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LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

Sess. Law #	85-74	Sec. #	all	LOF cite	Ii, 429-454
Prime Bill #	HB 690	Comp./Sim. Bills	none		
JLMC Hist. Cites	Senate 34 House 79	Comms. of Ref.	Senate House	Committee (see 1st)	

COMMITTEE RECORDS

H/S	Committee	Record Series: Folder title, etc.	Loc. Cite	✓
H	Comm	200-126 1985: H 670	19/14.3	
"	"	11-5-1985: Retail Gasoline Divorcement	19/1-20	
"	"	SUBJ FILES "Retail Divorcement FILES 1985"	19/1631	
S	Comm	meeting FILES 4/11/85	18/1505	

☐ continued on reverse

Senate/House Journals

Page #	?	Date	Page #	?	Date
SJ. 402*		11-5-1985			

Committee/Floor Tapes

H/S	c/f	Committee/subcommittee name	Date	#	Location Cite
H	C	Ad Hoc / Retail Gas 10-20 2 tapes	10-28 3 tapes		920/414/489
H	C	Ad Hoc ** 10-20 5 tapes	11-1 2 tapes		920/414/538
S	C	Ad Hoc 58 231	4-2-85		7-2/615/236, 339

Other Documentation

Record Series Title, folder title, etc.	Location Cite

[illegible]

NOTES

*"Two amendments were adopted to SB.237 to conform the bill to CS for HB 690." - SJ. 402

** The bill file for HB 690 lists only one meeting at which the bill was discussed. May 7, 1985 (1 tape)

(3) If the personal representative learns of any property not included in the original inventory, or learns that the estimated value or description indicated in the original inventory for any item is erroneous or misleading, he shall prepare an amended or supplementary inventory showing the estimated value of the new item at the date of the decedent's death, or the revised estimated value or description; and the personal representative shall serve a copy of the amended or supplementary inventory on each person on whom a copy of the inventory was served and shall file proof of such service. The amended or supplementary inventory shall be verified by the personal representative.

~~(4) -- The court, for good cause shown, may require the personal representative to file the inventory or any amended or supplementary inventory. Any inventory or amended or supplementary inventory which has been filed is subject to inspection only upon an order of the court for good cause shown.~~

~~(5) -- The personal representative shall serve a copy of the inventory on the Department of Revenue as provided in s. 193.052(7).~~

Section 2. This act shall take effect October 1, 1985.

Approved by the Governor June 5, 1985.

Filed in Office Secretary of State June 5, 1985.

CHAPTER 85-73

House Bill No. 553

An act relating to public records; amending s. 119.07, F.S., providing a procedure for the examination of ballots under the public records law; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) is added to subsection (1) of section 119.07, Florida Statutes, 1984 Supplement, to read:

119.07 Inspection and examination of records; exemptions.--

(1)

(c) When ballots are produced under this section for inspection or examination, no persons other than the supervisor of elections or his employees shall touch the ballots. The supervisor of elections shall make a reasonable effort to notify all candidates by telephone or otherwise of the time and place of the inspection or examination. All such candidates, or their representatives, shall be allowed to be present during the inspection or examination.

Section 2. This act shall take effect January 1, 1986.

Approved by the Governor June 5, 1985.

Filed in Office Secretary of State June 5, 1985.

CHAPTER 85-74

Committee Substitute for House Bill No. 690

An act relating to sale of motor fuel; creating the Motor Fuel Marketing Practices Act; providing definitions; prohibiting predatory practices which injure competition; prohibiting sale of motor fuel at discriminatory prices which injure competition; prohibiting discriminatory allocations; prohibiting certain unfair practices in connection with retail outlets; prohibiting certain rebates which injure competition; providing exemptions; providing for civil penalties and injunctive relief; specifying duties of the Department of Agriculture and Consumer Services and the Department of Legal Affairs; providing for private actions; providing for damages and injunctive relief; providing for attorney's fees; providing limitations on actions; repealing s. 526.151, F.S., which provides restrictions on operation of retail service stations by producers and refiners and requires producers and refiners to apply equipment rental charges uniformly to retail service station dealers; specifying effect on actions begun under said section before the effective date of the act; requiring certain reports and studies; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Short title.--This act may be cited as the "Motor Fuel Marketing Practices Act."

Section 2. Legislative findings and intent.--The Legislature finds that fair and healthy competition in the marketing of motor fuel provides maximum benefits to consumers in Florida, and that certain marketing practices which impair such competition are contrary to the public interest. Predatory practices and, under certain conditions, discriminatory practices, are unfair trade practices and restraints which adversely affect motor fuel competition. It is the intent of the Legislature to encourage competition and promote the general welfare of Florida citizens by prohibiting such unfair practices.

Section 3. Definitions.--As used in this act:

(1) "Motor fuel" means any petroleum product which is used for the propulsion of motor vehicles.

(2) "Retail outlet" means a facility, including land and improvements, where motor fuel is offered for sale, at retail, to the motoring public.

(3) "Sale" means any transfer, gift, sale, offer for sale, or advertisement for sale in any manner or by any means whatsoever, including any transfer of motor fuel from a person to itself or an

affiliate at another level of distribution, but does not include product exchanges at the wholesale level of distribution.

(4) "Refiner" means any person engaged in the production or refining of motor fuel, whether such production or refining occurs in this state or elsewhere, and includes an affiliate of such refiner with respect to such affiliate's sale of motor fuel.

