

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 810

SPONSOR: Senator Carlton

SUBJECT: Motor Fuel Marketing Practices Act

DATE: March 28, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Overcash</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill revises the definition of “nonrefiner cost” to specify that the adjusted invoice cost shall not be less than the supplier’s posted terminal price. This amendment applies only to a civil cause of action accruing on or after the effective date of this act.

It transfers the authority to bring a civil action for violations of the Motor Fuel Marketing Practices Act from the Department of Legal Affairs to the Department of Agriculture and Consumer Services. The bill also provides that all funds collected in such actions are to be deposited in the General Inspection Trust Fund, rather than being shared equally between the Department of Legal Affairs Trust Fund and the General Inspection Trust Fund.

The bill further specifies that the Division of Standards shall compile a report of all complaints received by the Department of Agriculture and Consumer Services regarding the Motor Fuel Marketing Practices Act, for presentation to the Speaker of the House of Representatives and the President of the Senate no later than January 1 of each year.

This bill amends sections 526.303, 526.311, 526.312, 526.313, and 526.3135, Florida Statutes.

II. Present Situation:

Chapter 74-387, L.O.F., created s. 526.151, F.S. The act, commonly referred to as the Retail Divorcement Law, restricted the number of retail service stations operated by producers, refiners, or any subsidiary of a producer or refiner of petroleum products.

Chapter 85-74, L.O.F., repealed s. 526.151, F.S., and created the Motor Fuel Marketing Practices Act (Section 526.301, F.S.). The stated intent of this act was to encourage competition, and promote the general welfare of Florida citizens by prohibiting predatory, discriminatory, or unfair trade practices and restraints which adversely affect motor fuel competition in Florida. To this

end, the act prohibited refiners from selling motor fuel at a retail outlet below refiner cost, where the effect is to injure competition (Section 526.302, F.S.).

“Refiner cost” was defined by this act to mean a refiner’s posted terminal price plus certain taxes, inspection fees, freight charges, direct labor costs, and a reasonable rental value of the retail outlet attributable to the retail sale of the motor fuel. Isolated, inadvertent incidents or sales made in good faith to meet competition were exempted.

“Posted terminal cost” was defined to mean a retailer’s posted terminal price, by grade of motor fuel, to the wholesale class of trade within a general trade area. If a refiner does not have a posted terminal price in a general trade area, the posted terminal price is deemed to be no lower than the posted terminal price of motor fuel of like grade and quality of any other retailer selling to the wholesale class of trade in the general trade area.

Chapter 87-158, L.O.F., amended the Motor Fuel Marketing Practices Act to include nonrefiners under the provisions of the act, and defined the term “nonrefiner” to mean a retailer, jobber, multi-state marketer, chain dealer, or a dealer engaged in the sale of motor fuel.

“Nonrefiner cost” was defined to mean the nonrefiner’s invoice cost, by grade, plus certain taxes, inspection fees, freight charges, direct labor charges, and a reasonable rental value of the retail outlet attributable to the retail sale of the motor fuel. Credit card allowances, trade discounts, and rebates actually received were allowable deductions when determining nonrefiner cost.

Chapter 90-354, L.O.F., provided definitions for direct labor cost, reasonable rental value, and rent, and redefined the term “motor fuel” to include any special fuel which is used for the propulsion of motor vehicles.

Chapter 91-247, L.O.F., further amended the Motor Fuel Marketing Practices Act and revised certain definitions and provided additional definitions. The term “nonrefiner” was redefined to mean any person other than a refiner engaged in the sale of motor fuel. The term “refiner” was redefined to mean any person who stores or exchanges motor fuel at a terminal facility in this state and who sells or transfers motor fuel through the loading rack at such facility. The term includes affiliates of the refiner. “Dealer” was defined to mean any person, other than a refiner or wholesaler, who is engaged in the business of selling motor fuel at a retail outlet. The term “wholesaler” was defined to mean any person, other than a refiner or dealer, who purchases motor fuel at a terminal facility and supplies it to retail outlets.

