

# HOUSE BILL 1208

I3, C2

8lr2636

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By: **Delegate Rudolph**

Introduced and read first time: February 8, 2008

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Gasoline Marketing - Zone Pricing Prohibited**

3 FOR the purpose of prohibiting a producer, refiner, wholesaler, or distributor of  
4 gasoline for retail sale from using certain pricing systems using a determination  
5 based on certain geographic locations or certain pricing systems with certain  
6 effects; prohibiting a producer, refiner, wholesaler, or distributor from  
7 discriminating in certain pricing of gasoline; requiring the disclosure and offer  
8 of certain discounts and rebates in a certain manner; providing for the  
9 construction of this Act; providing certain penalties for a violation of this Act;  
10 providing a certain exception to the application of this Act; making a stylistic  
11 correction; and generally relating to gasoline marketing practices.

12 BY repealing and reenacting, without amendments,  
13 Article – Business Regulation  
14 Section 10–313 and 10–324  
15 Annotated Code of Maryland  
16 (2004 Replacement Volume and 2007 Supplement)

17 BY repealing and reenacting, without amendments,  
18 Article – Commercial Law  
19 Section 11–204(a)(3), 11–301, and 11–304(a)  
20 Annotated Code of Maryland  
21 (2005 Replacement Volume and 2007 Supplement)

22 BY repealing and reenacting, with amendments,  
23 Article – Commercial Law  
24 Section 11–304(l) and (m)  
25 Annotated Code of Maryland  
26 (2005 Replacement Volume and 2007 Supplement)

27 BY adding to

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Commercial Law  
2 Section 11–304(m)  
3 Annotated Code of Maryland  
4 (2005 Replacement Volume and 2007 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article – Business Regulation**

8 10–313.

9 Each contractual relationship between a supplier and retail service station  
10 dealer shall conform to the Maryland Gasohol and Gasoline Products Marketing Act  
11 and the federal Petroleum Marketing Practices Act.

12 10–324.

13 Except as otherwise provided in this subtitle, a person who violates this subtitle  
14 or aids or assists in the violation of this subtitle is guilty of a misdemeanor and, on  
15 conviction, is subject to a fine not exceeding \$5,000 or imprisonment not exceeding 1  
16 year or both.

17 **Article – Commercial Law**

18 11–204.

19 (a) A person may not:

20 (3) Directly or indirectly discriminate in price among purchasers of  
21 commodities or services of like grade and quality, if the effects of the discrimination  
22 may:

23 (i) Substantially lessen competition;

24 (ii) Tend to create a monopoly in any line of trade or commerce;  
25 or

26 (iii) Injure, destroy, or prevent competition with any person who  
27 grants or knowingly receives the benefit of the discrimination or with customers of  
28 either of them;

29 11–301.

30 (a) In this subtitle the following words have the meanings indicated.

1 (b) "Controlled outlet" means an outlet which is operated by a distributor or  
2 operated by company employees, a subsidiary company, commissioned agent, or by  
3 any person who manages the outlet on a fee arrangement with the distributor.

4 (c) The distributor may not:

5 (1) Require the dealer to refuse credit card purchases of gasohol; or

6 (2) Provide that any credit card it issues may not be used for the  
7 purchase of gasohol.

8 (d) (1) "Dealer" means a person engaged in the retail sale of gasohol or  
9 gasoline products under a marketing agreement, at least 30 percent of whose gross  
10 revenue is derived from the retail sale of gasoline products.

11 (2) "Dealer" does not include an employee of a distributor.

12 (e) (1) "Distributor" means a person who:

13 (i) Engages in the sale, consignment, or distribution of gasohol  
14 or gasoline products through retail outlets which he owns or leases; and

15 (ii) Maintains an oral or written contractual relationship with a  
16 dealer for the sale of the products.

17 (2) "Distributor" includes any subsidiary or affiliated corporation in  
18 which a distributor holds at least 30 percent voting control.

19 (f) "Farm cooperative" means a cooperative organized under Subtitle 5 of  
20 Title 5 of the Corporations and Associations Article.

21 (g) "Gasoline products" includes gasohol.

22 (h) "Independent jobber" means an individual or corporation who purchases  
23 gasohol or gasoline products from a wholesaler for resale to a dealer.

24 (i) "Marketing agreement" means an oral or written agreement between a  
25 distributor and a dealer under which the dealer is granted the right, for the purpose of  
26 engaging in the retail sale of gasohol or gasoline products supplied by the distributor,  
27 to:

28 (1) Use a trademark, trade name, service mark, or other identifying  
29 symbol or name owned by the distributor; or

30 (2) Occupy premises owned, leased, or controlled by the distributor.

1 (j) "Person" includes an individual, corporation, business trust, estate, trust,  
2 partnership, association, two or more persons having a joint or common interest, or  
3 any other legal or commercial entity.