(5) "Affiliate" means any person whose stock is more than 50 percent owned by, or who, regardless of stock ownership, is controlled by, or who, regardless of stock ownership, is under common control with, any refiner.

(6) "Posted terminal price" means a refiner'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, his posted terminal price shall be deemed to be no lower than the lowest posted terminal price of motor fuel of like grade and quality of any other refiner selling to the wholesale class of trade in the general trade area.

(7) "Refiner cost" means a refiner's posted terminal price plus state, federal and local taxes and inspection fees applicable to motor fuel, and freight charges to its retail outlet, and direct labor costs and reasonable rental value of the retail outlet attributable to the retail sale of motor fuel by the refiner. If motor fuel is sold with another item, at a combined price, refiner cost shall also include the cost of the other item and direct labor costs and reasonable rental value of the retail outlet attributable to the retail sale of the item by the refiner.

(8) "Competition" means the vying for motor fuel sales between any two sellers in the same market area and at the same level of distribution.

Section 4. Predatory practices unlawful; exceptions.--

(1) It is unlawful for any refiner engaged in commerce in this state to sell any grade or quality of motor fuel at a retail outlet below refiner cost, where the effect is to injure competition. An isolated, inadvertent incident shall not be a violation of this section.

(2) A refiner's sale below refiner cost in good faith to meet an equally low retail price of a competitor selling motor fuel of like grade which can be used in the same motor vehicle, or of the same or similar items in combination with motor fuel of like grade which can be used in the same motor vehicle, is not a violation of this section.

Section 5. Discriminatory practices unlawful; exceptions.--

(1) It is unlawful for any person engaged in commerce in this state:

(a) To sell for resale any grade of motor fuel at a price lower than the price at which the seller contemporaneously sells motor fuel of like grade and quality to another person on the same level of distribution, in the same class of trade, and within the same market area as the purchaser; or

(b) To knowingly receive for resale any grade of motor fuel at a price lower than the price at which the seller from which the motor fuel is purchased or received contemporaneously sells motor fuel of like grade and quality to another person on the same level of distribution, in the same class of trade, within the same market area as the purchaser;

where the effect is to injure competition. An isolated inadvertent incident shall not be a violation of this act.

(2) A sale of motor fuel of like grade and quality at different prices to persons at the same level of distribution is not a violation of this section if the difference in price is due to a difference in the cost of sale or delivery resulting from differing methods or quantities in which the grade of motor fuel is sold or delivered.

(3) A sale made in good faith to meet an equally low price of a competitor selling motor fuel of like grade which can be used in the same motor vehicle is not a violation of this section.

Section 6. Discriminatory allocations unlawful.--

(1) It is unlawful for a supplier engaged in commerce in this state to limit or allocate the quantity of motor fuel available to a reseller purchasing under contract from such supplier because such reseller was prevented by such supplier from purchasing the minimum quantities such reseller was obligated to purchase from such supplier in the immediately preceding year, unless the limitations or allocations are applied in a reasonable and nondiscriminatory manner among all resellers supplied by such supplier under contract in a general trade area and the supplier's own retail outlets.

(2) It is also unlawful for a supplier to limit or allocate for more than 5 days the quantity of motor fuel available to a reseller purchasing under contract from such supplier, unless the limitations or allocations are applied in a reasonable and nondiscriminatory manner among all resellers supplied by such supplier under contract in a general trade area and the supplier's own retail outlets.

Section 7. Unfair practices unlawful.--

(1) It shall be unlawful for a refiner or other supplier to fix or maintain the retail price of motor fuel at a retail outlet supplied by that refiner or supplier. Nothing herein shall be construed to prevent a refiner or supplier from counseling concerning retail prices, provided no threat or coercion is used in the counseling. This subsection shall not apply to retail outlets operated by the refiner or supplier.

(2) It is unlawful for a supplier supplying motor fuel to a person for resale and leasing a retail outlet to the person to impose any material modification in the contractual arrangements during the term of the contract, including a material modification of the leased retail outlet, unless such modification is made in good faith and based upon reasonable business practices.

Section 8. Certain rebates unlawful.--It is unlawful for any seller to offer or give, or any purchaser to knowingly receive, a rebate or concession of any kind in connection with the sale of motor

fuel for resale to a person when the seller does not provide, on proportionately equal terms, the same rebate or concession to all persons purchasing for resale in a market area, where the effect is to injure competition. However, any rebate or concession received by a wholesaler shall be offered or given to any retail outlet supplied by such wholesaler. Provided that a rebate or concession made in good faith to meet the same or a comparable rebate or concession of a competitor shall not be a violation of this act.

Section 9. Exempt sales.--The provisions of this act shall not apply to the following retail sales by a refiner:

(1) A bona fide clearance sale for the purpose of discontinuing trade in such motor fuel.

(2) A final business liquidation sale.

(3) A sale of the refiner's motor fuel by a fiduciary or other officer under the order or direction of any court.

(4) Sales made during a grand opening to introduce a new or remodeled business not to exceed 3 days, which grand opening shall be held within 60 days from the date the new or remodeled business begins operations.

