

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 78
Economic Matters

(Delegate Miller)

Business Regulation - Motor Fuel - Below Cost Sales

This bill repeals provisions that prohibit retail service station dealers from selling motor fuel below cost except under limited circumstances. Instead, sales of motor fuel are subject to the Maryland Sales Below Cost Act, which prohibits a retailer or wholesaler from advertising, offering to sell, or selling merchandise below cost with the intent to diminish or eliminate competition. Repeal of these provisions also eliminates the Comptroller's specific regulatory authority and duties regarding the sale of fuel below cost and instead requires individuals who may be harmed by a competitor selling fuel below cost to file a complaint in a circuit court.

Fiscal Summary

State Effect: Minimal operational impact for the Office of the Attorney General to enforce motor fuel below cost sales violations. The Comptroller's Office experiences a corresponding impact on its operations as investigative staff are able to focus on other types of enforcement.

Local Effect: Potential minimal increase in costs due to additional cases being heard in circuit courts involving sales of motor fuel below cost.

Small Business Effect: None.

Analysis

Current Law: Retail service stations may not sell motor fuel below cost except under limited circumstances. "Below cost" is defined as a price that is less than the total of the most recently published average reseller rack cost of motor fuel by grade and quality, as

calculated by the Oil Price Information Service, 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 the freight charges and all applicable federal, State, and local taxes not included in the invoice cost.

A retail service station dealer may sell motor fuel below cost if the sale is made in good faith to meet competition; made as part of a final liquidation of a retail service station; made as part of a bona fide charitable promotion lasting no longer than two days; or made under the direction or order of a court or government entity.

The Comptroller's Office investigates complaints of below cost sales and determines within three business days of receiving the complaint whether the allegations are true. If the Comptroller's Office determines there is a violation, it must issue a stop sale notice and may suspend or revoke the certificate of registration of the offending dealer. There is no monetary penalty for violating the motor fuel below cost sales law.

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 wholesaler, respectively. On complaint from a person who claims to be injured by a below cost sale, a circuit court may issue an injunction against a retailer or wholesaler who is found to be selling merchandise below cost. This Act does not impose monetary penalties nor does it apply to sales of motor fuel by retail service station dealers.

Background: As of January 2008, there were 2,129 retail service stations in Maryland. Of those, 839 were unbranded gasoline stations. Unbranded gasoline stations, such as Wawa or Costco, purchase gasoline from a variety of sources. Roughly half of unbranded gasoline stations are one-station operations. The other stations are under a common name that operates more than one station.

Branded stations are retail stations that sell a brand of gasoline affiliated with a major oil company (Exxon, BP, etc.). Branded stations in Maryland may be company owned but operated by independent lessee-dealers, or retail outlets owned and operated by independent dealers who agree to sell only branded gasoline. Maryland law prohibits refiners from owning and operating retail service stations.

In response to the perception that larger, regional fuel providers were selling fuel below cost and putting competitive price pressure on independent service stations, Chapters 616 and 617 of 2001 were enacted. These acts prohibit retail service station dealers from selling motor fuel below cost except under limited circumstances.

Additional Information

Prior Introductions: An identical bill, HB 1601 of 2008, received an unfavorable report from the House Economic Matters Committee. Identical bills were introduced in the 2006 session as SB 781 and HB 127. SB 781 was withdrawn after its hearing in the Senate Finance Committee, and HB 127 received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

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

Fiscal Note History: First Reader - February 11, 2009
ncs/mcr

Analysis by: Michael T. Vorgetts

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