

SENATE BILL 858

I4, C2
SB 604/08 – FIN

9lr1465
CF 9lr2248

By: **Senators Pugh, DeGrange, Edwards, Exum, Gladden, Kasemeyer, King, Kramer, Miller, Peters, Rosapepe, and Stone**
Introduced and read first time: February 6, 2009
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law – Maryland Gasohol and Gasoline Products Marketing Act –**
3 **Marketing Premises**

4 FOR the purpose of prohibiting a refiner under the Maryland Gasohol and Gasoline
5 Products Marketing Act from selling, transferring, or assigning to another
6 person the refiner's fee simple or leasehold interest in certain premises leased to
7 a dealer unless the refiner makes certain offers of the refiner's interest to the
8 dealer; requiring a certain person that acquires a refiner's interest in certain
9 marketing premises to maintain a certain lease and offer a certain new lease
10 before a certain date; providing that this Act does not prohibit a refiner from
11 requiring a dealer to enter into a certain supply agreement as a condition to the
12 sale of the refiner's interest to the dealer; defining certain terms; providing for
13 the application of this Act; and generally relating to the Maryland Gasohol and
14 Gasoline Products Marketing Act.

15 BY renumbering

16 Article – Commercial Law
17 Section 11–301(k)
18 to be Section 11–301(l)
19 Annotated Code of Maryland
20 (2005 Replacement Volume and 2008 Supplement)

21 BY repealing and reenacting, without amendments,

22 Article – Commercial Law
23 Section 11–301(a) and 11–304(a)
24 Annotated Code of Maryland
25 (2005 Replacement Volume and 2008 Supplement)

26 BY adding to

27 Article – Commercial Law

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 11-301(k) and 11-304(n)
2 Annotated Code of Maryland
3 (2005 Replacement Volume and 2008 Supplement)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
5 MARYLAND, That Section(s) 11-301(k) of Article – Commercial Law of the Annotated
6 Code of Maryland be renumbered to be Section(s) 11-301(l).

7 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
8 read as follows:

9 **Article – Commercial Law**

10 11-301.

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

12 (K) **“REFINER” MEANS A PERSON WHO OWNS, OPERATES, OR CONTROLS**
13 **THE OPERATIONS OF A REFINERY.**

14 11-304.

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

17 (N) (1) (I) **IN THIS SUBSECTION THE FOLLOWING WORDS HAVE**
18 **THE MEANINGS INDICATED.**

19 (II) **“BOOK VALUE” MEANS ACTUAL COST LESS ACTUAL**
20 **DEPRECIATION TAKEN.**

21 (III) **“MARKETING PREMISES” MEANS THE PREMISES THAT**
22 **ARE USED BY A DEALER IN CONNECTION WITH THE SALE, CONSIGNMENT, OR**
23 **DISTRIBUTION OF MOTOR FUEL.**

24 (2) **THIS SUBSECTION DOES NOT APPLY TO TRANSACTIONS**
25 **OTHERWISE COVERED UNDER THE FEDERAL PETROLEUM MARKETING**
26 **PRACTICES ACT.**

27 (3) **IF A REFINER OWNS A FEE SIMPLE INTEREST IN MARKETING**
28 **PREMISES LEASED TO A DEALER, THE REFINER MAY NOT SELL, TRANSFER, OR**
29 **ASSIGN TO ANOTHER PERSON THE REFINER’S INTEREST IN THE MARKETING**
30 **PREMISES UNLESS THE REFINER:**

31 (I) **MAKES A BONA FIDE OFFER BASED ON FAIR MARKET**
32 **VALUE TO SELL, TRANSFER, OR ASSIGN TO THE DEALER THE REFINER’S**

1 INTEREST IN THE MARKETING PREMISES, EXCEPT FOR SIGNS DISPLAYING THE
2 INSIGNIA OR ANY OTHER TRADEMARK, SERVICE MARK, COPYRIGHT, OR
3 PATENTED EQUIPMENT OF THE REFINER; OR

4 (II) IF APPLICABLE, OFFERS A RIGHT OF FIRST REFUSAL TO
5 THE DEALER OF ANY BONA FIDE OFFER BASED ON FAIR MARKET VALUE
6 ACCEPTABLE TO THE REFINER MADE BY ANOTHER PERSON TO PURCHASE THE
7 REFINER'S INTEREST IN THE MARKETING PREMISES.