Section 10. Enforcement; civil penalties; injunctive relief.--

(1) Any person who knowingly violates this act shall be subject to a civil penalty not to exceed \$1,000 per violation. Each day that a violation of this act occurs shall be considered a separate violation, but no civil penalty shall exceed \$50,000. Any such person shall also be liable for attorney's fees and shall be subject to injunctive relief.

(2) The Department of Agriculture and Consumer Services shall investigate any complaints regarding violations of this act. The Department of Agriculture and Consumer Services may request, but shall not require the production of, or subpoena, records or testimony. After completion of an investigation, the Department of Agriculture and Consumer Services shall give the results of its investigation to the Department of Legal Affairs. The Department of Legal Affairs may then subpoena relevant records or testimony if it determines that the Department of Agriculture and Consumer Services' investigation shows a violation has likely occurred.

(3) The civil penalty imposed under this section may be assessed and recovered in a civil action brought by the Department of Legal Affairs in any court of competent jurisdiction. If the Department of Legal Affairs prevails in a civil action, the court may award it reasonable attorneys' fees as it deems appropriate. All funds recovered by the Department of Legal Affairs shall be paid to the State Treasury.

Section 11. Enforcement; private actions; injunctive relief.--

(1) Any person injured as a result of an act or practice which violates this act may bring a civil action for appropriate relief, including an action for a declaratory judgment, injunctive relief, and for actual damages.

(2) On the application for a temporary restraining order or a preliminary injunction, the court, in its discretion having due regard for the public interest, may require or dispense with the requirement of a bond, with or without surety, as conditions and circumstances may require. If a bond is required, the amount shall not be greater than \$50,000.

(3) Any actual damages found to have resulted from violations of this act may be trebled by the court.

(4) The court shall award a reasonable attorney's fee to the prevailing plaintiff and may award a reasonable attorney's fee to the prevailing defendant.

Section 12. Limitations period for actions.--Any action brought by the Department of Legal Affairs shall be brought within 2 years after the alleged violation occurred or should reasonably have been discovered. Any action brought by any other person shall be brought within 1 year after the alleged violation occurred or should have reasonably been discovered, except that a private action brought under section 5 for unlawful price discrimination shall be brought within 2 years from the date the alleged violation occurred or should reasonably have been discovered.

Section 13. Section 526.151, Florida Statutes, is hereby repealed.

Section 14. The provisions of s. 526.151, Florida Statutes, shall not be enforced against any person, corporation, partnership, or other entity with respect to any alleged violations occurring during the time period that s. 526.151, Florida Statutes, was in effect. Any enforcement action begun before the effective date of this act shall be dismissed.

Section 15. (1) The Division of Consumer Services is directed to compile a report pursuant to s. 570.544, Florida Statutes, of all complaints received by the Department of Agriculture and Consumer Services pursuant to this act. Such report shall contain at least the information required by s. 570.544(6)(b)2.-4., Florida Statutes, and shall be presented to the Speaker of the House of Representatives and the President of the Senate no later than January 1 of each year.

(2) The Division of Consumer Services is directed to study the operation of this act to determine whether it serves the best interest of consumers. The study shall examine in detail the effect this act has over gasoline prices in the state, both at the wholesale (i.e. refiners and jobbers) and retail levels of distribution; and shall include a comparison of the effect of this act on prices in a vertical system of distribution versus a horizontal system of distribution. The study shall contain recommendations for legislation, and shall be presented to the Speaker of the House of Representatives and the President of the Senate no later than November 1987.

Section 16. This act shall take effect upon becoming a law.

Approved by the Governor June 5, 1985.

Filed in Office Secretary of State June 5, 1985.

CHAPTER 85-75

House Bill No. 1155

An act relating to the Florida Statutes; amending s. 229.558(1)(e), Florida Statutes (1984 Supplement), and ss. 230.66(7), 233.068(1), 446.011(2), 446.041(8), 446.052(2), (3), and 616.21(2)(a), Florida Statutes; conforming these sections to s. 106, ch. 84-336, Laws of Florida, which changed the name of the Division of Vocational Education to the Division of Vocational, Adult, and Community Education.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (e) of subsection (1) of section 229.558, Florida Statutes (1984 Supplement), is amended to read:

229.558 Vocational education reporting requirements.--

(1) The Commissioner of Education shall develop a report, to be submitted by March 15 of each year to the Legislature, the State Board of Education, and the Governor, which shall include analyses and supporting data relating to the following:

(e) The effectiveness of vocational programs, analyzed at the planning region level and state level, as measured by direct and indirect measures of program performance. Such measure of effectiveness shall include student training-related placement rates, unemployment rates, employer satisfaction, and performance on occupational and basic skills assessment tests and licensure examinations. The Department of Education shall initially use historical follow-up data for vocational job preparatory programs to develop and apply performance standards implemented pursuant to Title II-A of Public Law No. 97-300 to all job preparatory vocational programs offered in public schools, community colleges, and area vocational-technical centers in the state. The standards shall be developed based upon statewide data and should provide for adjustments for local and regional economic and labor market conditions, using a methodology similar to that developed for the Title II-A performance standards. The result of this project shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 1985, and annually thereafter. The standards may be readjusted after the initial year as new data become available. The Division of Vocational, Adult, and Community Education shall provide technical assistance to institutions that require assistance in meeting the standards. The division shall also allocate a portion of its federal funds in the form of incentive awards to programs which exceed the standards, to the extent that federal law does not specifically prohibit the use of federal funds for this purpose.

