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By: **Senator Gladden**

Introduced and read first time: February 3, 2006

Assigned to: Finance

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A BILL ENTITLED

1 AN ACT concerning

2 **Business Regulation - Motor Fuel - Below Cost Sales**

3 FOR the purpose of repealing certain provisions of law that prohibit a retail service  
4 station dealer from selling motor fuel below cost; repealing certain provisions of  
5 law that require the Comptroller, on receipt of a certain complaint, to conduct a  
6 certain investigation within a certain amount of time; repealing certain  
7 penalties; repealing the exemption for motor fuel sold by a retail service station  
8 dealer from the provisions of the Sales Below Cost Act; and generally relating to  
9 the sale of motor fuel at below cost.

10 BY repealing and reenacting, with amendments,  
11 Article - Business Regulation  
12 Section 10-301 and 10-316  
13 Annotated Code of Maryland  
14 (2004 Replacement Volume and 2005 Supplement)

15 BY repealing  
16 Article - Business Regulation  
17 Section 10-304.1  
18 Annotated Code of Maryland  
19 (2004 Replacement Volume and 2005 Supplement)

20 BY repealing and reenacting, with amendments,  
21 Article - Commercial Law  
22 Section 11-402  
23 Annotated Code of Maryland  
24 (2005 Replacement Volume)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
26 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Business Regulation**

2 10-301.

3 (a) In this subtitle the following words have the meanings indicated.

4 (b) ["Below cost" means a price that is less than the total of:

5 (1) the most recently published average reseller rack cost of motor fuel  
6 by grade and quality, as calculated by the Oil Price Information Service (OPIS), for  
7 the particular terminal from which the motor fuel was delivered to the retail service  
8 station dealer, or the actual invoice cost from the supplier of the product, whichever is  
9 lower; and10 (2) the freight charges and all applicable federal, State, and local taxes  
11 not included in the invoice cost.

12 (c) (1) "Dealer" means a person who:

13 (i) imports any gasoline into the State;

14 (ii) blends, in the State, any gasoline on which the motor fuel tax  
15 has not been paid;16 (iii) refines, in the State, any gasoline on which the motor fuel tax  
17 has not been paid; or18 (iv) acquires, in the State, any gasoline on which the motor fuel tax  
19 has not been paid, for:

20 1. export; or

21 2. wholesale distribution.

22 (2) "Dealer" includes:

23 (i) the State when it engages in any activities listed in paragraph  
24 (1) of this subsection; and25 (ii) a political subdivision of the State when it engages in any of the  
26 activities listed in paragraph (1) of this subsection.27 (3) "Dealer" does not include a person who brings gasoline into the State  
28 in the fuel supply tank of an aircraft, motor vehicle, or vessel.29 [(d)] (C) "Manufacturer" means a person who in the State blends gasoline  
30 from blend stocks before final sale.31 [(e)] (D) "Special fuel seller" has the meaning stated in § 9-301(s) of the Tax -  
32 General Article.

1 [10-304.1.

2 (a) Except as provided in subsection (b) of this section, a retail service station  
3 dealer may not sell motor fuel below cost.

4 (b) A retail service station dealer may sell motor fuel below cost if the sale is:

5 (1) made in good faith to meet competition;

6 (2) made as part of a final liquidation or closing of the business of the  
7 retail service station dealer;

8 (3) made as part of a bona fide charitable promotion lasting no longer  
9 than 2 days; or

10 (4) made under the direction or order of a court or government entity.

11 (c) If the Comptroller receives a complaint in writing that a retail service  
12 station dealer is selling motor fuel below cost, the Comptroller shall investigate and  
13 determine within 3 business days of the receipt of the complaint whether the  
14 allegations contained in the complaint are true.

15 (d) The Comptroller shall issue a stop sale notice and may suspend or revoke  
16 the certificate of registration of a retail service station dealer if the Comptroller  
17 determines that the retail service station dealer is in violation of this section.]

18 10-316.

19 The Comptroller shall issue a stop sale notice if the Comptroller finds that a  
20 person:

21 (1) stores or sells motor fuel from a location that does not have a valid  
22 certificate of registration;

23 (2) willfully uses a motor fuel advertisement that is misleading; OR

24 (3) willfully markets motor fuel that has not been approved[]; or

25 (4) sells motor fuel below cost in violation of § 10-304.1 of this subtitle].

26 **Article - Commercial Law**

27 11-402.

28 This subtitle does not apply to an advertisement, offer to sell, retail sale, or  
29 wholesale sale, if the merchandise:

30 (1) Is sold in a bona fide clearance sale and is so advertised and marked;

31 (2) Must be sold promptly in order to prevent loss;

- 1 (3) Is imperfect, damaged, or being discontinued and is so advertised and  
2 marked;
- 3 (4) Is sold on the final liquidation of a business;
- 4 (5) Is sold for charitable purposes or to relief agencies;
- 5 (6) Is sold on contract to a department of a government or governmental  
6 institution;
- 7 (7) Is sold by an officer acting under the order or direction of a court; OR
- 8 (8) Is sold at a price set in good faith to meet competition[; or
- 9 (9) Is motor fuel sold by a retail service station dealer].

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
11 October 1, 2006.