

Department of Legislative Services
 Maryland General Assembly
 2008 Session

FISCAL AND POLICY NOTE

House Bill 1367 (Delegate Stull, *et al.*)
 Economic Matters

Commercial Law - Below Cost Sales - Fluid Milk Products

This bill prohibits a dealer from selling or offering to sell specified fluid milk products to a retailer, distributor, broker, or State or local governmental agency in the State at less than the dealer’s specified costs (generally, all actual costs incurred). The sale of fluid milk products in combination with other merchandise given free of charge or sold below cost is also prohibited. The bill establishes various provisions relating to the duties and authorities of the Secretary of Agriculture to implement and enforce the bill. Among other things, the Secretary must develop a procedure for collecting specified assessments from dealers.

Fiscal Summary

State Effect: Special fund revenue and expenditure increase of \$320,600 in FY 2009, reflecting the collection of dealer assessments and costs to enforce the bill. Future year estimates reflect annualization, salary increases, a reduced need for legal services beginning in FY 2011, and inflation, and assume that assessments would increase over time to offset expenditures. Any increase in State expenditures for fluid milk products (not reflected below) cannot be reliably estimated.

| (in dollars) | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 |
|----------------|-----------|-----------|-----------|-----------|-----------|
| SF Revenue | \$320,600 | \$409,400 | \$371,800 | \$388,300 | \$405,500 |
| SF Expenditure | 320,600 | 409,400 | 371,800 | 388,300 | 405,500 |
| Net Effect | \$0 | \$0 | \$0 | \$0 | \$0 |

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

Local Effect: Local government expenditures could increase as a result of increased milk costs; however, any increase cannot be reliably estimated.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The Secretary of Agriculture has specified enforcement responsibility and authority with regard to the bill's prohibition and must develop a procedure for collecting assessments from dealers, based on each dealer's sales, to offset the cost of enforcement. The Secretary may employ inspectors and other staff to enforce the bill's requirements. Dealers must present to the Secretary on a monthly basis, under oath, the actual costs incurred by the dealer.

The Secretary must issue a stop-sale notice if a dealer is in violation of the prohibition and may recommend to the Secretary of Health and Mental Hygiene that the dealer's permit be suspended or revoked. A circuit court may, on complaint by the Secretary of Agriculture or any affected person, enjoin a dealer from any act prohibited under the bill and award damages, costs, and reasonable attorney's fees.

In the case of a person that is both a dealer and a retailer, the bill's prohibition only applies to the person's sales as a dealer.

The bill's provisions apply to the specified fluid milk products in lieu of the existing Sales Below Cost Act.

Current Law: Under the Sales Below Cost Act, a retailer or wholesaler 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, with intent to injure a competitor or to destroy competition. Specified exceptions apply such as • advertised and marked clearance sales; • final liquidations; • sales of merchandise advertised and marked as imperfect, damaged, or being discontinued; • merchandise sold on contract to a department of a government or governmental institution; and • motor fuel sold by a retail service station. On complaint from a person who claims to be injured from the action, a circuit court may issue an injunction against a retailer or wholesaler who is found to be engaging in selling merchandise below cost as prohibited.

Separate below cost sales prohibitions apply to cigarette sales and motor fuel sold by a retail service station.

The Department of Health and Mental Hygiene regulates the production, processing, labeling, and distribution of milk products in the State.

Background: The establishment of a law prohibiting the sale of fluid milk products in Maryland at below cost with the costs of administering the program funded through an assessment on fluid milk processors and distributors was recommended by the Maryland Dairy Industry Oversight and Advisory Council in its October 2007 report to the Governor. The report notes that fluid milk processors in Maryland, along with dairy farms, are an important component of Maryland’s economy. Maryland processors, however, face aggressive competition from Pennsylvania processors that have benefited from a competitive advantage due to a guaranteed minimum wholesale price established by the Pennsylvania Milk Marketing Board for milk produced, processed, and sold in Pennsylvania. According to the council’s report, Maryland processors indicate that some Pennsylvania processors use the advantage to offer unrealistically low milk prices in Maryland to capture market share.