4 (k) "Retail sale" means the sale of a product for purposes other than resale.

5 11-304.

6 (a) Every marketing agreement is subject to the provisions of this section,  
7 whether or not expressly set forth in the agreement.

8 (l) (1) A distributor who sets the retail price of gasoline through  
9 controlled outlets shall provide those noncontrolled outlets that it supplies with  
10 gasoline products at a wholesale price of at least 4 cents per gallon under the lowest  
11 price posted for each grade of gasoline at any controlled outlet. Violation of this  
12 subsection constitutes price discrimination as prohibited by § 11-204(a)(3) of this  
13 [article] TITLE.

14 (2) The provisions of this [act] SUBSECTION do not apply to  
15 independent jobbers and farm cooperatives.

16 (M) (1) **A PRODUCER, REFINER, WHOLESALER, OR DISTRIBUTOR WHO**  
17 **FURNISHES GASOLINE TO A DEALER IN THE STATE MAY NOT USE A PRICING**  
18 **SYSTEM UNDER WHICH THE WHOLESALE PRICE PAID FOR THE GASOLINE BY THE**  
19 **DEALER IS DETERMINED BASED ON THE GEOGRAPHIC LOCATION OF THE**  
20 **DEALER IN ANY GEOGRAPHIC ZONE IN THE STATE, OR ANY OTHER SYSTEM THAT**  
21 **WOULD PREVENT DEALERS FROM PAYING LOWER PRICES ON AN EQUAL BASIS**  
22 **WITH OTHER DEALERS IN THE STATE.**

23 (2) (I) **THE PRODUCER, REFINER, WHOLESALER, OR**  
24 **DISTRIBUTOR MAY NOT DISCRIMINATE IN THE PRICE OF GASOLINE CHARGED TO**  
25 **DEALERS IN THE STATE, EXCEPT TO OFFER DISCOUNTS OR REBATES THAT MAY**  
26 **BE DETERMINED BY THE PRODUCER, REFINER, WHOLESALER, OR DISTRIBUTOR**  
27 **FROM TIME TO TIME.**

28 (II) **THE PRODUCER, REFINER, WHOLESALER, OR**  
29 **DISTRIBUTOR SHALL:**

30 1. **DISCLOSE THESE DISCOUNTS OR REBATES TO**  
31 **THE DEALERS; AND**

32 2. **OFFER THEM TO ALL OF ITS DEALERS ON EQUAL**  
33 **TERMS AND CONDITIONS.**

1                   **(III) WHEN OFFERED, THE DISCOUNTS OR REBATES AND THE**  
2 **TIME PERIOD FOR WHICH THEY ARE OFFERED SHALL BE LISTED AS A SEPARATE**  
3 **LINE ITEM ENTRY ON EACH INVOICE.**

4                   **(3) (I) THIS SUBSECTION MAY NOT BE CONSTRUED TO**  
5 **PREVENT A PRODUCER, REFINER, WHOLESALER, OR DISTRIBUTOR FROM**  
6 **CHARGING THE DEALER THE ACTUAL COST OF TRANSPORTING GASOLINE FROM**  
7 **A WHOLESALE TERMINAL OR OTHER DISTRIBUTION FACILITY TO THE DEALER.**

8                   **(II) THE TRANSPORTATION CHARGE SHALL BE LISTED AS A**  
9 **SEPARATE LINE ITEM ENTRY ON EACH INVOICE.**

10                   **(4) VIOLATION OF THIS SUBSECTION CONSTITUTES PRICE**  
11 **DISCRIMINATION AS PROHIBITED BY § 11-204(A)(3) OF THIS TITLE.**

12                   **(5) THIS SUBSECTION DOES NOT APPLY TO INDEPENDENT FARM**  
13 **COOPERATIVES.**

14                   **[(m)] (N) (1) A franchise created by a marketing agreement under this**  
15 **subtitle is personal property and shall devolve on death or retirement of a service**  
16 **station dealer to a designated successor in interest of the dealer, limited to the dealer's**  
17 **spouse, adult child, or adult stepchild.**

18                   **(2) (i) Subject to the distributor's approval which may not be**  
19 **unreasonably withheld, the successor dealer shall be granted a 1 year trial marketing**  
20 **agreement by the distributor, in the name of the successor dealer, under the same**  
21 **terms and conditions as were contained in the original agreement.**

22                   **(ii) In accordance with [§ 11-304(g) of this subtitle]**  
23 **SUBSECTION (G) OF THIS SECTION, during the period of the trial marketing**  
24 **agreement, and with the consent of the distributor, the successor dealer may:**

- 25                                   1.     Sell the business assets;
- 26                                   2.     Assign the marketing agreement; or
- 27                                   3.     Renew the marketing agreement under terms and
- 28 **conditions agreeable to the distributor and the successor dealer.**

29                   **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**  
30 **October 1, 2008.**