

By the Committee on Agriculture and Consumer Services; and
Senator Carlton

303-1890-00

1 A bill to be entitled
2 An act relating to the Motor Fuel Marketing
3 Practices Act; amending s. 526.303, F.S.;
4 revising a definition; providing for
5 application to certain civil actions; amending
6 s. 526.311, F.S.; revising enforcement
7 provisions; transferring from the Department of
8 Legal Affairs to the Department of Agriculture
9 and Consumer Services responsibilities as the
10 lead agency to enforce the Motor Fuel Marketing
11 Practices Act; revising disposition of funds
12 collected in civil actions; amending ss.
13 526.312, 526.313, F.S., to conform; amending s.
14 526.3135, F.S.; specifying certain required
15 reporting by the Division of Standards of the
16 Department of Agriculture and Consumer
17 Services; providing an effective date.

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19 Be It Enacted by the Legislature of the State of Florida:
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21 Section 1. Subsection (7) of section 526.303, Florida
22 Statutes, is amended to read:

23 526.303 Definitions.--As used in this act:
24 (7) "Nonrefiner cost" means: the nonrefiner's invoice
25 cost by grade of the motor fuel, ~~by grade~~, less credit card
26 allowances, trade discounts, and rebates actually received,
27 which shall not be less than the posted terminal price of the
28 nonrefiner's supplier, as determined in accordance with
29 subsection (8), to which shall be added federal, state, and
30 local taxes and inspection fees applicable to motor fuel;
31 freight charges to the retail outlet; and direct labor costs

1 and the reasonable rental value of the retail outlet
2 attributable to the sale of motor fuel by the nonrefiner. If
3 motor fuel is sold with another item at a combined price,
4 nonrefiner motor fuel cost shall also include the cost of the
5 other item and the direct labor costs and the reasonable
6 rental value of the retail outlet attributable to the retail
7 sale of the item by the nonrefiner.

8 Section 2. The amendment to section 526.303(7),
9 Florida Statutes, by section 1 shall apply to any civil cause
10 of action accruing on or after the effective date of this act.

11 Section 3. Subsections (2) and (3) of section 526.311,
12 Florida Statutes, are amended to read:

13 526.311 Enforcement; civil penalties; injunctive
14 relief.--

15 (2) The Department of Agriculture and Consumer
16 Services shall investigate any complaints regarding violations
17 of this act and may request in writing the production of
18 documents and records as part of its investigation of a
19 complaint. ~~Trade secrets, as defined in s. 812.081, and~~
20 ~~proprietary confidential business information contained in the~~
21 ~~documents or records received by the department pursuant to a~~
22 ~~written request or a Department of Legal Affairs subpoena are~~
23 ~~confidential and exempt from the provisions of s. 119.07(1)~~
24 ~~and s. 24(a), Art. I of the State Constitution.~~ If the person
25 upon whom such request was made fails to produce the documents
26 or records within 30 days after the date of the request, the
27 department, through the department's office of general
28 counsel, may of Agriculture and Consumer Services may request
29 that the Department of Legal Affairs issue and serve a
30 subpoena subpoenas to compel the production of such documents
31 and records. If any person shall refuse to comply with a

1 subpoena issued under this section, the department of ~~Legal~~
2 ~~Affairs~~ may petition a court of competent jurisdiction to
3 enforce the subpoena and assess such sanctions as the court
4 may direct. Refiners shall afford the department of
5 ~~Agriculture and Consumer Services~~ reasonable access to the
6 refiners' posted terminal price. ~~After completion of an~~
7 ~~investigation, the Department of Agriculture and Consumer~~
8 ~~Services shall give the results of its investigation to the~~
9 ~~Department of Legal Affairs. The Department of Legal Affairs~~
10 ~~may then subpoena additional relevant records or testimony if~~
11 ~~it determines that the Department of Agriculture and Consumer~~
12 ~~Services' investigation shows a violation has likely occurred.~~
13 Any records, documents, papers, maps, books, tapes,
14 photographs, files, sound recordings, or other business
15 material, regardless of form or characteristics, obtained by
16 the ~~a~~ department of ~~Legal Affairs~~ subpoena are confidential
17 and exempt from the provisions of s. 119.07(1) and s. 24(a),
18 Art. I of the State Constitution while the investigation is
19 pending. At the conclusion of an investigation, any matter
20 determined by the department of ~~Legal Affairs~~ or by a judicial
21 or administrative body, federal or state, to be a trade secret
22 or proprietary confidential business information held by the
23 department pursuant to such investigation shall be considered
24 confidential and exempt from the provisions of s. 119.07(1)
25 and s. 24(a), Art. I of the State Constitution. Such
26 materials may be used in any administrative or judicial
27 proceeding so long as the confidential or proprietary nature
28 of the material is maintained.

