SB 632

Department of Legislative Services

Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 632 (Senator Forehand)
Finance

Commercial Law - Consumer Protection - Gasoline Pricing

This bill prohibits a person from selling gasoline at excessive prices. A violator is guilty of an unfair or deceptive trade practice.

Fiscal Summary

State Effect: Assuming that the Consumer Protection Division receives fewer than 50 complaints per year stemming from this bill, any additional workload could be handled with existing resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: In order to determine if a person has sold gasoline at an excessive price, the following factors are to be considered:

- whether there is a gross disparity between the price charged and the price of gasoline in the months prior to the sale in question; and
- whether the price grossly exceeded the price other sellers were charging at the time of the sale.

Two mitigating factors against this charge are specified: • the price that would be charged for gasoline in a competitive and freely functioning market; and • whether the price reflects additional costs beyond the seller's control.

Current Law: Retail service station dealers may not sell motor fuel below cost. A retail service station dealer may sell motor fuel below cost if the sale is made:

- in good faith to meet competition;
- as part of a final liquidation sale;
- as part of a charitable promotion lasting no longer than two days; or
- under the order of a court or government entity.

"Below cost" means 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. The freight charges and all applicable federal, State, and local taxes are not included in the invoice cost.

The Consumer Protection Division within the Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims under the Maryland Consumer Protection Act. Upon receiving a complaint, the division must determine whether there are "reasonable grounds" to believe that a violation of the Act has occurred. Generally, if the division does find reasonable grounds that a violation has occurred, the division must seek to conciliate the complaint. The division may also issue cease and desist orders, or seek action in court, including an injunction or civil damages, to enforce the Act. Violators of the Act are subject to: (1) civil penalties of $1,000 for the first violation and $5,000 for subsequent violations; and (2) criminal sanction as a misdemeanor, with a fine of up to $1,000 and/or up to one year's imprisionment.

Background: As of September 2005, there were 2,077 retail service stations in the State. Of those, 695 are unbranded gasoline stations. On average, these stations sell 8 million gallons of gasoline per day, in addition to 1.5 million gallons of diesel.

Hurricanes Katrina and Rita battered the nation's oil production and refining markets. Soon after Hurricane Katrina, Maryland gasoline prices, which had typically closely followed the national average price, were among the highest in the nation. Gasoline prices peaked nationwide on September 2, 2005. At that time, Maryland and the District of Columbia had the highest average gasoline retail price of $3.26 in the United States, compared with a national average of $3.06. The average price is currently $2.32.

Prior to Hurricane Katrina, gasoline prices in Maryland in 2005 closely followed the national average, approximately one-third of a cent higher. After Katrina, Maryland gasoline prices averaged $0.14 more than the national average. In addition, gasoline prices increased more in Maryland than in Virginia. After Katrina, gasoline prices in Maryland were $0.10 higher than in Virginia, compared with $0.08 pre-Katrina.

Several factors have been attributed to the increase in gasoline prices after Hurricanes Katrina and Rita:

- tight refining capacity nationwide, of which a significant portion was shut down;
- Maryland's geographic dependence on Gulf Coast refined gasoline;
- the temporary closure of two pipelines – the Colonial and the Plantation, which supply approximately two-thirds of the State's gasoline;
- the closing of approximately 20% of the production of crude oil necessary to meet U.S. daily demand; and
- an already tight global oil market due to high demand and limited excess crude oil production capacity.

There is currently a task force of attorney generals from over 40 states investigating gasoline pricing by major oil companies; Maryland is participating in this task force. As yet, the investigation had not been completed.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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ncs/jr

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