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

3653

2009-2010 Regular Sessions

I N S E N A T E

March 26, 2009

Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to establishing minimum distances in which a refiner may operate a retail service station; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. Section 199-a of the general business law is amended by adding a new subdivision 6 to read as follows:

6. "REFINER" MEANS ANY PERSON WHO IS ENGAGED IN THE PRODUCTION OR REFINING OF CRUDE OIL TO PRODUCE MOTOR FUEL WHETHER SUCH REFINING OR PRODUCTION OCCURS IN THIS STATE OR ELSEWHERE, AND INCLUDES ANY AFFILIATE OF SUCH PERSON.

S 2. The general business law is amended by adding a new section 199-o to read as follows:

S 199-O. REFINERS OPERATING RETAIL SERVICE STATIONS; DISTANCE LIMITATIONS. 1. NO REFINER WITH A FRANCHISE AGREEMENT WITH A RETAIL SERVICE STATION DEALER OR DISTRIBUTOR SHALL OPERATE A RETAIL SERVICE STATION WITH COMPANY PERSONNEL EMPLOYED BY SUCH REFINER OR EMPLOYED BY A PARENT COMPANY OF SUCH REFINER OR WITH ANY PERSON, FIRM OR CORPORATION MANAGING A RETAIL SERVICE STATION ON A COMMISSION FEE ARRANGEMENT UNDER CONTRACT WITH THE REFINER WHERE SUCH REFINER RETAINS OWNERSHIP OF THE MOTOR FUEL WITHIN THE FOLLOWING DISTANCES AS MEASURED BY THE MOST DIRECT SURFACE TRANSPORTATION DISTANCE FROM THE DEALER FRANCHISEE:

A. IN CITIES WITH A POPULATION OF ONE MILLION OR MORE, ONE MILE.

B. IN COUNTIES WITH A POPULATION OF NINE HUNDRED THOUSAND OR MORE NOT WHOLLY CONTAINED WITHIN A CITY, ONE AND ONE-HALF MILES.

C. FOR ALL OTHER COUNTIES, TWO MILES.

2. THE DISTANCE LIMITATIONS ESTABLISHED IN SUBDIVISION ONE OF THIS SECTION SHALL NOT BE APPLICABLE:

A. TO A RETAIL SERVICE STATION WHICH IS TO BE LOCATED ON THE OPPOSITE SIDE OF A DIVIDED HIGHWAY FROM AN EXISTING DEALER OR DISTRIBUTOR FRANCHISEE RETAIL SERVICE STATION. A DIVIDED HIGHWAY, FOR PURPOSES OF THIS

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

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SECTION, SHALL CONSIST OF TWO OR MORE ROADWAYS, WHICH ARE THIRTY FEET OR MORE APART AND TO WHICH ACCESS AND EGRESS IS CONTROLLED OR TO WHICH ACCESS OR EGRESS IS CONTROLLED FROM ENTRANCES THERETO OR EXITS THEREFROM;

B. TO A RETAIL SERVICE STATION WHICH IS TO BE LOCATED ON THE OPPOSITE SIDE OF A NATURAL PHYSICAL BARRIER SUCH AS A NAVIGABLE BODY OF WATER WHICH PROVIDES A GEOGRAPHIC SEPARATION FROM AN EXISTING DEALER OR DISTRIBUTOR FRANCHISEE RETAIL SERVICE STATION; OR

C. TO A RETAIL SERVICE STATION WHICH IS TO BE LOCATED ON PROPERTY THE TITLE TO WHICH IS IN THE STATE OF NEW YORK OR AN INDIAN TRIBE.

3. A REFINER OR A DEALER OR DISTRIBUTOR FRANCHISEE MAY MAKE AN APPLICATION TO AN ARBITRATOR, WHO SHALL BE APPOINTED WITH THE CONSENT OF BOTH PARTIES, TO DETERMINE ANY DISPUTE ARISING OUT OF THE APPLICABILITY OF ANY OF THE EXEMPTIONS PROVIDED IN SUBDIVISION TWO OF THIS SECTION. ANY ARBITRATION FEES SHALL BE EQUALLY DIVIDED AMONG THE PARTIES TO THE ARBITRATION, AND SHALL OTHERWISE BE GOVERNED BY THE PROVISIONS OF SECTION ONE HUNDRED NINETY-NINE-G OF THIS ARTICLE.

4. THE EFFECT OF THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION MAY NOT BE MODIFIED OR DISCLAIMED BY ANY AGREEMENT, WHETHER WRITTEN OR ORAL, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR AGREEMENT OR BY A PRIOR COURSE OF DEALING OR USAGE OF TRADE. HOWEVER, NOTHING IN THIS ARTICLE SHALL PROHIBIT A REFINER FROM OPERATING AN EXISTING RETAIL SERVICE STATION WITH COMPANY PERSONNEL EMPLOYED BY SUCH REFINER OR EMPLOYED BY A PARENT COMPANY OF SUCH REFINER OR WITH ANY PERSON, FIRM OR CORPORATION MANAGING A RETAIL SERVICE STATION ON A COMMISSION FEE ARRANGEMENT UNDER CONTRACT WITH THE REFINER WHERE THE REFINER RETAINS OWNERSHIP OF THE MOTOR FUEL, PROVIDED THAT SUCH RETAIL SERVICE STATION WAS:

A. SOLD FOR FAIR COMPENSATION TO SUCH REFINER BY THE DEALER OR DISTRIBUTOR FRANCHISEE. "FAIR COMPENSATION," FOR THE PURPOSES OF THIS SUBDIVISION, SHALL INCLUDE, BUT NOT BE LIMITED TO, GOOD WILL OF THE DEALER OR DISTRIBUTOR FRANCHISEE WHICH MAY NOT BE FIXED OR OTHERWISE DETERMINED IN THE FRANCHISE OR LEASE AGREEMENT BETWEEN THE REFINER AND THE DEALER OR DISTRIBUTOR FRANCHISEE; OR

B. THE SUBJECT OF AN AGREEMENT WHICH, PROVIDES THAT FOR FAIR COMPENSATION, THE DEALER OR DISTRIBUTOR FRANCHISEE AGREES IN WRITING THAT THE REFINER MAY LOCATE A RETAIL SERVICE STATION IN VIOLATION OF THE DISTANCE LIMITATIONS ESTABLISHED IN SUBDIVISION ONE OF THIS SECTION.

S 3. This act shall take effect immediately and shall expire and be deemed repealed three years after such effective date; provided, however, that the provisions of this act shall not apply to: (a) retail service stations operated by a refiner with company personnel employed by such refiner or employed by a parent company of such refiner or with any person, firm or corporation managing a retail service station on a commission fee arrangement under contract with the refiner where the refiner retains ownership of the motor fuel on the effective date of this act; (b) any retail service stations for which a refiner has applied for a building permit prior to the effective date of this act and for which construction commences within 90 days after the effective date of this act; and (c) any retail service stations acquired by a refiner in a single transaction involving the purchase of ten or more retail service stations and which are operated by a refiner with company personnel, employed by such refiner within 90 days after the effective date of this act.