29 (3) The civil penalty imposed under this section may
30 be assessed and recovered in a civil action brought by the
31 department of ~~Legal Affairs~~ in any court of competent

1 jurisdiction. If the department ~~of Legal Affairs~~ prevails in a
2 civil action, the court may award it reasonable attorneys'
3 fees as it deems appropriate. All funds recovered by the
4 department ~~of Legal Affairs~~ shall be deposited into ~~shared~~
5 ~~equally between the Department of Legal Affairs Trust Fund and~~
6 the General Inspection Trust Fund.

7 Section 4. Subsection (2) of section 526.312, Florida
8 Statutes, is amended to read:

9 526.312 Enforcement; private actions; injunctive
10 relief.--

11 (2) On the application for a temporary restraining
12 order or a preliminary injunction, the court, in its
13 discretion having due regard for the public interest, may
14 require or dispense with the requirement of a bond, with or
15 without surety, as conditions and circumstances may require.
16 If a bond is required, the amount shall not be greater than
17 \$50,000. Upon proper application by the plaintiff, the court
18 shall grant preliminary injunctive relief if the plaintiff
19 shows:

20 (a) That he or she is a proper person to seek the
21 relief requested.

22 (b) There exist sufficiently serious questions going
23 to the merits to make such questions a fair ground for
24 litigation; and the court determines, on balance, the
25 hardships imposed on the defendant and the public interest by
26 the issuance of such preliminary injunctive relief will be
27 less than the hardship which would be imposed on the plaintiff
28 if such preliminary injunctive relief were not granted.

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1 The standards specified in paragraphs (a) and (b) shall also
2 apply to actions for injunctive relief brought by the
3 department of ~~Legal Affairs~~ under s. 526.311.

4 Section 5. Section 526.313, Florida Statutes, is
5 amended to read:

6 526.313 Limitations period for actions.--Any action
7 brought by the department of ~~Legal Affairs~~ shall be brought
8 within 2 years after the alleged violation occurred or should
9 reasonably have been discovered. Any action brought by any
10 other person shall be brought within 1 year after the alleged
11 violation occurred or should reasonably have been discovered,
12 except that a private action brought under s. 526.305 for
13 unlawful price discrimination shall be brought within 2 years
14 from the date the alleged violation occurred or should
15 reasonably have been discovered.

16 Section 6. Section 526.3135, Florida Statutes, is
17 amended to read:

18 526.3135 Reports by the Division of Standards
19 ~~Department of Agriculture and Consumer Services~~--The Division
20 of Standards ~~Department of Agriculture and Consumer Services~~
21 is directed to compile a report pursuant to s. 570.544 of all
22 complaints received by the Department of Agriculture and
23 Consumer Services pursuant to this act. Such report shall
24 contain at least the information required by s.
25 570.544(6)(b)2.-4. and shall be presented to the Speaker of
26 the House of Representatives and the President of the Senate
27 no later than January 1 of each year.

28 Section 7. This act shall take effect upon becoming a
29 law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 810

4 The committee substitute makes the following changes:

- 5 * Deletes language that redefines "retail outlet" to
6 include a facility selling only to its members.
- 7 * Deletes language that provides that discounts received
8 at the time of purchase are considered when determining
9 whether a refiner or nonrefiner's retail sales price is
10 below the refiner or nonrefiner's cost.
- 11 * Deletes language that stipulates that the legislative
12 intent of the act is to clarify and conform existing
13 law.
- 14 * Stipulates that the amendment to s. 526.303(7), F.S.,
15 shall apply to any civil cause of action accruing on or
16 after the effective date of this act.
- 17 * Transfers the authority to bring a civil action for
18 violations of the Motor Fuel Marketing Practices Act
19 from the Department of Legal Affairs to the Department
20 of Agriculture and Consumer Services.
- 21 * Provides that all funds collected in such actions are to
22 be deposited in the General Inspection Trust Fund,
23 rather than being shared equally between the Department
24 of Legal Affairs Trust Fund and the General Inspection
25 Trust Fund.
- 26 * Provides that the Department of Agriculture and Consumer
27 Services must show cause for injunctive relief against
28 alleged violators of the Motor Fuel Marketing Practices
29 Act.
- 30 * Provides that the Department of Agriculture and Consumer
31 Services must bring action within two years after
 alleged violations have occurred.
- * 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
 President of the Senate and the Speaker of the House of
 Representatives no later than January 1 of each year.