HB 1208

Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1208 (Delegate Rudolph)
Economic Matters

Gasoline Marketing - Zone Pricing Prohibited

This bill prohibits a producer, refiner, wholesaler, or distributor that furnishes gasoline to a dealer for retail sale from using geographic zones to determine pricing. These same entities may not discriminate in the price of gasoline charged to dealers, except to offer discounts or rebates from time to time. Discounts or rebates offered to dealers must be • disclosed to all dealers; • offered to all dealers on equal terms and conditions; and • listed as separate line items on invoices. A producer, refiner, wholesaler, or distributor of gasoline may charge each dealer the actual cost of transporting gasoline from distribution facilities to the dealer. Transportation costs have to be listed on invoices as a separate line item. Violation is price discrimination. The bill does not apply to independent farm cooperatives.

Fiscal Summary

State Effect: If the Attorney General's Office receives fewer than 50 complaints per year stemming from this bill, the additional workload could be handled with existing resources. Any effect on motor fuel tax revenues is expected to be limited as the overall demand for gasoline is considered inelastic.

Local Effect: None.

Small Business Effect: Overall minimal; however, potential expenditure increases for small retail gasoline operators paying for the direct costs of transporting gasoline by tanker truck to individual retail locations.

Analysis

Current Law: Chapter 854 of 1974, the "divorcement" law, prohibited petroleum producers from owning a retail service station. The constitutionality of the law was upheld by the U.S. Supreme Court in 1978 in *Exxon Corporation vs. Governor of Maryland*. Two rehearings were denied.

Background: Zone pricing refers to a marketing practice that gasoline refiners use to establish different wholesale prices for retail gasoline stations according to geographic area. A geographic area can be large or small (*e.g.*, zip code or city block) and can be based on the number of affiliated stations and competing retail dealers of gasoline operating in an area. Gasoline suppliers may establish as many or as few zones and associated prices in accordance to their distribution needs. The gasoline, as a product, is shipped by tanker truck to individual retail locations. The costs associated with shipping gasoline by tanker truck are known (*e.g.*, fuel costs, driver time). However, refineries can set the price of delivered gasoline provided to a retail gasoline station based on zonal pricing restrictions.

In August 2000, Governor Glendening formed the Task Force on Gasoline Zone-Pricing in Maryland (Executive Order 01.01.2000.14). The task force considered the practice and methods of zone pricing and recommended action to be taken by the State. The task force submitted its final report to the Governor and the General Assembly on September 14, 2001. The report included these recommendations:

- The Comptroller must investigate as soon as practical complaints of discriminatory pricing for motor fuel between dealers of the same brand with the same supplier. If the differential between competing retailers is due to discriminatory pricing as opposed to an allowance to meet competition, transportation, a dealer's margin, rack/dealer tank wagon price differential, or relative factor, the Comptroller must report the possible price discrimination to the Attorney General's Office as soon as possible.
- The Comptroller's Office should more closely monitor the marketing of gasoline to ensure that no unlawful, anticompetitive, or unfair marketing practices are occurring in Maryland. If the Comptroller finds evidence of possible violations of Maryland law, the Comptroller must report the evidence to the Attorney General's Office. The Attorney General's Office must take appropriate action in an expeditious manner.
- All reasonable measures should be taken to make sure that the Motor Fuel Division of the Comptroller's Office develop the expertise needed to monitor and understand the motor fuel distribution system to protect and to ensure that sufficient competition exists.

Recently, the Comptroller's Office asked the five major oil companies to explain their policies on the industry practice of zone pricing. Information from four oil companies was received and meetings with the fifth were held.

In the Supreme Court's 2007 *Leegin* decision, the court held that "resale price maintenance" agreements should be analyzed under a "rule of reason" standard. As such, the *Leegin* decision makes it more difficult to show that vertical price restraints (such as zone pricing) are a violation of the Sherman Act because the evidentiary standard was changed from a "*per se*" rule to a "rule of reason." A *per se* rule made it easier to prove a claim of violation, whereas, the rule of reason requires more evidence and is a higher standard of proof. Because vertical price restraints have shown to have positive competitive effects, the Supreme Court was not as concerned with "intra-brand" restraints as it would be with horizontal "inter-brand" restraints, the latter being the target of the Sherman Act.

According to the Comptroller, injury to competition must be proved by • competitive pattern of the zones; • price differentials between zones over at least a one-year period; • the effect the price differential has had on pump prices; • economic effects of granting price differentials to dealers in different zones has had on competition between dealers of the same brand located in different price zones; and • whether lost sales can be directly attributed to the tank wagon price granted to dealers in a favored zone.

Small Business Effect: Potential revenue increase for small retail gasoline operators paying for the direct costs of transporting gasoline by tanker truck to individual retail locations.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office, Office of the Attorney General (Consumer Protection Division), George Mason University, U.S. Supreme Court, Walton College of Business, Department of Legislative Services

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