

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **S.B. 193** DATE: **March 11, 2008**

STATUS: **As Introduced** SPONSOR: **Sen. Grendell**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **Makes charging an unreasonable price for gasoline an unfair or deceptive consumer sales practice and makes other changes**

State Fiscal Highlights

STATE FUND	FY 2008	FY 2009	FUTURE YEARS
General Revenue Fund – Attorney General			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Potential increase for additional legal expenses	Potential increase for additional legal expenses
Consumer Protection Enforcement Fund (Fund 6310) – Attorney General			
Revenues	- 0 -	Potential gain from civil penalties	Potential gain from civil penalties
Expenditures	- 0 -	Potential increase for additional legal expenses	Potential increase for additional legal expenses
Unspecified State Fund – Department of Commerce			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Potential increase to handle petroleum industry reports	Potential increase to handle petroleum industry reports
Division of Administration Fund (Fund 1630) – Department of Commerce			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Potential increase for additional information technology equipment	Potential increase for additional information technology equipment

Note: The state fiscal year is July 1 through June 30. For example, FY 2008 is July 1, 2007 – June 30, 2008.

Attorney General

- The Office of the Attorney General's Consumer Protection Section, funded out of the GRF and the Consumer Protection Enforcement Fund (Fund 6310), may file a few additional civil actions as a result of the bill. Whether the bill will create additional ongoing operating expenses for the Consumer Protection Section is uncertain. Any proceeds from civil penalties that might be imposed would be deposited in Fund 6310.



Department of Commerce

- The bill requires refiners and wholesalers of petroleum products and retail sellers of gasoline in this state to prepare and submit certain reports to the Department of Commerce, which must be posted on the Department's web site. Based on the number of current operators, the Department may receive around 608 monthly reports. The Department is unsure if additional staff will be needed to carry out this function.
- Given the volume of these reports, it may be that the Department needs to procure additional information technology equipment, such as data storage, to house the reports posted online. The Division of Administration Fund (Fund 1630) would likely be used to purchase such equipment.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008	FY 2009	FUTURE YEARS
Counties and Municipalities			
Revenues	Potential gain from court costs and fines	Potential gain from court costs and fines	Potential gain from court costs and fines
Expenditures	Potential increase in adjudication expenses	Potential increase in adjudication expenses	Potential increase in adjudication expenses

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

Courts

- Additional civil suits could impose some new costs on county and municipal courts. However, additional lawsuits would also likely generate some additional filing fee and court cost revenue for the counties in which the cases take place. If the number of cases actually filed were few, then the expenses and court cost revenue related to conducting court proceedings in these cases would be minimal.

Detailed Fiscal Analysis

Overview

This bill makes charging a price for a grade of gasoline that does not bear a reasonable relationship to the cost of making the particular grade of gasoline available to consumers an unfair or deceptive consumer sales practice and requires certain reports to be sent to the Department of Commerce by retailers of gasoline as well as refiners and wholesalers of petroleum products. The bill also creates the Ohio Gasoline Practices Oversight Commission to examine the petroleum industry and conduct hearings to recommend a state gasoline policy.

Attorney General

Consumer Sales Practices Act investigations

As noted above, the bill makes charging a price for a grade of gasoline that does not bear a reasonable relationship to the cost of making the particular grade of gasoline available to consumers an unfair or deceptive consumer sales practice and, thus, a violation of the Consumer Sales Practices Act (CSPA). CSPA prohibits unfair or deceptive trade practices as well as unconscionable acts in consumer transactions. The statute authorizes the Attorney General to investigate alleged violations and to seek civil penalties and remedies for various consumer transactions and provides consumers with a private right of action.

By giving the Attorney General specific authority to investigate complaints regarding gasoline prices, the bill may result in an increased workload for Office of the Attorney General (AGO) staff to investigate additional complaints or initiate additional legal action. While current law does not specifically identify gas price gouging as a violation of CSPA, the Attorney General's office has initiated such legal action in the past under existing sections of that law.¹

Potential for new AGO civil cases

Under CSPA, AGO may pursue civil remedies and its Consumer Protection Section, funded by both the GRF and the Consumer Protection Enforcement Fund (Fund 6310), would handle the associated legal work. Based on prior experience, it would be reasonable to assume that under the bill's authority there would be a relatively small number of additional civil cases, if any at all, filed for several reasons.

¹ The Attorney General's web site lists eight legal actions concerning "gas gouging" in its Online Public Inspection File (OPIF) at <http://www.opif.ag.state.oh.us>, all of them in the wake of September 11, 2001. Each action cited sections 1345.03(A), 1345.03(B)(2), and 1345.03(B)(5) of the Revised Code, which concerns unconscionable acts in consumer transactions when the supplier knows that the price is substantially in excess of the price readily obtainable in similar transactions or when the supplier required the consumer to enter into a transaction on terms the supplier knew were substantially one sided in the favor of the supplier.

