

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

House Bill 736 Delegate Moe, et al.)
Economic Matters

Finance

Business Regulation - Motor Fuel - Below Cost Sales

This bill prohibits a retail service station from selling motor fuel “below cost,” with certain exceptions. It authorizes the State Comptroller to issue a stop sale notice or to revoke the offending station’s certificate of registration.

Fiscal Summary

State Effect: None. Enforcement of the bill’s provisions could be handled with existing resources of the Comptroller’s Office, which currently investigates complaints under a similar law.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill defines “sell motor fuel below cost” as selling motor fuel at a price less than the total of: (1) the most recently published average reseller rack cost of motor fuel by grade and quality, as calculated by the Oil Price Information Service (OPIS), 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 (2) 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 in good faith to meet competition;
- made as part of a final liquidation or closing of the business of the retail service station dealer;
- made as part of a bona fide charitable promotion lasting no longer than two days; or
- made under the direction or order of a court or government entity.

The Comptroller must investigate any complaints of below-cost sales and determine within three business days of the receipt of the complaint whether the allegations are true. If the Comptroller determines there is a violation, the Comptroller shall issue a stop sale notice and may suspend or revoke the certificate of registration of the offending dealer.

Current Law: A retailer or wholesaler (of any good) with intent to injure a competitor or to destroy competition may not advertise, offer to sell, or sell at retail sale or wholesale sale any item of merchandise at less than its cost to the retailer or its cost to the wholesaler, respectively. In this context, “below cost” is defined as the retailer’s cost plus 7%, with certain adjustments.

Background: There is concern that certain regional fuel providers are selling motor fuel below cost and putting competitive price pressure on independent service stations and that the existing general prohibition on below-cost pricing has not been sufficient in preventing the conduct.

Small Business Effect: It is assumed that the retailers selling motor fuel below cost are larger firms that have the financial resources to absorb such losses. Conversely, it is assumed that smaller retailers would be more likely to file a complaint under the bill because they would be less able to compete against below-cost sales. Based on these assumptions, it is estimated that the bill would have a positive impact on small business fuel retailers, by increasing the price of fuel when that fuel would have otherwise been sold below cost.

Additional Information

Prior Introductions: SB 597 of 2000, a similar bill, passed the Senate Finance Committee but received an unfavorable report from the House Economic Matters Committee. HB 611 of 2000, the cross file to SB 597, received an unfavorable report from the House Economic Matters Committee.

Cross File: SB 687 (Senator Dorman, *et al.*) Finance.

Information Source(s): Comptroller's Office, Department of Legislative Services

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