The council’s report indicates that the State’s nine major milk processors (of fluid milk, cheese, and ice cream) regulated by the Department of Health and Mental Hygiene employ 2,078 people, with an annual payroll of \$104 million, and produce 1.3 billion pounds of dairy products. The Maryland Department of Agriculture advises that there are four fluid milk processors in the State.

State Fiscal Effect: Special fund expenditures could increase by an estimated \$320,622 in fiscal 2009, which accounts for the bill’s October 1, 2008 effective date. This estimate reflects the cost of hiring one administrator, two financial compliance auditors, one administrative specialist, and a part-time contractual attorney to administer and enforce the bill’s below cost sales prohibition. It includes salaries, fringe benefits, one-time start-up costs, contractual services, and ongoing operating expenses. The estimate is based largely on the costs of a similar program in Colorado.

| | |
|---|------------------|
| Positions | 4.5 |
| Salaries and Fringe Benefits | \$254,727 |
| Contractual Services | 15,000 |
| One-time Start-up Costs | 17,265 |
| Operating Expenses | <u>33,630</u> |
| Total FY 2009 State Expenditures | \$320,622 |

Future year expenditures reflect • full salaries with 4.4% annual increases and 3% employee turnover; • elimination of the part-time contractual attorney in fiscal 2011; and • 2% annual increases in ongoing operating expenses.

Special fund revenues would also increase by an estimated \$320,622 in fiscal 2009, based on the estimated expenditures to enforce the bill, as described above. As required by the bill, it is assumed the assessments would be set so as to generate enough revenue to cover those costs. The estimate assumes procedures for collecting assessments would be developed in time to allow for collection in fiscal 2009.

The bill specifies that the dealer assessments be assessed proportionally to each dealer based on the dealer's sales. Assuming a yearly consumption rate in Maryland of 20 gallons per capita (based on U.S. Department of Agriculture's Economic Research Service's national data) and a State population of just over 5.6 million (July 1, 2007 estimate, Maryland Department of Planning) the dealer assessment could be approximately \$.003 per gallon of fluid milk sold in fiscal 2009, rising to \$.004 per gallon in fiscal 2013, to generate the necessary revenues to cover the estimated costs of enforcing the bill.

State expenditures could also increase to the extent the bill's prohibition results in higher milk prices for State purchases than would otherwise be paid. However, information is not readily available to determine the extent of any increase.

Local Fiscal Effect: Local government expenditures could increase to the extent local governments are currently purchasing below cost milk (as end-users). Any fiscal impact on local governments, however, cannot be reliably estimated at this time.

Small Business Effect: To the extent the bill improves the competitive position of Maryland fluid milk processors and ensures their continued viability, small businesses could benefit – including any small businesses that provide services to fluid milk processors in the State and small business dairy farms that may otherwise incur costs to ship their milk out-of-state to be processed. Any small business milk distributors in the State could conceivably also benefit from an improved competitive position of milk processed in Maryland.

Additional Information

Prior Introductions: None.

Cross File: SB 684 (Senator Middleton, *et al.*) – Finance.

Information Source(s): Maryland Department of Agriculture, Maryland Department of Planning, U.S. Department of Agriculture, Department of Human Resources, Judiciary (Administrative Office of the Courts), Department of Juvenile Services, Office of

Administrative Hearings, Department of Health and Mental Hygiene, Maryland State Department of Education, Department of Public Safety and Correctional Services, Charles County, Frederick County, Montgomery County, Prince George's County, Somerset County, Maryland Dairy Industry Oversight and Advisory Council, Maryland and Virginia Milk Producers Cooperative, Department of Legislative Services

Fiscal Note History: First Reader - February 29, 2008
ncs/lgc

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510