Reviser's note.--Amended to conform this section to s. 106, ch. 84-336, Laws of Florida, which changed the name of

the Division of Vocational Education to the Division of Vocational, Adult, and Community Education.

Section 2. Subsection (7) of section 230.66, Florida Statutes, is amended to read:

230.66 Industry services training program.--

(2)(a) To assist the department in carrying out the provisions of this act, there is created the Industry Services Advisory Council, which shall consist of nine members. The council shall consist of the Director of the Division of Economic Development of the Department of Commerce, who shall serve as chairman, the Director of the Division of Labor, Employment, and Training of the Department of Labor and Employment Security, and seven members appointed by the State Board of Education pursuant to s. 20.15(5) from two or more names nominated for each position by the Commissioner of Education. The seven members shall represent private-sector Florida business and industry and should have special knowledge, experience, and familiarity with employment and training programs or industry needs in Florida. Members of the council shall, insofar as possible, represent the diverse industries of the state. Each appointive member shall be appointed for a term of 4 years, except that in case of a vacancy the appointment shall be for the unexpired term. Any of the appointive members of the council may be removed for cause. The Director of the Division of Vocational, Adult, and Community Education, or his designee, shall serve as executive secretary. Members of the council shall serve without compensation or honorarium but shall be entitled to receive reimbursement for per diem and traveling expenses as provided in s. 112.061.

(b) The Industry Services Advisory Council shall:

1. Meet at the call of its chairman, at the request of a majority of its membership, at the request of the division, or at such times as may be prescribed by its rules.

2. Advise the Director of the Division of Vocational, Adult, and Community Education of the Department of Education in the administration of the industry services training programs and have such other duties as may be prescribed by rules of the State Board of Education.

Reviser's note.--Amended to conform this section to s. 106, ch. 84-336, Laws of Florida, which changed the name of the Division of Vocational Education to the Division of Vocational, Adult, and Community Education.

Section 3. Subsection (1) of section 233.068, Florida Statutes, is amended to read:

233.068 Job-related vocational instruction.--

(1) The Department of Education shall develop and implement regulations providing for practical courses of direct job-related instruction in each school district throughout the state. Said regulations shall be effective not later than September 1, 1971, and shall place primary responsibility for the development of such instructional courses for students under 19 years of age with the district school boards, and consulting responsibility with the Division of Vocational, Adult, and Community Education. The

FLORIDA LEGISLATURE

History of Legislation ***1985 Regular Session*** ***1984 Special Session A***



prepared by:

Joint Legislative Management Committee
Legislative Information Division
Capitol Building, Room 826 - 488-4371

FLORIDA LEGISLATURE—REGULAR SESSION—1985

HISTORY OF SENATE BILLS

S 234 (CONTINUED)

04/18/85 SENATE On Committee agenda—Judiciary-Civil, 04/22/85, 2 00 pm, Room B—Not considered
 04/23/85 SENATE On Committee agenda—Judiciary-Civil, 04/25/85, 2 00 pm, Room B
 04/25/85 SENATE Comm Report Favorable with 3 amendment(s) by Judiciary-Civil, placed on Calendar -SJ 194
 05/07/85 SENATE Placed on Special Order Calendar
 05/09/85 SENATE Placed on Special Order Calendar, Passed as amended, YEAS 36 NAYS 0 -SJ 261
 05/14/85 HOUSE In Messages
 05/15/85 HOUSE Received, placed on Calendar -HJ 351
 05/22/85 HOUSE Placed on Special Order Calendar, Substituted for HB 290; Read second time, Amendment adopted -HJ 510
 05/23/85 HOUSE Read third time, Passed as amended, YEAS 109 NAYS 1 -HJ 524
 05/23/85 SENATE In Messages
 05/24/85 SENATE Concurred, Passed as amended, YEAS 29 NAYS 0
 05/24/85 Ordered engrossed, then enrolled -SJ 421
 05/30/85 Signed by Officers and presented to Governor -SJ 1075
 06/05/85 Approved by Governor, Chapter No 85-64

S 235 GENERAL BILL/CS/CS/ENG by Appropriations; Health and Rehabilitative Services; Malchon and others (Similar CS/CS/H 281)

Nursing Home Financial Disclosure, provides legislative intent & definitions, provides for uniform system of financial reporting, provides for reporting certain resident info, provides for an analysis of nursing home financial reports & of certain resident info, provides for annual report, provides funding, provides for assessments against nursing homes, provides penalties Creates 400 341-346 Effective Date 07/01/85
 02/18/85 SENATE Prefiled
 03/06/85 SENATE Referred to Health and Rehabilitative Services; Commerce, Appropriations
 04/02/85 SENATE Introduced, referred to Health and Rehabilitative Services, Commerce, Appropriations -SJ 41
 04/05/85 SENATE On Committee agenda—Health and Rehabilitative Services, 04/09/85, 2.00 pm, Room A
 04/09/85 SENATE Comm Report CS by Health and Rehabilitative Services -SJ 98, CS read first time 04/15/85 -SJ 102
 04/11/85 SENATE Now in Commerce -SJ 98
 04/23/85 SENATE Withdrawn from Commerce -SJ 167, Now in Appropriations
 04/29/85 SENATE Extension of time granted Committee Appropriations
 05/13/85 SENATE Extension of time granted Committee Appropriations
 05/17/85 SENATE On Committee agenda—Appropriations, 05/21/85, 2:00 pm, Room A
 05/21/85 SENATE Comm Report CS/CS by Appropriations, placed on Calendar -SJ 418
 05/24/85 SENATE CS read first time -SJ 419
 05/28/85 SENATE Placed on Special Order Calendar
 05/29/85 SENATE Placed on Special Order Calendar, CS passed as amended, YEAS 28 NAYS 2 -SJ 694
 05/30/85 HOUSE In Messages, Received, placed on Calendar -HJ 943, Substituted for CS/CS/HB 261, Read second time, Read third time, CS passed, YEAS 108 NAYS 3 -HJ 1124
 05/30/85 Ordered enrolled -SJ 699
 06/13/85 Signed by Officers and presented to Governor
 06/20/85 Approved by Governor, Chapter No 85-298

