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Bill Analysis
Legislative Service Commission

S.B. 187

126th General Assembly
(As Introduced)

Sens. Grendell, Schuring, Mumper, Niehaus, Clancy, Fingerhut, Miller, Zurz

BILL SUMMARY

- Provides that charging a price for a grade of gasoline that does not bear a reasonable relationship to the costs of making that grade of gasoline available to consumers is an unfair or deceptive consumer sales practice.
- Creates the Gasoline Practices Oversight Commission.

CONTENT AND OPERATION

Consumer Sales Practices Act

Current law

The Consumer Sales Practices Act, R.C. Chapter 1345., governs a "consumer transaction," which is defined in current law as a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things. "Consumer transaction" does not include transactions between persons, as defined in R.C. 4905.03 (public utilities) and 5725.01 (financial institutions) and their customers; transactions between certified public accountants or public accountants and their clients; transactions between attorneys, physicians, or dentists and their clients or patients; and transactions between veterinarians and their patients that pertain to medical treatment but not ancillary services. (R.C. 1345.01(A).)

Current law prohibits a supplier from committing an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or deceptive act or practice by a supplier violates R.C. 1345.02 whether it occurs before, during, or after the transaction. (R.C. 1345.02(A).) The act or practice of a supplier in representing any of the following is deceptive (R.C. 1345.02(B)):

(1) That the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits that it does not have;

(2) That the subject of a consumer transaction is of a particular standard, quality, grade, style, prescription, or model, if it is not;

(3) That the subject of a consumer transaction is new, or unused, if it is not;

(4) That the subject of a consumer transaction is available to the consumer for a reason that does not exist;

(5) That the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not, except that the act of a supplier in furnishing similar merchandise of equal or greater value as a good faith substitute does not violate R.C. 1345.02;

(6) That the subject of a consumer transaction will be supplied in greater quantity than the supplier intends;

(7) That replacement or repair is needed, if it is not;

(8) That a specific price advantage exists, if it does not;

(9) That the supplier has a sponsorship, approval, or affiliation that the supplier does not have;

(10) That a consumer transaction involves or does not involve a warranty, a disclaimer of warranties or other rights, remedies, or obligations if the representation is false.

Operation of the bill

The bill provides that the owner of a gasoline service station violates R.C. 1345.02(A), described above, if the station charges consumers a price for a grade of gasoline that does not bear a reasonable relationship to the costs necessary to make the particular grade of gasoline available to consumers (R.C. 1345.02(F)).

Ohio Gasoline Practices Oversight Commission

Creation and composition

The bill creates the Ohio Gasoline Practices Oversight Commission, consisting of ten members. The President of the Senate and Speaker of the House of Representatives must each appoint three persons from their respective houses, with not more than two from each house being members of the same political

party. The Governor, Attorney General, Auditor of State, and Consumers' Counsel must each appoint one person. (Section 3(A).)

Officers, quorums, and vacancies

The Commission must elect from among its members a chairperson and vice-chairperson and must appoint a secretary, who need not be a member of the Commission. Six members constitute a quorum, and the affirmative vote of six members is necessary for any action the Commission takes. A vacancy in the Commission membership does not impair the rights of a quorum to exercise all Commission rights and perform all Commission duties. A vacancy must be filled in the same manner as the original appointment. (Section 3(A).)

Duties

The Commission must (1) examine and review the existing infrastructure that delivers and distributes petroleum products to and within Ohio, (2) examine the availability of petroleum products, current gasoline pricing practices, alternative fuels for motor vehicles, and government laws, rules, and regulations that affect the supply, delivery, and distribution of petroleum products generally, and gasoline in particular, to and within Ohio, and (3) conduct hearings on the issues identified in those examinations. After the hearings, the Commission must formulate and recommend a state gasoline policy to ensure (a) consumer confidence in Ohio's gasoline supply and delivery infrastructure and (b) a continuing and affordable supply of motor vehicle fuel within Ohio to the benefit of all Ohioans. (Section 3(B).)

Investigatory power

The bill grants the Commission, in the discharge of its duties, authority throughout Ohio to administer oaths, issue subpoenas compelling the attendance of witnesses and testimony, and depose witnesses who are state residents. If a subpoena is not complied with or a witness refuses to testify on matters for which the witness can be lawfully interrogated, it is the duty of the prosecuting attorney of any county, on the Commission's application, to bring a contempt proceeding, presumably in a court of common pleas. (Section 3(C).)

Reports and termination date

The Commission must issue an interim report to the General Assembly not later than 90 days after the bill's effective date and issue updated quarterly reports thereafter. It must issue its final report during the final quarter of 2006, and the Commission will cease to exist on December 31, 2006. (Section 3(D).)

COMMENT

R.C. 1345.01 contains the following definitions regarding the Consumer Sales Practices Act:

(1) "Consumer" means a person who engages in a consumer transaction with a supplier.

(2) "Knowledge" means actual awareness, but such actual awareness may be inferred where objective manifestations indicate that the individual involved acted with such awareness.

(3) "Supplier" means a seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions, whether or not the person deals directly with the consumer.

HISTORY

ACTION	DATE
Introduced	09-27-05

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