First, while the number of complaints to be investigated by AGO might be significant (perhaps in the hundreds or thousands depending on price swings), the actual number of additional lawsuits may be rather small. Cases of gas price gouging alone have been difficult to prove due to the many factors that affect the price of gasoline, such as the cost of crude oil (the largest component in the price of gasoline), seasonality of demand, and product supply/demand imbalances.² Refiner inventory levels and profit margins may also play a significant part in the price of gasoline.³ The Florida Attorney General, for example, received over 4,000 price-gouging complaints in the days before and following Hurricane Katrina, yet only two lawsuits were filed against gasoline retailers based on gas price gouging.⁴

Second, it seems likely that AGO would try to settle cases before initiating any formal legal action. Similar to the procedures taken in existing Consumer Sales Practices Law cases, AGO would seek court action against a person as a last resort only if it perceives that the person is receiving a pattern of consumer complaints. Assuming a less formal negotiating strategy does not work, AGO could request that a court of common pleas issue a declaratory judgment, a temporary restraining order, or an injunction in order to persuade violators to cease their offending behavior.

On the other hand, if AGO successfully pursues a civil remedy, the court adjudicating the matter can award AGO all costs and expenses associated with its investigation, in addition to reasonable attorney's fees. The court may also order civil penalties of up to \$25,000. Three-quarters of this civil penalty as well as investigation costs and attorney's fees would be credited to the state's Consumer Protection Enforcement Fund (Fund 6310). The remaining one-quarter of the civil penalty would go to the treasury of the county where the case took place.

Thus, whether the bill will create additional ongoing operating expenses to the Consumer Protection Section, as well as the amount of those potential costs, is uncertain. It is also uncertain how much civil penalty revenue may be collected annually from persons in violation of the bill's prohibition and subsequently deposited to the credit of Fund 6310.

Consumer-initiated actions

As noted above, a consumer injured by a violation of the new sections would also be able to pursue civil remedies, which means that additional civil suits could be filed. It is uncertain how many consumers will elect to pursue a civil remedy without the assistance of AGO, but the number is assumed to be small as injured persons would, most likely, report a complaint to AGO initially and then allow the Consumer Protection Section to seek a resolution to the complaint.

² *A Primer on Gasoline Prices*, May 1, 2006, U.S. Department of Energy, Energy Information Administration, http://www.eia.doe.gov/bookshelf/brochures/gasolinepricesprimer/eia1_2005primerM.html (last visited March 10, 2008).

³ Leffler, Keith B and Peter K. Ashton, *Report on Gasoline Pricing in Florida*, June 2005, *Florida Attorney General*, [http://myfloridalegal.com/webfiles.nsf/WF/KGRG-6DDLDL/\\$file/GasPriceReport.pdf](http://myfloridalegal.com/webfiles.nsf/WF/KGRG-6DDLDL/$file/GasPriceReport.pdf) (last visited March 10, 2008).

⁴ *2005 Year in Review*, pg. 31, June 1, 2006, *Florida Attorney General*, [http://myfloridalegal.com/webfiles.nsf/WF/MRAY-6SNRSU/\\$file/2005YIR.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MRAY-6SNRSU/$file/2005YIR.pdf) (last visited March 10, 2008).

Local civil justice considerations

The filing of civil suits would likely generate some additional filing fee and court cost revenue for the counties and municipalities that the cases take place in. However, these suits would place some additional burdens on the courts that will have to adjudicate these matters. If the number of cases actually filed as a result of the bill were small, then the expenses and court cost revenue related to conducting court proceedings in these cases would be minimal.

Department of Commerce

Petroleum industry reports

The bill requires each refiner and wholesaler of petroleum products in this state to submit to the Department of Commerce (COM) a monthly report specifying the amount of unrefined and refined petroleum products the refiner or wholesaler brought into, consumed in, and exported from this state during the previous calendar month.⁵ These reports are to be posted on the Department web site. Retail sellers of gasoline must also send written if the retail seller has or will increase the price of gasoline by seven cents or more during a calendar week and the reason for the price increase. Unlike the refiner and wholesaler reports, the bill does not require COM to post these notices online.

COM may receive 608 or so monthly reports from refiners and petroleum wholesalers. This number is based on the number of Department of Taxation-licensed motor fuel dealers (i.e. wholesalers and refiners that distribute motor fuel in Ohio) and exporters as of March 5, 2008.⁶ Thus, there may be an additional administrative burden to handle the reports, which would involve posting the required reports online. As of this writing, COM is unsure if additional staff will be needed to carry out this function.

Given the volume of these reports, it may be that COM needs to procure additional information technology (IT) equipment, such as data storage, to house the reports posted online. The Division of Administration Fund (Fund 1630), which pays for COM's IT infrastructure, would likely be used to purchase any additional IT equipment needed. LSC is uncertain what the costs may be for the equipment.

Gasoline Practices Oversight Commission

The bill also creates the Ohio Gasoline Practices Oversight Commission to examine the petroleum industry and conduct hearings to recommend a state gasoline policy. The Commission would cease to exist December 31, 2009. Presumably, expenses would be borne by those making appointments to the Commission: the House of Representatives and the Senate (three members each), the Governor, the Attorney General, the Auditor of State, and the Consumers' Council.

⁵ Some of this information may already be submitted to the Department of Taxation on various motor fuel tax forms.

⁶ "Motor fuel" is defined in the Revised Code as gasoline, diesel fuel, K-1 kerosene, or any other liquid motor fuel, including, but not limited to, liquid petroleum gas or liquid natural gas.

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