S 236 GENERAL BILL/CS by Rules and Calendar; Jenne (Compare CS/ENG/H 132)

Elections, requires person seeking to qualify for nomination as candidate of a political party to have been a registered member of such party & no other for a specified period, requires verification of oath taken by such persons, provides for notice that certain requirement has not been met, provides for disqualification of candidacy of such person if party registration requirements are not met Amends 99 021, creates 99 099 Effective Date Upon becoming law
 02/20/85 SENATE Prefiled
 03/06/85 SENATE Referred to Judiciary-Civil, Rules and Calendar
 04/02/85 SENATE Introduced, referred to Judiciary-Civil, Rules and Calendar -SJ 41
 04/05/85 SENATE On Committee agenda—Judiciary-Civil, 04/10/85, 10.00 am, Room B
 04/10/85 SENATE Comm Report Favorable with 1 amendment(s) by Judiciary-Civil, Now in Rules and Calendar -SJ 98
 04/12/85 SENATE On Committee agenda—Rules and Calendar, 04/16/85, upon adjournment of Session until 1 00 pm, Room 1C
 04/16/85 SENATE Comm Report CS by Rules and Calendar, placed on Calendar -SJ 129
 04/19/85 SENATE CS read first time -SJ 148
 05/31/85 SENATE Died on Calendar

S 237 GENERAL BILL by Fox and others (Compare CS/H 690)

Petroleum Products Dealers, repeals provision relating to operating restrictions on retail service stations Repeals 526 151 Effective Date 07/01/85, or upon becoming law whichever occurs later
 02/20/85 SENATE Prefiled

S 237 (CONTINUED)

03/06/85 SENATE Referred to Commerce
 04/02/85 SENATE Introduced, referred to Commerce -SJ 41, On Committee agenda—Commerce, 04/02/85, 3 00 pm, Room A —Temporarily postponed
 04/09/85 SENATE On Committee agenda—Commerce, 04/11/85, 9:00 am, Room A
 04/11/85 SENATE Comm Report Favorable by Commerce, placed on Calendar -SJ 98
 05/23/85 SENATE Placed on Special Order Calendar, Amendments adopted, Iden /Sim House Bill substituted, Laid on table under Rule, Iden /Sim /Compare Bill passed, refer to CS/HB 690 (Ch 85-74) -SJ 402

S 238 GENERAL BILL by Myers (Similar H 1216, CS/S 394)

Dietetics Practice Act, creates said act, requires licensure of dietitians, provides powers, duties & membership of Dietetic Council & powers & duties of Medical Examiners Bd re regulating dietetics practice, specifies duties of Professional Reg Dept, provides for licensure examinations, licensure without examination, fees, grounds for refusal, revocation or suspension of licenses, etc Creates 468 501-521 Effective Date 10/01/85
 02/20/85 SENATE Prefiled
 03/06/85 SENATE Referred to Economic, Community and Consumer Affairs, Appropriations
 04/02/85 SENATE Introduced, referred to Economic, Community and Consumer Affairs, Appropriations -SJ 41
 04/16/85 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs
 05/01/85 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs
 05/13/85 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs
 05/16/85 SENATE On Committee agenda—Economic, Community and Consumer Affairs, 05/20/85, 10 00 am, Room H—Not considered
 05/21/85 SENATE On Committee agenda—Economic, Community and Consumer Affairs, 05/23/85, 12 00 noon, Room H -SJ 332
 05/23/85 SENATE CS combines this bill and 394, Comm Report CS by Economic, Community and Consumer Affairs, refer to CS/SB 394 -SJ 497
 05/31/85 SENATE Died on Calendar

S 239 GENERAL BILL by W.D. Childers and others (Compare CS/ENG/H 612)

Outdoor Advertising, provides that Transportation Dept shall not revoke certain sign permits, provides for reinstatement of certain sign permits previously revoked, deletes provisions re specific information panel program Amends 479 26 Effective Date Upon becoming law
 02/20/85 SENATE Prefiled
 03/06/85 SENATE Referred to Transportation
 04/02/85 SENATE Introduced, referred to Transportation -SJ 41
 04/12/85 SENATE On Committee agenda—Transportation, 04/16/85, 2 00 pm, Room C
 04/15/85 SENATE Extension of time granted Committee Transportation
 04/16/85 SENATE Comm Report Favorable with 2 amendment(s) by Transportation, placed on Calendar -SJ 129
 05/22/85 SENATE Placed on Special Order Calendar
 05/23/85 SENATE Placed on Special Order Calendar -SJ 382
 05/24/85 SENATE Placed on Special Order Calendar -SJ 416
 05/28/85 SENATE Placed on Special Order Calendar
 05/29/85 SENATE Placed on Special Order Calendar
 05/30/85 SENATE Placed on Special Order Calendar to be considered at 11 20 am -SJ 699, Amendments adopted, Iden /Sim House Bill substituted, Laid on table under Rule, Iden /Sim / Compare Bill passed, refer to CS/HB 612 (Vetoed by Governor - 06/17/85) -SJ 742

