

BUSINESS & PROFESSIONS CODE 21150.1
Hours of Operation

DIVISION 8. Special Business Regulations
CHAPTER 7.9. Hours of Business

Cal Bus & Prof Code @ 21150.1 (1993) @ 21150.1.
Franchisee's hours of operation; Applicability

- (a) In all future franchise agreements no retail gasoline dealer who operates pursuant to a franchise shall be required by the franchisor to operate the service station during hours that are not profitable to the franchisee, provided that the hours of operation that are maintained by the franchisee are for a continuing period of time.
- (b) In the event that the terms and conditions of the franchise require the franchisee to maintain hours of operation that the franchisee has determined in good faith to be unprofitable, the franchisee shall notify the franchisor in writing of his or her determination that a certain period or periods are not profitable and provide the franchisor with any statements, studies, analyses, summaries, business records, or other documents that the franchisee prepared or reviewed to determine that operation of the service station during the period or periods specified in the notice were unprofitable.
- (c) In the event that the franchisor in good faith is not satisfied that the operation of the service station is not profitable during the periods specified in the notice after the franchisor has reviewed the statements, studies, analyses, summaries, business records, or other documents submitted by the franchisee, the franchisor may prepare its own statements, studies, analyses, summaries, business records, or other documents regarding the profitability of operation of the service station during the period specified by the franchisee. The franchisee shall reimburse the franchisor for the actual cost incurred by the franchisor in preparing any statements, studies, analyses, summaries, business records, or other documents to verify the franchisee's determination that it is not profitable to operate during the period or periods specified in the notice, not to exceed the sum of three hundred dollars (\$ 300).
- (d) In the event that the franchisor and franchisee still do not agree regarding the profitability of certain hours of operation, the franchisor and franchisee shall conduct arbitration in accordance with the rules of the American Arbitration Association. The decision of the arbitrator shall be final.
- (e) The franchisee may establish and maintain the hours of operation of the service station without regard to the hours specified in the franchise:
 - (1) If the franchisor fails to notify the franchisee of his or her intent to prepare statements, studies, analyses, summaries, business records, or other documents to verify the franchisee's determination that it is not profitable to operate during the period or periods specified in the notice within 15 days after receipt of the franchisee's notice.

- (2) If the franchisor fails to complete the preparation of the statements, studies, analyses, summaries, business records, or other documents within 30 days after the receipt of notice from the franchisee.
- (3) If it is established pursuant to subdivisions (b) to (d), inclusive, that the operation of the service station is not profitable during the period or periods specified by the franchisee.
- (f) For the purposes of this section, the terms "unprofitable" and "not profitable" shall mean that the amount of the gross revenues generated by the sales of motor fuels and other petroleum products, as well as related automotive accessories, is less than the amount of the expenses incurred by the franchisee to operate during the period or periods the franchisee specified in the written notice, including the proportionate costs for rent, labor, or other fixed or variable overhead costs that may be reasonably allocated to the operation of the service station during the period or periods that the franchisee specified in the written notice.
- (g) This section shall not apply:
 - (1) Where specific hours of business or operation are required under the franchisor's prime lease or license from any governmental entity, airport, parking, marine or port authority, shopping center, or any private investor not affiliated with or controlled by the franchisor; or,
 - (2) Where the retail gasoline station subject to the franchise agreement is located within one-half mile access of any highway which is a part of the California freeway and expressway system, provided, however, that if there is not commercial property developed as a service station within one-half mile of an entry to or exit from any such highway, the exception shall extend to the first such development and extend one-quarter mile beyond in all directions. This section is also not applicable to any business which is not primarily a gasoline station, but which sells gasoline incidentally to its business.

HISTORY: Added Stats 1974 ch 1015 @ 1. Amended Stats 1976 ch 1001 @ 1; Stats 1982 ch 599 @ 1. NOTES: AMENDMENTS: 1976 Amendment: (1) Substituted "beyond the hour of 10 p.m. and prior to 6 a.m." for "at any time that an adequate supply of gasoline is not available" in the first paragraph; and (2) added the second paragraph. 1982 Amendment: (1) Designated the former first paragraph to be subd (a); (2) substituted "required by the franchisor to operate the service station during hours that are not profitable to the franchisee, provided that the hours of operation that are maintained by the franchisee are for a continuing period of time" for "precluded by the franchisor from establishing his own hours of business or operation beyond the hour of 10 p.m. and prior to 6 a.m." in subd (a); (3) added subds (b)--(f); (4) designated the former second paragraph to be subd (g); and (5) substituted "specific" for "different" in subd (g)(1).