S T A T E O F N E W Y O R K

6036--B

R. R. 281

2009-2010 Regular Sessions

I N A S S E M B L Y

February 24, 2009

Introduced by M. of A. KOON, BENJAMIN, SCHIMEL, GUNTHER, ZEBROWSKI, MAISEL, PERRY, McDONOUGH -- Multi-Sponsored by -- M. of A. ABBATE, ALESSI, GALEF, HOOPER, LIFTON, MAGEE, M. MILLER, PHEFFER, REILLY, SWEENEY, THIELE -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry -- recommitted to the Committee on Economic Development, Job Creation, Commerce and Industry in accordance with Assembly Rule 3, sec. 2 -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the general business law, in relation to prohibiting a producer or refiner from selling, transferring, or assigning interest in a retail outlet leased to a dealer unless the producer or refiner makes certain offers of the producer's or refiner's interest to such dealer

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The general business law is amended by adding a new article 24-D to read as follows:

ARTICLE 24-D

SALE OR TRANSFER OF GASOLINE RETAIL OUTLETS

SECTION 375. SALE OR TRANSFER OF GASOLINE RETAIL OUTLETS.

S 375. SALE OR TRANSFER OF GASOLINE RETAIL OUTLETS. (A) FOR THE PURPOSES OF THIS SECTION:

(1) "PRODUCER" MEANS A PERSON WHO PURCHASES COMPONENT ELEMENTS AND COMBINES THEM TO PRODUCE GASOLINE PRODUCTS.

(2) "BOOK VALUE" MEANS ACTUAL COST LESS ACTUAL DEPRECIATION TAKEN.

(3) "DEALER" MEANS ANY PERSON, OTHER THAN A REFINER OR WHOLESALER, WHO IS ENGAGED IN THE BUSINESS OF SELLING MOTOR FUEL AT A RETAIL OUTLET.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(4) "REFINER" MEANS ANY PERSON WHO PRODUCES AND STORES OR EXCHANGES MOTOR FUEL AT A TERMINAL FACILITY AND WHO SELLS OR TRANSFERS MOTOR FUEL THROUGH THE LOADING RACK AT SUCH TERMINAL FACILITY, AND INCLUDES AN AFFILIATE OF SUCH REFINER WITH RESPECT TO SUCH AFFILIATE'S SALE OF MOTOR FUEL.

(5) "RETAIL OUTLET" MEANS A FACILITY, INCLUDING LAND AND IMPROVEMENTS, WHERE MOTOR FUEL IS OFFERED FOR SALE AT RETAIL TO THE PUBLIC.

(B)(1) EVERY MARKETING AGREEMENT BETWEEN A REFINER OR PRODUCER AND A DEALER IS SUBJECT TO THE PROVISIONS OF THIS SECTION, WHETHER OR NOT EXPRESSLY SET FORTH OR STATED IN SUCH AGREEMENT.

(2) THIS SECTION SHALL NOT APPLY TO TRANSACTIONS OTHERWISE COVERED UNDER THE FEDERAL PETROLEUM MARKETING PRACTICES ACT.

(C) IF A PRODUCER OR A REFINER OWNS A FEE SIMPLE INTEREST IN A RETAIL OUTLET LEASED TO A DEALER, THE PRODUCER OR REFINER MAY NOT SELL, TRANSFER, OR ASSIGN TO ANOTHER PERSON THE PRODUCER'S OR REFINER'S INTEREST IN THE RETAIL OUTLET UNLESS THE PRODUCER OR REFINER:

(1) MAKES A BONA FIDE OFFER TO SELL, TRANSFER, OR ASSIGN TO THE DEALER THE PRODUCER'S OR REFINER'S INTEREST IN THE RETAIL OUTLET, EXCEPT FOR SIGNS DISPLAYING THE INSIGNIA OR ANY OTHER TRADEMARK, SERVICE MARK, COPYRIGHT, OR PATENTED EQUIPMENT OF THE PRODUCER OR REFINER; OR

(2) IF APPLICABLE, OFFERS A RIGHT OF FIRST REFUSAL TO THE DEALER OF ANY BONA FIDE OFFER ACCEPTABLE TO THE PRODUCER OR REFINER MADE BY ANOTHER PERSON TO PURCHASE THE PRODUCER'S OR REFINER'S INTEREST IN THE RETAIL OUTLET.

(D) IF A PRODUCER OR REFINER LEASES A RETAIL OUTLET FROM A THIRD PARTY AND SUBLEASES THE RETAIL OUTLET TO A DEALER, THE PRODUCER OR REFINER MAY NOT SELL, TRANSFER, OR ASSIGN TO ANOTHER PERSON THE PRODUCER'S OR REFINER'S INTEREST IN THE THIRD PARTY LEASE UNLESS THE PRODUCER OR REFINER:

(1)(I) MAKES A BONA FIDE OFFER TO SELL, TRANSFER, OR ASSIGN TO THE DEALER THE PRODUCER'S OR REFINER'S INTEREST IN THE THIRD PARTY LEASE; AND

(II) MAKES A BONA FIDE OFFER TO SELL, TRANSFER, OR ASSIGN TO THE DEALER THE PRODUCER'S OR REFINER'S INTEREST IN ANY IMPROVEMENTS OR EQUIPMENT OWNED BY THE PRODUCER OR REFINER AND LOCATED AT THE RETAIL OUTLET, EXCEPT FOR SIGNS DISPLAYING THE INSIGNIA OR ANY OTHER TRADEMARK, SERVICE MARK, COPYRIGHT, OR PATENTED EQUIPMENT OF THE PRODUCER OR REFINER, AT A PRICE NOT EXCEEDING THE GREATER OF THE FAIR MARKET VALUE OR THE BOOK VALUE OF THE IMPROVEMENTS AND EQUIPMENT; OR

(2) IF APPLICABLE, OFFERS A RIGHT OF FIRST REFUSAL TO THE DEALER OF ANY BONA FIDE OFFER ACCEPTABLE TO THE PRODUCER OR REFINER MADE BY ANOTHER PERSON TO ACQUIRE THE PRODUCER'S OR REFINER'S INTEREST IN THE THIRD PARTY LEASE AND THE IMPROVEMENTS AND EQUIPMENT LOCATED AT THE RETAIL OUTLET.

S 2. This act shall take effect immediately; provided, however, that nothing in this act shall be construed to affect any retail outlet where the title to such retail outlet was transferred by the producer or refiner, or a contract of sale or lease of such retail outlet was entered into prior to the date this act shall have become a law.