S 240 GENERAL BILL by Castor (Compare CS/S 127)

Education, exempts certain students with high school diplomas or equivalent from fees for adult basic or high school instruction Amends 228 072 Effective Date 07/01/85, or upon becoming law, whichever occurs later
 02/21/85 SENATE Prefiled
 03/06/85 SENATE Referred to Education, Appropriations
 04/02/85 SENATE Introduced, referred to Education, Appropriations -SJ 42
 04/16/85 SENATE Extension of time granted Committee Education
 04/18/85 SENATE On Committee agenda—Education, 04/22/85, 2 00 pm, Room A—Temporarily postponed
 04/23/85 SENATE On Committee agenda—Education, 04/25/85, 2 00 pm, Room A
 04/25/85 SENATE CS combines this bill and 127&655 Comm Report CS by Education, refer to CS/SB 127 -SJ 194
 05/31/85 SENATE Died in Committee on Appropriations

S 241 GENERAL BILL/CS/CS by Appropriations, Judiciary-Criminal, Crawford and others (Similar CS/ENG/H 387, Compare H 76, CS/ENG/H 386, S 42, CS/S 242)

Criminal Investigations/Prosecutions, specifies prosecutorial jurisdiction of Attorney General, creates Office of Statewide Prosecution in Legal Affairs Dept, (CONTINUED ON NEXT PAGE)

FLORIDA LEGISLATURE—REGULAR SESSION—1985

HISTORY OF HOUSE BILLS

H 689 (CONTINUED)

05/23/85 SENATE In Messages, Received, Placed on Local Calendar, Passed, YEAS 36 NAYS 0 -SJ 414, Immediately certified -SJ 417
05/23/85 Ordered enrolled
06/04/85 Signed by Officers and presented to Governor
06/12/85 Became Law without Governor's Signature, Chapter No 85-378

H 690 GENERAL BILL/CS by Commerce; Burnsed (Compare S 237)

Motor Fuel Marketing Practices Act, creates said act, prohibits predatory practices & sale of motor fuel at discriminatory prices which injure competition, prohibits discriminatory allocations & certain unfair practices in connection with retail outlets, repeals provision which provides restrictions on operation of retail service stations by producers & refiners, etc Repeals 526 151 Effective Date 06/05/85.
03/28/85 HOUSE Prefiled
04/01/85 HOUSE Referred to Commerce, Subreferred to Subcommittee on General Commerce
04/02/85 HOUSE Introduced, referred to Commerce -HJ 62, Subreferred to Subcommittee on General Commerce
04/05/85 HOUSE On Committee agenda—Commerce, 04/09/85, 1 15 pm, 317C—For subreferral ratification
05/03/85 HOUSE On Committee agenda—Commerce, 05/07/85, 3 30 pm, 317C
05/07/85 HOUSE Preliminary Committee Report by Commerce Favorable, as a Committee Substitute, to Calendar
05/10/85 HOUSE Comm Report CS by Commerce, placed on Calendar -HJ 297
05/14/85 HOUSE Placed on Special Order Calendar
05/17/85 HOUSE CS read first and second times -HJ 416
05/20/85 HOUSE Read third time, CS passed, YEAS 114 NAYS 0 -HJ 447
05/20/85 SENATE In Messages
05/23/85 SENATE Received, referred to Commerce, Withdrawn from Commerce, Substituted for SB 237, Passed, YEAS 35 NAYS 0 -SJ 402
05/24/85 Ordered enrolled
05/29/85 Signed by Officers and presented to Governor -HJ 881
06/05/85 Approved by Governor, Chapter No 85-74

H 691 GENERAL BILL by Burnsed (Identical S 1000)

Local Occupational Licenses, revises provisions re exemptions for certain disabled persons & veterans Amends 205 162, 171 Effective Date 06/17/85
03/28/85 HOUSE Prefiled
04/02/85 HOUSE Introduced, referred to Veterans Affairs -HJ 62
04/08/85 HOUSE On subcommittee agenda—Veterans Affairs, 04/10/85, 1 30 pm, 214C
04/10/85 HOUSE Subcommittee Recommendation pending ratification by full Committee Favorable
04/15/85 HOUSE On Committee agenda—Veterans Affairs, 04/17/85, 1 30 pm, 214C
04/17/85 HOUSE Preliminary Committee Report by Veterans Affairs Favorable, to Calendar
04/18/85 HOUSE Comm. Report Favorable by Veterans Affairs, placed on Calendar -HJ 159
04/22/85 HOUSE Placed on Special Order Calendar
05/02/85 HOUSE Read second time -HJ 233
05/06/85 HOUSE Read third time, Passed; YEAS 111 NAYS 0 -HJ 249
05/07/85 SENATE In Messages
05/13/85 SENATE Received, referred to Economic, Community and Consumer Affairs, Finance, Taxation and Claims -SJ 275
05/24/85 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs
05/30/85 SENATE Withdrawn from Economic, Community and Consumer Affairs, Finance, Taxation and Claims, Placed on Special Order Calendar, Passed, YEAS 26 NAYS 0 -SJ 949
05/30/85 Ordered enrolled
06/10/85 Signed by Officers and presented to Governor
06/17/85 Approved by Governor; Chapter No. 85-159

