HB 738

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 738 (Delegate Hubbard)
Economic Matters

Commercial Law - Maryland Energy Consumer Protection Act

This bill prohibits a person from selling crude oil, gasoline, or petroleum distillates at an unconscionable excessive price. A violator is guilty of an unfair or deceptive trade practice. In addition, the bill adds crude oil, gasoline, or petroleum distillates to the list of substances that the Governor may control after declaring a state of emergency and specifically authorizes the Governor to set a maximum price.

The bill takes effect July 1, 2007.

Fiscal Summary

State Effect: Potential decrease in Transportation Trust Fund revenues if the Governor declares an extended period of emergency and sets the maximum price of crude oil, gasoline, or petroleum distillates below market prices. 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: Local revenues could decrease from revenues from the Gasoline and Motor Vehicle Revenue Account (GMVRA) distributed to local governments as highway user revenues if the Governor declares an extended period of emergency and sets the maximum price of crude oil, gasoline, or petroleum distillates below market prices.

Small Business Effect: Potentially significant.

Analysis

Bill Summary: In order to determine if a person has sold crude oil, gasoline, or petroleum distillates at an excessive price, the following factors must be considered:

- whether there is a gross disparity between the price charged and the price of crude oil, gasoline, or petroleum distillates 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 of crude oil, gasoline, or petroleum distillates in a competitive and freely functioning market; and ● whether the price reflects additional costs beyond the seller's control.

Current Law: After proclaiming a state of emergency, the Governor may adopt reasonable orders, rules, or regulations that the Governor considers necessary to protect life and property or calculated effectively to control and terminate the public emergency in the emergency area, including orders, rules, or regulations to: (1) control the sale, transportation, and use of alcoholic beverages; (2) control the possession, sale, carrying, and use of firearms, other dangerous weapons, and ammunition; and (3) control the storage, use, and transportation of explosives or flammable materials or liquids considered to be dangerous to public safety, including "Molotov cocktails."

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 in the Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims under the Maryland Consumer Protection Act. On 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: • civil penalties of $1,000 for the first violation and $5,000 for subsequent violations; and • criminal sanction as a misdemeanor, with a fine of up to $1,000 and/or imprisonment for up to one year.

All revenues from the motor vehicle fuel tax are credited to the GMVRA. Thirty percent of revenues from the GMVRA are distributed to local governments as highway user revenues.

Background: As of March 8, 2007, there were 2,132 retail service stations in the State.

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 statewide is currently $2.47.

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.

State Fiscal Effect: The Governor is authorized to set a maximum price for crude oil, gasoline, or petroleum distillates if a state of emergency is declared. If the Governor were to set the maximum price either at or above the market price for the products, regardless of the length of the emergency, the market price would still be charged, and there would be no fiscal effect. If, however, the Governor were to set the maximum price below the market price, the effect would depend on the length of the declared emergency. In the short run, individuals would likely purchase the same amount of crude oil, gasoline, or petroleum distillates, and the same amount of motor vehicle fuel tax revenue would be collected. However, keeping prices below the market price would negatively impact the wholesalers or retailers to replace their supply, especially for gasoline.

The gasoline industry is on the whole a "cash on delivery" business. Retailers depend on the profit from the current load to pay for the next load. If there is no profit, their ability to continue to purchase and resell gas is diminished. Depending on the length of the emergency, wholesalers and retailers would not be able to continue to purchase gasoline, distillates, or petroleum products. In addition, suppliers outside the State would shift products away from Maryland. This would result in shortages, which would decrease motor vehicle fuel tax revenue.

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

Local Revenues: Local revenues from motor vehicle fuel taxes from GMVRA distributed to local governments as highway user revenues would decline if the Governor declares an extended period of emergency and sets the maximum price of crude oil, gasoline, or petroleum distillates below market prices; the effect would depend on the length of the emergency.

Small Business Effect: If the Governor sets the maximum price for crude oil, gasoline, or petroleum distillates below the market price, small wholesalers and retailers of these products would be negatively affected, as they would have to absorb the loss. If the emergency extended for a long period of time, these businesses would be forced to close until the emergency ended, or face possibly catastrophic financial losses.

Additional Information

Prior Introductions: An identical bill, HB 53 of 2006, received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

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

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