

HOUSE BILL 77

C2

9lr0567

By: **Delegates Miller and Rudolph**

Introduced and read first time: January 19, 2009

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Business Regulation – Motor Fuel – Below-Cost Sales – Enforcement**

3 FOR the purpose of allowing a retail gasoline dealer against whom a certain complaint
4 is filed alleging a violation of the below-cost sales law to produce certain
5 documents relating to the complaint within a certain time period; providing for
6 the imposition of certain sanctions in a certain manner, including a civil
7 penalty; making a stylistic change; and generally relating to the sale of motor
8 fuel below cost.

9 BY repealing and reenacting, without amendments,
10 Article – Business Regulation
11 Section 10–301 and 10–316
12 Annotated Code of Maryland
13 (2004 Replacement Volume and 2008 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article – Business Regulation
16 Section 10–304.1
17 Annotated Code of Maryland
18 (2004 Replacement Volume and 2008 Supplement)

19 BY repealing and reenacting, without amendments,
20 Article – Commercial Law
21 Section 11–402
22 Annotated Code of Maryland
23 (2005 Replacement Volume and 2008 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
25 MARYLAND, That the Laws of Maryland read as follows:

26 **Article – Business Regulation**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 10-301.

2 (a) In this subtitle the following words have the meanings indicated.

3 (b) "Below cost" means a price that is less than the total of:

4 (1) the most recently published average reseller rack cost of motor fuel
5 by grade and quality, as calculated by the Oil Price Information Service (OPIS), for the
6 particular terminal from which the motor fuel was delivered to the retail service
7 station dealer, or the actual invoice cost from the supplier of the product, whichever is
8 lower; and

9 (2) the freight charges and all applicable federal, State, and local taxes
10 not included in the invoice cost.

11 (c) (1) "Dealer" means a person who:

12 (i) imports any gasoline into the State;

13 (ii) blends, in the State, any gasoline on which the motor fuel
14 tax has not been paid;

15 (iii) refines, in the State, any gasoline on which the motor fuel
16 tax has not been paid; or

17 (iv) acquires, in the State, any gasoline on which the motor fuel
18 tax has not been paid, for:

19 1. export; or

20 2. wholesale distribution.

21 (2) "Dealer" includes:

22 (i) the State when it engages in any activities listed in
23 paragraph (1) of this subsection; and

24 (ii) a political subdivision of the State when it engages in any of
25 the activities listed in paragraph (1) of this subsection.

26 (3) "Dealer" does not include a person who brings gasoline into the
27 State in the fuel supply tank of an aircraft, motor vehicle, or vessel.

28 (d) "Manufacturer" means a person who in the State blends gasoline from
29 blend stocks before final sale.

1 (e) "Special fuel seller" has the meaning stated in § 9-301(s) of the Tax -
2 General Article.

3 10-304.1.

4 (a) Except as provided in subsection (b) of this section, a retail service station
5 dealer may not sell motor fuel below cost.

6 (b) A retail service station dealer may sell motor fuel below cost if the sale is:

7 (1) made in good faith to meet competition;

8 (2) made as part of a final liquidation or closing of the business of the
9 retail service station dealer;

10 (3) made as part of a bona fide charitable promotion lasting no longer
11 than 2 days; or

12 (4) made under the direction or order of a court or government entity.

13 (c) (1) If the Comptroller receives a complaint in writing that a retail
14 service station dealer is selling motor fuel below cost, the Comptroller shall investigate
15 and determine within 3 business days [of the] **AFTER** receipt of the complaint whether
16 the allegations contained in the complaint are true.

17 (2) (I) **THE DEALER SHALL HAVE 3 BUSINESS DAYS AFTER**
18 **NOTIFICATION OF INVESTIGATION BY THE COMPTROLLER TO PRODUCE**
19 **DOCUMENTATION AS TO THE COST TO THE DEALER OF THE MOTOR FUEL**
20 **ALLEGEDLY SOLD OR OFFERED IN VIOLATION OF THIS SECTION, WHETHER OR**
21 **NOT THE COMPTROLLER ISSUES A STOP SALE NOTICE FOR THE ALLEGED**
22 **VIOLATION.**

23 (II) **NOTHING IN THIS PARAGRAPH MAY BE CONSTRUED TO**
24 **PREVENT THE COMPTROLLER FROM ORDERING THE DEALER TO ALTER THE**
25 **SALE PRICE TO A LEVEL THAT IS NOT BELOW COST PENDING THE OUTCOME OF**
26 **THE INVESTIGATION.**

27 (3) **IF AFTER INVESTIGATION THE COMPTROLLER DETERMINES**
28 **THAT THE DEALER IS IN VIOLATION OF THIS SECTION, THE COMPTROLLER**
29 **SHALL ORDER THE DEALER TO PAY AS A CIVIL PENALTY THE PRODUCT OF:**

30 (I) **THE VOLUME OF THE MOTOR FUEL SOLD BY THE**
31 **DEALER DURING THE PERIOD OF THE VIOLATION; AND**

32 (II) **THE DIFFERENCE BETWEEN:**

- 1 (4) Is sold on the final liquidation of a business;
- 2 (5) Is sold for charitable purposes or to relief agencies;
- 3 (6) Is sold on contract to a department of a government or
4 governmental institution;
- 5 (7) Is sold by an officer acting under the order or direction of a court;
- 6 (8) Is sold at a price set in good faith to meet competition; or
- 7 (9) Is motor fuel sold by a retail service station dealer.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2009.