SB 858

Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 858 (Senator Pugh, *et al.*)
Finance

Commercial Law - Maryland Gasohol and Gasoline Products Marketing Act - Marketing Premises

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This bill restricts the ability of refiners of gasoline products to sell, transfer, or assign a fee simple or leasehold interest in a "marketing premises" that is leased to a dealer unless specified conditions are met.

The bill takes effect July 1, 2009, and applies to all offers of bulk transfers of service stations on or after January 1, 2009.

Fiscal Summary

State Effect: The bill does not directly affect State finances or operations.

Local Effect: The bill does not directly affect local finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill defines a "refiner" as a person who owns, operates, or controls the operations of a refinery. The bill does not apply to transactions otherwise covered under the federal Petroleum Marketing Practices Act (PMPA).

The bill prohibits refiners of gasoline products from selling, transferring, or assigning a fee simple interest in a marketing premises that is leased to a dealer (the retail seller of these products) unless the refiner makes a bona fide, fair market value offer to sell, transfer, or assign the interest to the dealer; or if applicable, offers a right of first refusal to the dealer of another person's purchase offer.

A refiner who leases a marketing premises from a third party and subleases it to a dealer is prohibited from selling, transferring, or assigning an interest in the lease unless the refiner (1) makes a bona fide, fair market value offer to sell, transfer, or assign that interest to the dealer, along with any interest in improvements or equipment, at a price not exceeding the greater of the fair market value or the book value of improvements and equipment; or (2) if applicable, offers a right of first refusal to the dealer of another person's purchase offer.

If a refiner sells, transfers, or assigns the refiner's interest in the marketing premises to a person other than a dealer, the acquiring person must:

- maintain the lease with the dealer in effect at the time of the sale, transfer, or assignment, subject to changes made by mutual agreement; and
- before the expiration of the lease, offer the dealer a new lease of at least the same duration.

A new lease offered by the purchaser to the dealer leasing the marketing premises cannot require the dealer to engage in business practices that are not economically viable. The bill does not prohibit a refiner from requiring a dealer to enter into a commercially reasonable supply agreement as a condition to the sale of the refiner's interest in the marketing premises to the dealer. However, the supply agreement must be nondiscriminatory, executed in good faith, and provide for the sale of petroleum at wholesale prices.

Current Law/Background: A refiner's obligation toward a dealer when disposing of its interests in a marketing premises (such as a retail filling station) is not specifically governed by State statutory law. The Maryland Gasohol and Gasoline Products Marketing Act, created in response to the oil crises of the 1970s, defines the relationships and responsibilities of the parties to certain agreements pertaining to petroleum product marketing arrangements. A person who violates a provision of the Act is liable for damages caused by the violation and is subject to any other legal or equitable remedies available to the party injured by the violation.

The federal Petroleum Marketing Practices Act prohibits any franchisor engaged in the sale, consignment, or distribution of petroleum from terminating a franchise prior to the conclusion of the term, or the expiration date stated in the franchise agreement. PMPA also prohibits a franchisor from failing to renew a franchise relationship without regard to the date on which the franchise was entered into or renewed. However, PMPA allows a franchisor to terminate or fail to renew a franchise agreement if specified notification requirements and grounds for termination are met.

Small Business Effect: Both small independent jobbers and small independent dealers may be affected by the bill's provisions in their respective abilities to purchase the rights to new premises or retain existing premises.

Additional Information

Prior Introductions: A similar bill was introduced as HB 777 in 2008 session but was subsequently withdrawn.

Cross File: HB 1100 (Delegate Love, *et al.*) - Economic Matters.

Information Source(s): Department of Legislative Services

Fiscal Note History:	First Reader - March 4, 2009
mcp/ljm	Revised - Clarification - March 30, 2009

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