

Department of Legislative Services
 Maryland General Assembly
 2011 Session

FISCAL AND POLICY NOTE

House Bill 153 (Delegates W. Miller and Rudolph)
 Economic Matters

Business Regulation - Motor Fuel - Below-Cost Sales - Enforcement

This bill institutes a civil penalty for motor fuel retailers who are found to sell at below-cost prices. Civil penalty revenue collected as a result of the bill is deposited into the general fund.

Fiscal Summary

State Effect: General fund revenues increase by \$11,700 in FY 2012 due to the bill’s penalty provision and the bill’s October 1, 2011 effective date. Future years reflect annualization. No effect on expenditures.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
GF Revenue	\$11,700	\$15,700	\$15,700	\$15,700	\$15,700
Expenditure	0	0	0	0	0
Net Effect	\$11,700	\$15,700	\$15,700	\$15,700	\$15,700

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: A retail service station dealer who is accused of offering to sell fuel below cost has three business days to submit documentation to the Comptroller’s Office regarding the cost of the fuel. The Comptroller’s Office may order the dealer to alter the sale price to a level that is not below cost, pending the outcome of the investigation.

If the Comptroller’s Office determines that the dealer sold motor fuel below cost, the dealer must pay a civil penalty. The amount of the penalty is determined by multiplying

the volume of fuel sold below cost by the difference between the below-cost price and the legitimate price of the fuel.

The Comptroller's Office may also impose any other existing penalty for the sale of motor fuel below cost.

Current Law: Retail service stations may not sell motor fuel below cost except under limited circumstances. "Below cost" is defined as a price that is less than the total of the most recently published average reseller rack cost of motor fuel by grade and quality, as calculated by the Oil Price Information Service, for the particular terminal from which the motor fuel was delivered to the retail service station dealer, or the actual invoice cost from the supplier of the product, whichever is lower; and the freight charges and all applicable federal, State, and local taxes not included in the invoice cost.

A retail service station dealer may sell motor fuel below cost if the sale is made (1) in good faith to meet competition; (2) as part of a final liquidation of a retail service station; (3) as part of a *bona fide* charitable promotion lasting no longer than two days; or (4) under the direction or order of a court or government entity.

The Comptroller's Office investigates complaints of below-cost sales and determines within three business days of receiving the complaint whether the allegations are true. If the Comptroller's Office determines there is a violation, it must issue a stop-sale notice and may suspend or revoke the certificate of registration of the offending dealer. There is currently no monetary penalty for violating the motor fuel below-cost sales law.

Background: As of February 2011, there were about 2,260 retail service stations in Maryland. Of those, about 1,050 were unbranded gasoline stations. Unbranded gasoline stations, such as Wawa or Costco, purchase gasoline from a variety of suppliers. Roughly half of unbranded gasoline stations are one-station operations. The other stations are under a common owner who operates more than one station.

Branded stations are retail stations that sell a brand of gasoline affiliated with a major oil company, or large supplier or jobber (*e.g.*, Exxon, BP, Carroll Fuel, etc.). Branded stations in Maryland may be company owned but operated by independent lessee-dealers, or retail outlets owned and operated by independent dealers who agree to sell only branded gasoline. Maryland law prohibits refiners from owning and operating retail service stations.

In response to the perception that larger, regional fuel providers were selling fuel below cost and putting competitive price pressure on independent service stations, Chapters 616 and 617 of 2001 were enacted. These Acts prohibit retail service station dealers from selling motor fuel below cost except under limited circumstances. Alabama,

Florida, Massachusetts, Minnesota, Missouri, New Jersey, North Carolina, South Carolina, Tennessee, Utah, and Wisconsin also have similar prohibitions. Penalties range from \$10,000 per violation in Alabama and Florida to \$1,000 per violation in Massachusetts and \$1,000 per day in Tennessee.

State Fiscal Effect: In fiscal 2010 the Comptroller's Office investigated 345 complaints of below-cost sales of motor fuel and found 12 retail service stations in violation of the State's law.

The Comptroller's Office advises that, if the civil penalty had been in place, the total fines assessed against these 12 violators would have been \$15,660, based on assumptions that 26,100 gallons were sold below cost (8,700 gallons per day), and that the fuel was sold at an average of 5¢ per gallon below cost. The Comptroller's Office advises that the number of offenses that occurred in fiscal 2010 is indicative of the number of violations that may occur in future years. Based on this analysis, general fund revenues increase by \$11,745 in fiscal 2012, which accounts for the bill's October 1, 2011 effective date. Future years reflect annualization.

Legislative Services advises that the imposition of a civil penalty for below-cost sales may create a deterrent effect that reduces the number of violations found by the Comptroller's Office. The extent of a deterrent effect cannot be reliably estimated. Moreover, the Comptroller's Office advises that the "stop-sale" provision under current law is likely more of a deterrent than a civil penalty because the station must cease operation, which results in lost revenue and public awareness of the violation.

Additional Information

Prior Introductions: HB 77 of 2009 received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Comptroller's Office, Department of Legislative Services

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