H 692 GENERAL BILL by Garcia (Similar H 1129)

Trials; requires court to appoint a qualified person to assist certain victims in sexual battery or child abuse cases. Creates 918 165 Effective Date. 07/01/85
03/28/85 HOUSE Prefiled
04/01/85 HOUSE Referred to Judiciary, Appropriations
04/02/85 HOUSE Introduced, referred to Judiciary, Appropriations -HJ 62
05/31/85 HOUSE Died in Committee on Judiciary

H 693 GENERAL BILL by Agriculture and others (Identical S 746)

Agriculture/Advisory Council, increases membership of State Agricultural Advisory Council, clarifies terms of office Amends 570 23 Effective Date 01/15/86
03/28/85 HOUSE Prefiled
04/01/85 HOUSE Placed on Calendar
04/02/85 HOUSE Introduced, placed on Calendar -HJ 62
04/08/85 HOUSE Placed on Special Order Calendar, Read second time -HJ 103
04/09/85 HOUSE Read third time, Passed, YEAS 114 NAYS 0 -HJ 119
04/11/85 SENATE In Messages
04/24/85 SENATE Received, referred to Agriculture -SJ 180

H 693 (CONTINUED)

04/26/85 SENATE On Committee agenda—Agriculture, 04/30/85, 2 00 pm, Room B
04/30/85 SENATE Comm Report Favorable by Agriculture, placed on Calendar -SJ 210
05/09/85 SENATE Placed on Special Order Calendar, Passed, YEAS 33 NAYS 0 -SJ 265
05/14/85 Ordered enrolled
05/17/85 Signed by Officers and presented to Governor -HJ 441
05/24/85 Approved by Governor, Chapter No 85-37 -HJ 571

H 694 GENERAL BILL by Agriculture and others

Agricultural History, authorizes Agriculture & Consumer Services Dept to acquire, preserve, & exhibit artifacts, relics, & historic items reflective of state's agricultural history Amends 570 07 Effective Date 10/01/85
03/28/85 HOUSE Prefiled
04/01/85 HOUSE Placed on Calendar
04/02/85 HOUSE Introduced, placed on Calendar -HJ 62
04/08/85 HOUSE Withdrawn from Calendar, referred to Appropriations -HJ 102
04/30/85 HOUSE Subreferred to Subcommittee on General Government (Subcommittee II)
05/31/85 HOUSE Died in Committee on Appropriations

H 695 GENERAL BILL by Hazouri (Similar S 697, Compare CS/S 1200)

Firefighters, provides that death or disability due to cancer suffered by firefighter shall be presumed to have been accidental & suffered in line of duty, unless competent evidence to contrary be shown, provides applicability of benefits, provides for records of exposure to known carcinogens, etc Creates 112 185 Effective Date Upon becoming law
03/28/85 HOUSE Prefiled
04/01/85 HOUSE Referred to Retirement, Personnel & Collective Bargaining, Appropriations
04/02/85 HOUSE Introduced, referred to Retirement, Personnel & Collective Bargaining, Appropriations -HJ 62
04/18/85 HOUSE On subcommittee agenda—Retirement, Personnel & Collective Bargaining, 04/22/85, 2 30 pm, 317 HOB—Temporarily postponed
04/22/85 HOUSE On Committee agenda—Retirement, Personnel & Collective Bargaining, 04/24/85, 1 15 pm, 317C
04/24/85 HOUSE Preliminary Committee Report by Retirement, Personnel & Collective Bargaining Favorable
05/01/85 HOUSE Comm Report Favorable by Retirement, Personnel & Collective Bargaining -HJ 242, Now in Appropriations
05/06/85 HOUSE Subreferred to Subcommittee on State Employee Benefits
05/31/85 HOUSE Died in Committee on Appropriations

H 696 GENERAL BILL/CS by Education, K - 12; Friedman (Similar S 1145)

Education, amends provision re responsibilities of reading resource specialists Amends 233 057 Effective Date Upon becoming law
03/28/85 HOUSE Prefiled
04/01/85 HOUSE Referred to Education, K - 12
04/02/85 HOUSE Introduced, referred to Education, K - 12 -HJ 62
04/04/85 HOUSE On subcommittee agenda—Education, K - 12, 04/08/85, 4 30 pm, 214C
04/08/85 HOUSE Subcommittee Recommendation pending ratification by full Committee Favorable, with 1 amendment, On Committee agenda—Education, K - 12, 04/10/85, 10:00 am, 214C
04/10/85 HOUSE Preliminary Committee Report by Education, K - 12 Favorable, as a Committee Substitute, with 1 amendment, to Calendar
05/09/85 HOUSE Comm Report. CS by Education, K - 12, placed on Calendar -HJ 296
05/24/85 HOUSE Placed on Consent Calendar
05/27/85 HOUSE CS read first and second times, Read third time, CS passed, YEAS 101 NAYS 0 -HJ 605
05/27/85 SENATE In Messages
05/28/85 SENATE Received, referred to Education -SJ 530
05/31/85 SENATE Died in Committee on Education

