

HOUSE BILL 78

C2
HB 1601/08 – ECM

9lr0531

By: **Delegate Miller**

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**

3 FOR the purpose of repealing certain provisions of law that prohibit a retail service
4 station dealer from selling motor fuel below cost; repealing certain provisions of
5 law that require the Comptroller, on receipt of a certain complaint, to conduct a
6 certain investigation within a certain amount of time; repealing certain
7 penalties; repealing the exemption for motor fuel sold by a retail service station
8 dealer from the provisions of the Sales Below Cost Act; and generally relating to
9 the sale of motor fuel below cost.

10 BY repealing and reenacting, with amendments,
11 Article – Business Regulation
12 Section 10–301 and 10–316
13 Annotated Code of Maryland
14 (2004 Replacement Volume and 2008 Supplement)

15 BY repealing
16 Article – Business Regulation
17 Section 10–304.1
18 Annotated Code of Maryland
19 (2004 Replacement Volume and 2008 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Commercial Law
22 Section 11–402
23 Annotated Code of Maryland
24 (2005 Replacement Volume and 2008 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Business Regulation

10–301.

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

(b) [“Below cost” means a price that is less than the total of:

(1) the most recently published average reseller rack cost of motor fuel by grade and quality, as calculated by the Oil Price Information Service (OPIS), 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; and

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

(c)] (1) “Dealer” means a person who:

(i) imports any gasoline into the State;

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

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

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

1. export; or

2. wholesale distribution.

(2) “Dealer” includes:

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

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

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

[(d)] (C) “Manufacturer” means a person who in the State blends gasoline from blend stocks before final sale.

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

17 (d) The Comptroller shall issue a stop sale notice and may suspend or revoke
18 the certificate of registration of a retail service station dealer if the Comptroller
19 determines that the retail service station dealer is in violation of this section.]

20 10–316.

21 The Comptroller shall issue a stop sale notice if the Comptroller finds that a
22 person:

23 (1) stores or sells motor fuel from a location that does not have a valid
24 certificate of registration;

25 (2) willfully uses a motor fuel advertisement that is misleading; **OR**

26 (3) willfully markets motor fuel that has not been approved[; or

27 (4) sells motor fuel below cost in violation of § 10–304.1 of this
28 subtitle].

29 **Article – Commercial Law**

1 11-402.

2 This subtitle does not apply to an advertisement, offer to sell, retail sale, or
3 wholesale sale, if the merchandise:

4 (1) Is sold in a bona fide clearance sale and is so advertised and
5 marked;

6 (2) Must be sold promptly in order to prevent loss;

7 (3) Is imperfect, damaged, or being discontinued and is so advertised
8 and marked;

9 (4) Is sold on the final liquidation of a business;

10 (5) Is sold for charitable purposes or to relief agencies;

11 (6) Is sold on contract to a department of a government or
12 governmental institution;

13 (7) Is sold by an officer acting under the order or direction of a court;

14 **OR**

15 (8) Is sold at a price set in good faith to meet competition[; or

16 (9) Is motor fuel sold by a retail service station dealer].

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