

# HOUSE . . . . . No. 4385

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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An Act RELATIVE TO GASOLINE DEALERS..

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           section 1. chapter 93e of the general laws is hereby amended by striking out section 1, as  
2   appearing in the 2008 official edition, and inserting in place thereof the following section:-

3           “book value”, actual cost less actual depreciation taken.

4           “dealer”, any person who is not a petroleum supplier and who purchases gasoline and  
5   engages in the retail sale thereof under written agreements entered into with a petroleum  
6   supplier.

7           “marketing agreement”, any agreement either written or oral between a supplier and a  
8   retail dealer under which (1) the retail dealer promises to sell or distribute the produce or  
9   products of the supplier; (2) the retail dealer is granted the right to use a trademark, trade name,  
10   service mark or other identifying symbol or name owned by a manufacturer; or (3) the retail  
11   dealer is granted the right to occupy premises owned, leased or controlled by a supplier.

12          “marketing premises”, the premises used by a dealer in connection with the sale or  
13   distribution of motor fuel.

“person”, any individual, firm, fiduciary, partnership, corporation, trust or association.

“refiner”, a person who has an ownership, operating or controlling interest in an oil refinery.

“supplier”, any person engaged in the sale, consignment or distribution of petroleum products to retail outlets.

section 2. said chapter 93e is hereby amended by inserting after section 5a the following section:-

section 5b. (a) to the extent not preempted by the petroleum marketing practices act, 15 u.s.c. §§ 2801–2806, inclusive, no refiner that owns a fee simple interest in a marketing premises which is leased to a dealer who has occupied such premises under a lease agreement or agreements for a period of at least 3 consecutive years, or occupies under a lease agreement for a term of at least 3 years, shall sell, transfer or assign such interest unless such refiner has:

made a bona fide offer to sell, transfer, or assign such interest to the dealer, which the dealer shall have 30 days to accept or reject; provided, however, that such offer may exclude signs displaying the insignia or any other trademark, service mark, copyright or patented equipment of the refiner; or

if applicable, offered the dealer a right of first refusal of any bona fide offer, made by a third party and acceptable to the refiner, to purchase such refiner’s interest in such premises. notice of such offer shall (i) be in writing; (ii) be posted by certified mail or personally delivered to the dealer; and (iii) contain a full and complete copy of the terms of the offer that must be matched by the dealer. the dealer shall have 30 days to accept or reject the offer. if the dealer

35 accepts an offer by the franchisor made pursuant to this paragraph, (i) the refiner, as a condition  
36 for entering into the contract for the accepted offer, may request as a good faith acknowledgment  
37 of the contract, a deposit by the dealer of up to 5 percent of the total amount payable under the  
38 terms of the contract, which shall be non-refundable if the dealer willfully defaults on the  
39 contract; and (ii) the dealer shall have 90 additional days to obtain a binding commitment for  
40 financing.