

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 978
Finance

(Senator Astle)

Commercial Law - Maryland Cigarette Sales Below Cost Act - Repeal

This bill repeals the prohibition against the sale and distribution of cigarettes below cost except under limited circumstances. Instead, sales of cigarettes would be subject to the Maryland Sales Below Cost Act, which prohibits a retailer from advertising, offering to sell, or selling merchandise at below cost with the intent to diminish or eliminate competition. These changes eliminate the Comptroller's specific regulatory authority and duties regarding the sale of cigarettes below cost.

Fiscal Summary

State Effect: Any impact on regulatory and enforcement activities at the Comptroller's Office would be minimal. The bill would not directly affect cigarette and sales tax revenues collected from cigarette sales.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: The Cigarette Sales Below Cost Act prohibits a retailer or wholesaler with intent to injure a competitor or destroy or substantially lessen competition from:

- selling cigarettes below cost;
- selling cigarettes in combination with any merchandise if the other merchandise is given free of charge or sold at a price below cost;

- selling cigarettes in combination with any other merchandise if the total sale price is less than cost to the retailer or wholesaler of the cigarettes and the retail or wholesale cost of all other items included in the sale, including items given free of charge in connection with the sale;
- giving cigarettes free of charge, except in the case of specially packaged manufacturers' samples; or
- making any rebate, advertising allowance, or any other concession in connection with the sale of cigarettes whereby the cigarettes are effectively sold below cost.

In addition, a retailer may not purchase cigarettes from a wholesaler at a cost which directly or indirectly is less than the cost to the wholesaler by any means, including offering, accepting, or attempting to induce a rebate in price or concession in connection with the cigarette sale.

The prohibition against the sale of cigarettes below cost does not apply if the sale is made

- in good faith to meet competition;
- as part of a final liquidation or closing of the business;
- as imperfect, damaged, or discontinued cigarettes;
- as part of a bona fide clearance sale; or
- under the direction or order of a court.

The Comptroller is required to enforce compliance with the Act and calculate minimum costs as specified in the Act. On complaint of the Comptroller or any person affected, a circuit court has the authority to enjoin a retailer or wholesaler from the commission of any act prohibited by the Act and award damages and costs. The Comptroller is required to suspend or revoke the cigarette licensee of any person who violates the Act.

Under the Sales Below Cost Act, a retailer or wholesaler (of any good) with intent to injure a competitor or to destroy competition 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. 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. Except with respect to combination sales and concessions, the Sales Below Cost Act does not apply to cigarette sales.

Background: As part of its enforcement efforts, the Comptroller's Office maintains a web site with updated minimum cigarette price calculations. The Comptroller's Office advises that in fiscal 2008 it has not initiated any investigations into violations of the Cigarette Below Sales Cost Act.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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Analysis by: Robert J. Rehrmann

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