CHARGES, AND DISCOUNTS. (a) For purposes of this section, wholesale price is computed by adding to the invoice price or purchase price per gallon charged to a franchisee who buys motor fuel any excise tax paid by the buyer and any reasonable freight charges paid by the buyer, and subtracting that portion of any refund, rebate, or subsidy not designed to offset the fee, charge, or discount described by this section.

(b) Except as provided by Subsection (c), a franchisor may not require a franchisee to pay to the franchisor a fee, charge, or discount for:

(1) honoring a credit card issued by the franchisor;
or

(2) submitting to the franchisor, for payment or credit to the franchisee's account, documents or other evidence of indebtedness of the holder of a credit card issued by the franchisor.

(c) A franchisor may require a franchisee to pay the fee, charge, or discount if the franchisor, in consideration of competitive prices in the relevant market, has adjusted the wholesale prices charged or rebates credited to franchisees for motor fuel by amounts that on average for franchisees in this state substantially offset the fee, charge, or discount.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.01, eff. April 1, 2009.

Sec. 104.003. CIVIL ACTION. (a) A franchisee may bring a civil action against a franchisor who violates Section [104.002](#), without regard to the amount in controversy, in the district court in any county in which the franchisor or franchisee transacts business. An action under this section must be commenced and prosecuted not later than the second anniversary of the date the cause of action accrues against the franchisor.

(b) The court shall award to a franchisee who prevails in an action under this section:

(1) the amount of actual damages;

(2) equitable relief as determined by the court to be necessary to remedy the effects of the franchisor's violation of Section [104.002](#), including a declaratory judgment, permanent injunctive relief, and temporary injunctive relief; and

(3) court costs and attorney's fees that are reasonable in relation to the amount of work expended.

(c) In addition to the remedies provided under Subsection (b), on finding that the defendant wilfully and knowingly committed the violation, the trier of fact shall award not more than three times the amount of actual damages.

(d) In an action under this section, the franchisor has the burden of establishing the offset described by Section [104.002](#) as an affirmative defense.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.01, eff. April 1, 2009.