STORAGE NAME: h2109a.gg
DATE: April 5, 2000

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
ANALYSIS

BILL #: HB 2109 (PCB BRCA 00-04)

RELATING TO: Motor Fuel Marketing Practices

SPONSOR(S): Committee on Business Regulation & Consumer Affairs, Representative Ogles, and others

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) BUSINESS REGULATION & CONSUMER AFFAIRS YEAS 7 NAYS 1
(2) GENERAL GOVERNMENT APPROPRIATIONS YEAS 11 NAYS 0
(3)
(4)
(5)

I. SUMMARY:

The statutory term “nonrefiner cost” is amended to tie the computation of costs, for the purposes of the Motor Fuel Marketing Practices Act, to the price actually paid by the nonrefiner. The investigation and prosecution of violations of the Motor Fuel Marketing Practices Act is consolidated within a single agency, the Department of Agriculture and Consumer Services. The disposition of recovered penalties is also revised.

The Department anticipates expending $208,816 for the requirements of this bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [x]
2.	Lower Taxes	Yes []	No [x]	N/A []
3.	Individual Freedom	Yes []	No []	N/A [x]
4.	Personal Responsibility	Yes []	No []	N/A [x]
5.	Family Empowerment	Yes []	No []	N/A [x]

For any principle that received a "no" above, please explain:

The proposed committee bill does not support individual freedom to the extent that it redefines the term “nonrefiner cost” so as to limit presently lawful pricing activities.

B. PRESENT SITUATION:

The Motor Fuel Marketing Practices Act (Ch. 85-74, L.O.F.) was passed by the 1985 Legislature to repeal and replace the retail divorcement law (Ch. 74-387, L.O.F.). The retail divorcement law required vertically integrated refiners[1] to divest of the majority of their retail operations in Florida.

The Motor Fuel Marketing Practices Act (the Act) currently allows vertically integrated refiners to operate in Florida but prohibits the wholesale and retail sale of motor fuels, by refiners, wholesalers and retailers, below statutorily defined costs. The Act prohibits predatory pricing[2], discriminatory practices[3] and allocations[4], unfair practices[5], and certain wholesale rebates[6]. The Act defines the term “nonrefiner cost” to establish the cost factors that are computed to determine the price the nonrefiner[7] cannot sell below. The current

[1]A vertically integrated refiner is one that owns and operates in all phases of the industry from exploration and production to retail outlets.

[2]S. 526.304, F.S.

[3]S. 526.305, F.S.

[4]S. 526.306, F.S.

[5]S. 526.307, F.S.

[6]S. 526.308, F.S.

[7]A nonrefiner is anyone other than a refiner. S. 526.303(6), F.S. This includes persons commonly referred to a wholesalers, jobbers, dealers, and retailers.

nonrefiner cost is the adjusted invoice price[8] plus taxes and fees, freight, direct labor cost, and reasonable rental value of the retail outlet[9].

The enforcement of the Act is currently divided between the Department of Agriculture and Consumer Services (DACS) and the Attorney General[10]. The DACS, Division of Standards, accepts and investigates complaints while the Attorney General prosecutes violations[11]. The General Inspection Trust Fund and the Department of Legal Affairs Trust Fund share equally in recovered civil penalties[12] Also, the DACS is required to submit annual reports of complaints to the Speaker of the House and President of the Senate[13].

C. EFFECT OF PROPOSED CHANGES:

Section 526.303(7), F.S., is amended to change the definition of nonrefiner cost. Under the new definition the adjusted invoice price cannot be less than the rack price[14] of the nonrefiner's supplier or the imputed rack price[15] if the nonrefiner's supplier does not have a posted rack price. This will tie the figuring of nonrefiner cost to the price actually paid by the nonrefiner's supplier at the rack. In certain circumstances, the nonrefiner cost will be higher than under the present statute. For example, in those instances where the nonrefiner's adjusted invoice price is less than the rack price, the nonrefiner cost will be computed from the rack price, a net increase in cost. Where the adjusted invoice price is greater than the rack price (as happens when computing the nonrefiner cost via imputed rack price pursuant to s. 526.303(8), F.S.), the nonrefiner cost will be computed from the adjusted invoice price, again a net increase. The change in nonrefiner cost will provide retailers, competitors and government an easily identifiable starting point when computing nonrefiner cost. This will potentially reduce complaints and law suits by making clearer the factors used by nonrefiners to set their retail price.

The DACS will provide both investigation and prosecution under the Act. Further, the annual report required pursuant to s. 526.3135, F.S., will now expressly be the responsibility of the Division of Standards.

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[8]The adjusted invoice price is the price paid by grade on the invoice minus any credit card allowance, trade discounts, and rebates actually received. S. 526.307, F.S.

[9]S. 526.303(7), F.S.

[10]S. 526.311, F.S. The Act also allows for private enforcement by providing a right of civil action to those injured by predatory pricing. S. 526.312, F.S.

[11]S. 526.311(2), F.S.

[12]S. 526.311(3), F.S.

[13]S. 526.3135, F.S.

[14]The rack price is the posted terminal price of the supplier. The posted terminal price is defined by s. 526.303(8), F.S.

[15]In the event that the rack price is not posted by the supplier, the rack price is imputed to be the lowest posted terminal price of like grade in the general trade area. S. 526.303(8), F.S.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s.526.303(7),F.S., making a grammatical change and adding a requirement that the nonrefiner's posted terminal price be used in certain circumstances when computing nonrefiner cost.

Section 2. Providing legislative intent regarding application of the amendment to statute made by section 1. of the bill.

Section 3. Amends s. 526.311(2) and (3), F.S., shifting responsibility for prosecuting violations of the Motor Fuel Marketing Practices Act from the Department of Legal Affairs to the Department of Agriculture and Consumer Services, revising disposition of civil penalties.

Section 4. Amends s. 526.312(2), F.S., deleting a reference to the Department of Legal Affairs.

Section 5. Amends s. 526.313, F.S., deleting a reference to the Department of Legal Affairs.

Section 6. Amends s. 526.3135, F.S., requiring the Division of Standards to perform mandatory reporting.

Section 7. Provides that the act will take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

Department of Agriculture and Consumer Services	**2000-01**	**2001-02**
One-time expenses:	21,183	
Recurring expenses:	187,633	192,199
Total	208,816	192,199

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Under certain circumstances, the statutorily defined nonrefiner cost will be increased which will either reduce profit margins proportionately or be passed on to consumers.

D. FISCAL COMMENTS:

The Department anticipates expending $208,816 for the requirements of this bill. Revenue from civil penalties and associated attorney fees are to be deposited into the General Inspection Trust Fund. Applicable revenues are indeterminate.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

Prepared by:	Staff Director:
Eric Lloyd	Rebecca R. Everhart

AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:	Staff Director:
Marsha M. Belcher	Cynthia P. Kelly