

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Transportation Committee

BILL: SB 476

INTRODUCER: Senator Norman

SUBJECT: Sale of Motor Fuel

DATE: November 8, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Abrams	Buford	TR	Pre-meeting
2.	_____	_____	CM	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill requires retail service stations that charge a different price for cash and credit purchases of motor fuels to display the respective price for each type of sale on all signage.

This bill substantially amends section 526.121, Florida Statutes.

II. Present Situation:

Section 526.121, Florida Statutes, regulates the posting of prices for gasoline in Florida. Subsection (1) prohibits retail service stations from charging a different price for the same grade of gasoline dispensed from different pumps when supplied from a common storage. Subsection (2) provides an exception to subsection (1) and allows a price differential between a cash sale and a credit sale of the same grade of gasoline. Subsection (2) also provides an exception for price differences between self-service and attendant-controlled pumps.

Current Gas Station Signage Requirements

The Federal Trade Commission has promulgated rules requiring retailers to post automotive fuel ratings on fuel dispensers, but no federal regulations cover retail service station signage requirements.¹ Similarly, Florida does not have a state signage requirement for gas stations.² Instead, the Florida Statutes provide that “[l]ocal land development regulations shall contain

¹ 16 CFR § 306.10 (2011).

² Despite the no signage requirement, when displaying the retail price of gasoline, Florida law does direct retail stations to maintain certain numeral requirements and include taxes in the advertised price. § 526.111(1) Fla. Stat. (2011).

specific and detailed provisions necessary or desirable to implement the adopted comprehensive plan and shall . . . [r]egulate signage.”³ For example, a city or county, through its ordinance, may mandate the posting of signs with gasoline prices by retail gasoline stations.⁴

Cash versus Credit Pricing for Gasoline

The Cash Discount Act⁵ of 1981 gives merchants the ability to offer a discount to induce cardholders to pay by cash, check or similar means.⁶ Extending credit for gasoline existed for 60 years as a free service prior to the passage of the Cash Discount Act. In 1982, two major oil companies dropped their credit card programs and many other companies followed. As a result, two-tiered pricing models with “discount-for-cash” programs came into existence. This major departure from the old practice of free extensions of credit resulted in charging credit users a few extra cents per gallon.⁷

Similarly, in Florida in the early 1980’s, Sing Oil Company instituted a cash for discount program, whereby a consumer paid a lower price for gasoline if he or she paid cash. This was challenged by the Florida Department of Agriculture and Consumer Services (DACCS). The Second Judicial Circuit decided that s. 526.121, Florida Statutes, was intended to stop misleading pricing and Sing’s posting of a different price was not misleading, but instead only the “granting of a discount.”⁸

Current section 501.0117, Florida Statutes, provides analogous provisions to the Cash Discount Act. In spirit with the original provisions of the Cash Discount Act, this statute allows discounts for the purpose of inducing payments by cash, check or similar means, but prohibits surcharges for using credit cards in lieu of payments via cash, check or similar means. Today, cash discounts are rare outside the retail gasoline industry context.⁹

III. Effect of Proposed Changes:

The bill requires all signage showing gasoline and motor fuel prices to display the different prices for a cash sale and a credit sale if a retail station charges different prices for each type of sale.

³ § 163.3202(2)(a) Fla. Stat. (2011)

⁴ See e.g., City of Orlando Ordinance § 43.89 (2011) (requiring gas stations to display the prices of gasoline sold to protect consumers from unfair and deceptive practices. Judge Rodriguez of the Ninth Judicial Circuit of Florida recently upheld this requirement.); Mark Schlueb, *Infamous gas stations put up signs but still face hefty fines* (Orlando Sentinel, October 20, 2011) available at http://articles.orlandosentinel.com/2011-10-20/news/os-airport-gas-stations-20111020_1_suncoast-energys-sun-gas-face-hefty-fines; see also, Code of Metropolitan Dade County, Florida, § 8A-4 available at <http://library.municode.com/index.aspx?nomobile=1&clientid=10620>

⁵ Cash Discount Act, Pub. L. No. 97-25, 95 Stat. 144 (1981), codified at 15 U.S.C. §§1602, 1666f(a) (2000).

⁶ Adam J. Levitin, *Priceless? The Economic Costs of Credit Card Merchant Restraints*, 55 UCLA L. Rev. 1321, 1350 (2008); For more information on Congress’s intention in creating this act, see Senate Report NO. 97-23, S. Rep. 97-23, 2, 1981 U.S.C.C.A.N. 74, 75, 1981 WL 21364, 1.

⁷ John M. Barron, Michael E. Staten & John Umbeck, *Discounts for Cash in Retail Gasoline Marketing*, Credit Research Center, Krannert Graduate School of Management of Purdue University (September 1991).

⁸ Florida House of Representatives Committee on Commerce, *Post 1982 Legislative Session Summary and Explanation of Senate Bill 477* (March 19, 1982) (on file with the Senate Transportation Committee).

⁹ Levitin, *supra* note 6.

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

According to the DACS, this bill may conflict with local ordinances regarding business advertising and signage. In turn, this could affect the ability of retail motor fuel stations to advertise motor fuel products.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the DACS, if signage is defined to include the individual motor fuel dispensers, most stations would be required to replace or alter their present motor fuel dispensers to simultaneously display both cash and credit prices for all products. Also, retail service stations may need to adjust the size of their existing signage or reduce the number of products advertised to provide space for additional prices. These costs cannot be estimated as they will vary with the specific situation at each station.¹⁰

C. Government Sector Impact:

The bill may alter the nature of consumer complaints received by DACS. Also, the DACS believes that this bill may conflict with local ordinances regarding business advertising and signage.¹¹

VI. Technical Deficiencies:

The bill requires all signage to display the differing gasoline and motor fuel prices, but does not provide a clear definition of what constitutes “signage.”¹²

¹⁰ Florida Department of Agriculture and Consumer Services, *SENATE BILL # SB 476 Senator Norman* (October 10, 2011) (on file with the Senate Transportation Committee).

¹¹ *Id.*

¹² *Id.* Under the regulation of professions and occupations outdoor advertising requirements section of the Florida Statutes, a sign is defined as “any combination of structure and message in the form of an outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, advertising structure, advertisement, logo, symbol, or other form, whether

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

placed individually or on a V-type, back-to-back, side-to-side, stacked, or double-faced display or automatic changeable facing, designed, intended, or used to advertise or inform, any part of the advertising message or informative contents of which is visible from any place on the main-traveled way. The term does not include an official traffic control sign, official marker, or specific information panel erected, caused to be erected, or approved by the department.” §479.01(20) Florida Statutes (2011); The Department of Transportation defines a “completed sign” as “an erected sign structure with attached facing, and a posted message.” Fla. Admin. C. Ann. 14-10.0011(b)(2011). Adopting the latter definition from the Florida Administrative Code will help clarify what structures need to include the cash and credit prices of gasoline.