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PETROLEUM MARKETING STABILIZATION ACT

House Bill 4757

Sponsor: Rep. Charles LaSata
Committee: Transportation

Complete to 7-1-03

A SUMMARY OF HOUSE BILL 4757 AS INTRODUCED 5-27-03

House Bill 4757 would create a new act called the Petroleum Marketing Stabilization Act to prevent unfair methods of competition and pricing practices in the distribution of motor fuel.

The bill specifies that a retailer engaged in commerce in Michigan could not sell motor fuel *below* retailer cost at either a retail location or an unattended location. However, it would not be a violation to establish a sale price for motor fuel in good faith, to meet an equally low lawful price of a competitor who was subject to the act, located in the same market area, and selling the same or a similar product, of like grade and quality. The bill also specifies that a retailer could not sell motor fuel *above* the maximum sale price at a retail location.

Further under the bill, a retailer would be prohibited from offering a rebate, or a concession of any kind in connection with a sale of motor fuel, if the resulting price was below retailer cost. The bill also specifies that a retailer or an affiliate could not engage in an advertisement, or sale involving motor fuel and one or more other items at a combined price, or an advertisement or sale involving the giving of a coupon, gift, or concession of any kind, if the combined selling price was below the retailer cost of the fuel and the basic cost of each article included in the transaction.

The bill specifies that this act would not apply to a retail sale of motor fuel that met any of the following:

- a) the sale was made in an isolated transaction that was not in the usual course of business;
- b) the motor fuel was advertised, offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in that motor fuel, and both of the following were met: (i) the advertising, offer to sell, or sale stated the reason for the sale and the quantity of the motor fuel available for sale, and (ii) the motor fuel was kept separate from other fuel stocks, and clearly and legible marked with the reason for the sale;
- c) the motor fuel was advertised, offered for sale, or sold as imperfect or damaged, and both of the conditions noted above in (i) and (ii) were met;
- d) the motor fuel was sold as part of the final liquidation of a business;

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e) the motor fuel was advertised, offered for sale, or sold by a fiduciary under the order or direction of a court; or,

f) the motor fuel was advertised, offered for sale, or sold during a grand opening to introduce a new or remodeled retail location, if the grand opening met both of the following: (i) it was held for three days or less; and (ii) it was held within 60 days after the new or remodeled retail location began operations.

The bill specifies that an express or implied agreement that violated the act would be void and unenforceable, and that an action for violation would be brought in a circuit court where venue was proper without regard to the amount of controversy.

Further, if the attorney general or a prosecuting attorney had reasonable cause to believe that a person had information or was in possession, custody, or control of any document or other tangible object relevant to an investigation for a violation of the act, then the attorney general or the prosecuting attorney (with the permission or at the request of the attorney general) could serve a written demand to appear and be examined under oath, and produce the document for inspection and copying. That demand would be required to meet all of the following standards:

- be served upon the person in the manner required for service of process;
- describe the nature of the conduct constituting the violation under investigation;
- describe the document or object with sufficient definiteness to permit it to be fairly identified;
- if demanded, contain a copy of the written interrogatories;
- prescribe a reasonable time at which the person must appear to testify, within which to answer the written interrogatories, and within which the document or object would be required to be produced, and advise the person that objections could be filed with the attorney general or prosecuting attorney, on or before that time;
- specify a place for taking testimony within the county where the person resided or maintained a principal place of business, and designate a person who would be custodian of the document; and,
- contain a copy of subsection (2) of Section 12 of the new act, as described next.

Under the bill, subsection (2) specifies that if a person objected to or otherwise failed to comply with the written demand served under subsection (1), the attorney general or a prosecuting attorney (with the permission of, or at the request of the attorney general) could file in the circuit court in the county where the person lived or maintained a principal place of business, an action to enforce the demand. Notice of hearing the action and a copy of all pleadings would be served upon the person who could appear in opposition. If the court found that the demand was proper, that there was reasonable cause to believe that there could have been or was presently occurring a violation of the act, and that the information sought or document demanded was relevant to the investigation, then the court would be required to order

that the person comply with the demand, subject to modification that the court could prescribe. Further, upon motion by the person and for good cause shown, the court could make any further order in the proceedings that justice required to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense.

Unless confidentiality were waived by the individual, or disclosure were authorized by the court, the attorney general or prosecuting attorney who brought the action would be required to keep confidential any procedure, testimony, or material produced, before bringing action against a person being investigated.

Under the bill, the attorney general or prosecuting attorney (with the attorney general's permission or at his or her request) could bring an action for appropriate injunctive or other equitable relief and civil penalties in the name of the state for a violation of the act. The court could assess a civil penalty of not more than \$2,500 for each violation of the act, subject to a maximum of \$10,000 each day, if multiple sales violations occurred during any one day. However, an action under this section would be barred if not begun within one year after the claim for relief or cause of action accrued. Further, an action to recover damages under this section would be barred if not begun within one year after the claim for relief or cause of action accrued, or within one year after the conclusion of any timely action brought by the state which was based in whole or in part on any matter complained of in the action for damages, whichever was later.

The bill specifies that any person threatened with injury or injured in his or her business or property by a violation of the act could bring an action for appropriate injunctive or equitable relief, three times the amount of actual damages sustained, interest on the damages from the date of complaint, taxable costs, and actual attorney fees. Further, all of the following would apply to an action:

a) the court would be required to grant the equitable relief it determined was necessary to remedy the effects of any violation of the act, which could include a declaratory judgment, mandatory or prohibitive injunctive relief, and interim equitable relief;

b) the court would be required to grant a temporary restraining order and preliminary injunction if the plaintiff showed that all of the following were met: (i) there was reasonable cause to believe that a violation of the act had occurred; (ii) there existed sufficiently serious questions going to the merits to make those questions a fair ground for litigation; and, (iii) the court determined that, on balance, the hardships imposed upon the defendant by the temporary restraining order or preliminary injunction would be less than the hardship that would be imposed upon the plaintiff in the absence of relief. Further, the bill specifies that if the action sought injunctive or equitable relief, the court could not require the plaintiff to provide a bond. Further, if the action sought injunctive or other equitable relief, it would not be a defense that the plaintiff's injury would be adequately remedied by an award of damages. However, an action under this section would be barred if not begun within one year after the claim for relief or cause of action accrued.

Under the bill, a person who knowingly prepared a false invoice or submitted false information would be guilty of a misdemeanor punishable by imprisonment for not more than six months, or a fine of not more than \$500, or both. The bill also specifies that a final judgment or

decree that determined a person had violated the act or a judgment or decree would be prima facie evidence against the person in any other action.

The bill specifies that the remedies provided in the act are cumulative and in addition to any other remedy available under state law.

Finally, the bill specifies that if a witness had been or could be called to testify, or provide other information at any proceeding under the act, the circuit court could issue, upon application of the attorney general or a prosecuting attorney, an order requiring the witness to give testimony or provide information if a witness refused on the basis of the privilege against self-incrimination. However, the order to provide information could be issued only if the court provided, in its order, that the witness would not be prosecuted or subjected to any penalty.

The new act would define 27 terms, including “average posted terminal price,” “basic cost,” “cost of doing business component,” “customary discount for cash,” “existing price of a competitor,” “maximum cost of doing business component,” “Maximum selling price,” “retail location,” “retailer cost,” “sell at retail,” and “unattended location.”

Analyst: J. Hunault

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.