8 (4) IF A REFINER LEASES MARKETING PREMISES FROM A THIRD
9 PARTY AND SUBLEASES THE MARKETING PREMISES TO A DEALER, THE REFINER
10 MAY NOT SELL, TRANSFER, OR ASSIGN TO ANOTHER PERSON THE REFINER'S
11 INTEREST IN THE THIRD PARTY LEASE UNLESS THE REFINER:

12 (I) 1. MAKES A BONA FIDE OFFER BASED ON FAIR
13 MARKET VALUE TO SELL, TRANSFER, OR ASSIGN TO THE DEALER THE REFINER'S
14 INTEREST IN THE THIRD PARTY LEASE; AND

15 2. MAKES A BONA FIDE OFFER TO SELL, TRANSFER,
16 OR ASSIGN TO THE DEALER THE REFINER'S INTEREST IN ANY IMPROVEMENTS
17 OR EQUIPMENT OWNED BY THE REFINER AND LOCATED ON THE MARKETING
18 PREMISES, EXCEPT FOR SIGNS DISPLAYING THE INSIGNIA OR ANY OTHER
19 TRADEMARK, SERVICE MARK, COPYRIGHT, OR PATENTED EQUIPMENT OF THE
20 REFINER, AT A PRICE NOT EXCEEDING THE GREATER OF THE FAIR MARKET
21 VALUE OR THE BOOK VALUE OF THE IMPROVEMENTS AND EQUIPMENT; OR

22 (II) IF APPLICABLE, OFFERS A RIGHT OF FIRST REFUSAL TO
23 THE DEALER OF ANY BONA FIDE OFFER ACCEPTABLE TO THE REFINER MADE BY
24 ANOTHER PERSON TO ACQUIRE THE REFINER'S INTEREST IN THE THIRD PARTY
25 LEASE AND THE IMPROVEMENTS AND EQUIPMENT LOCATED AT THE MARKETING
26 PREMISES.

27 (5) (I) IF A REFINER SELLS, TRANSFERS, OR ASSIGNS TO A
28 PERSON THAT IS NOT A DEALER THE REFINER'S FEE SIMPLE OR LEASEHOLD
29 INTEREST IN MARKETING PREMISES THAT ARE LEASED TO A DEALER, THE
30 PERSON THAT ACQUIRES THE INTEREST SHALL:

31 1. MAINTAIN THE LEASE WITH THE DEALER IN
32 EFFECT AT THE TIME OF THE SALE, TRANSFER, OR ASSIGNMENT, SUBJECT TO
33 ANY CHANGES MADE BY MUTUAL AGREEMENT OF THE DEALER AND THE PERSON
34 THAT ACQUIRES THE REFINER'S INTEREST; AND

35 2. BEFORE THE EXPIRATION OF THE LEASE, OFFER
36 THE DEALER A NEW LEASE OF AT LEAST THE SAME DURATION.

1 **(II) A LEASE OFFERED TO A DEALER UNDER**
2 **SUBPARAGRAPH (I)2 OF THIS PARAGRAPH MAY NOT REQUIRE THE DEALER TO**
3 **ENGAGE IN A BUSINESS PRACTICE THAT THE DEALER REASONABLY BELIEVES IS**
4 **NOT PROFITABLE.**

5 **(6) NOTHING IN THIS SUBSECTION PROHIBITS A REFINER FROM**
6 **REQUIRING A DEALER TO ENTER INTO A COMMERCIALY REASONABLE SUPPLY**
7 **AGREEMENT AS A CONDITION TO THE SALE OF THE REFINER'S INTEREST IN THE**
8 **MARKETING PREMISES TO THE DEALER, PROVIDED THAT THE SUPPLY**
9 **AGREEMENT:**

10 **(I) IS NONDISCRIMINATORY;**

11 **(II) IS CONSISTENT WITH OBJECTIVE AND SUBJECTIVE**
12 **STANDARDS OF GOOD FAITH; AND**

13 **(III) PROVIDES FOR THE SALE OF PETROLEUM PRODUCT TO**
14 **THE DEALER AT WHOLESALE PRICES.**

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act applies to all
16 offers of bulk transfers of service stations on or after January 1, 2009.

17 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 July 1, 2009.