The 1991 act also made it an unlawful predatory practice for a refiner to sell motor fuel at a retail outlet at a price below that which the refiner charges to a wholesaler or dealer under contract for like fuel within the same geographic market.

The act further made it an unlawful discriminatory practice for a refiner to sell motor fuel to a wholesaler under a written contract at a price higher, after deducting taxes and fees, which is higher than the net price, after deducting all allowances, rebates and discounts, at which the refiner contemporaneously sells to a dealer in competition with any retail outlet supplied by the wholesaler where the effect is to injure competition. An exception is provided when the difference

in price is attributable to a rebate or other concession which is offered to the wholesaler on relatively equal terms. There is an exemption for inadvertent or isolated incidents.

The Department of Agriculture and Consumer Services is required to investigate any complaints regarding violations of the Motor Fuel Marketing Practices Act, and may request documents and records as part of its investigation. If the alleged violator does not comply with this request, DACS may request that the Department of Legal Affairs subpoena the documents and records. The Department of Legal Affairs may also subpoena additional relevant records or testimony, if the investigation indicates that a violation has occurred.

Any violator of the Motor Fuel Marketing Practices Act is subject to a civil penalty not to exceed \$10,000 per violation. Each day that a violation occurs is considered a separate violation, but no civil penalty shall exceed \$25,000. Civil penalties may be assessed and recovered in a civil action brought by the Department of Legal Affairs. All funds recovered are shared equally between the Department of Legal Affairs Trust Fund and the General Inspection Trust Fund.

The Department of Legal Affairs must show cause for injunctive relief against alleged violators of the Motor Fuel Marketing Practices Act, and must bring action within 2 years after the alleged violation has occurred or should reasonably have been discovered.

The Department of Legal Affairs is directed to compile a report of all complaints received by the Department of Agriculture and Consumer Affairs regarding violations of the Motor Fuel Marketing Practices Act. This report is to be presented to the President of the Senate and the Speaker of the House of Representatives no later than January 1 of each year.

III. Effect of Proposed Changes:

Section 1. Amends s. 526.303, F.S., by redefining the term “nonrefiner cost,” to provide that the nonrefiner’s adjusted invoice cost by grade shall not be less than the posted terminal price of the nonrefiner’s supplier.

Section 2. Amends s. 526.303, F.S., to stipulate that it shall apply to any civil cause of action accruing on or after the effective date of this act.

Section 3. Amends s. 526.311, F.S., to authorize the Department of Agriculture and Consumer Services, through its office of general counsel, to issue subpoenas and institute civil actions for violations of the Motor Fuel Marketing Practices Act.

Provides that funds recovered through civil actions will be deposited into the General Inspection Trust Fund.

Section 4. Amends s. 526.312, F.S., to provide that the Department of Agriculture and Consumer Services must show cause for injunctive relief against alleged violators of the Motor Fuel Marketing Practices Act.

Section 5. Amends s. 526.313, F.S., to provide that the Department of Agriculture and Consumer Services must bring action within 2 years after alleged violations have occurred.

Section 6. Amends s. 526.3135, F.S., to specify that the Division of Standards is to compile an annual report of all complaints received by the Department of Agriculture and Consumer Services regarding the Motor Fuel Marketing Practices Act, for presentation to the Speaker of the House of Representatives and the President of the Senate.

Section 7. Provides that this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under certain circumstances, the statutorily defined nonrefiner cost will be increased or decreased, which may have an indeterminate effect on profit margins or consumer costs.

C. Government Sector Impact:

Expenditures	Fund	FY 2000-01	FY 2001-02
Department of Agriculture and Consumer Services			
Non-Recurring Costs:			
One-Time Expenses	GR	<u>\$ 21,183</u>	<u>\$ 0</u>
Recurring Costs (Annualized Cont. Effects):			
3 FTEs	GR	<u>\$187,633</u>	<u>\$192,199</u>
TOTAL OPERATING COSTS:	GR	<u>\$208,816</u>	<u>\$192,199</u>

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