H 697 GENERAL BILL by Friedman and others (Identical S 691)

Florida Citizens Utility Board Act, creates nonprofit membership corporation to be known as Fla Citizens Utility Board, provides for automatic dissolution of corporation under certain circumstances, provides powers & duties of corporation; authorizes corporation to represent residential utility consumers in regulatory agency proceedings, prohibits corporation from endorsing or supporting any political party or candidate, etc Effective Date 07/01/85
03/28/85 HOUSE Prefiled
04/01/85 HOUSE Referred to Regulated Industries & Licensing, Appropriations
04/02/85 HOUSE Introduced, referred to Regulated Industries & Licensing, Appropriations -HJ 62
04/09/85 HOUSE Subreferred to Subcommittee on Public Utilities
04/25/85 HOUSE On subcommittee agenda—Regulated Industries & Licensing, 04/29/85, 2 15 pm, 415 HOB

(CONTINUED ON NEXT PAGE)

STORAGE NAME: fsa-CS/HB 690

Date: May 10, 1985

Revised: _____

Final: June 13, 1985

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DEPARTMENT OF STATE

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HOUSE OF REPRESENTATIVES
COMMITTEE ON COMMERCE
FINAL STAFF ANALYSIS

BILL# CS/HB 690 SPONSOR Commerce and Burnsed
(As enacted by the Legislature)

EFFECTIVE DATE June 5, 1985 IDENTICAL/SIMILAR BILLS SB 237

BECAME LAW June 5, 1985 Chapter 85-74 Laws of Florida

RELATING TO Motor Fuel Pricing Practices

COMMITTEE CONSIDERATION Commerce

I. SUMMARY:

Like House Bill 690, this bill repeals s. 526.151, F.S., the retail divorcement statute. However, unlike HB 690 this bill attempts to regulate the pricing of motor fuel by creation of the Motor Fuel Marketing Practices Act. The Act prohibits refiners from selling fuel at a retail outlet below cost; prohibits all persons from selling or buying fuel at discriminatory prices; and, prohibits suppliers from discriminatorily allocating fuel among resellers. Civil sanctions are provided for violations.

A. Current Law & Present Situation:

This bill attempts to encourage a competitive environment in the oil industry by prohibiting certain pricing practices. There are currently no laws at the state level specifically addressing such pricing practices. Chapter 542, F.S., the Florida Antitrust Act of 1980, prohibits restraints of trade and creation of monopolies. To the extent that any person or company violates the substantive provisions of the Act, such violator is subject to specified civil penalties. Section 526.151, F.S., prohibits refiners from operating more than 3% of their retail service stations. While no specific reference is made in the statute to pricing practices, it was apparently passed in reaction to the control exercised by such refiners during the oil embargo of the 1970's. This section of the statute (which is repealed by both HB 690 and CS/HB 690) was recently held constitutional by the District Court of Appeal for the First District of Florida on the basis of a United States Supreme Court decision.

Though there are no state laws specifically addressing price fixing, there are a number of federal laws which may be applicable. The Sherman Act prohibits: horizontal price fixing

between competing suppliers; suppliers from setting a dealer's or distributor's resale prices; and, a supplier from using illegal methods to gain a monopoly in a geographic market. Section 2 of the Clayton Act, known as the Robinson-Patman Act, prohibits a supplier from unfairly giving one dealer or distributor a price advantage over that dealer's or distributor's competitor. The Federal Trade Commission Act protects against "unfair methods of competition" and "unfair or deceptive trade practices."

The Petroleum Marketing Practices Act, though unrelated to particular pricing practices, governs to some extent the franchise relationship between suppliers, jobbers, and retail outlets. The Act sets out reasons for which a supplier can terminate or fail to renew its agreements with dealers or jobbers.

While all or some of these federal acts may provide recourse to persons harmed by anti-competitive pricing practices or franchising practices in the oil industry, apparently such recourse may prove to be very costly and lengthy. In addition, the standards of proof required by these acts may be difficult to meet.

B. Effect of Proposed Changes:

This bill creates the Motor Fuel Marketing Practices Act. The Act is composed of sixteen sections which provide as follows:

Section 1 provides the name of the act.

Section 2 expresses the Legislative findings and intent of the Act.

Section 3 provides definitions for the terms "motor fuel", "retail outlet", "sale", "refiner", "affiliate", "posted terminal price", "refiner cost", and "competition".

Section 4 prohibits refiners from selling motor fuel at a retail outlet below refiner cost, where the effect is to injure competition. ("Refiner cost" as defined in section 3(7) of the bill includes labor and rent value of the retail outlet attributable to the retail sale of fuel by the refiner.) Exempt from this prohibition are isolated and inadvertent sales, and sales made in good faith to meet an equally low price of a competitor.

Section 5 prohibits selling motor fuel to different persons on the same level of distribution at different prices, and buying motor fuel when the seller sells such fuel in violation of this section, where the effect is to injure competition. Exempted from this prohibition are: isolated and inadvertent sales, sales made in good faith to meet an equally low price of a competitor, and sales made at different prices if

the price differential is due to a difference in the cost of sale or delivery of the fuel.

Section 6 of the bill prohibits suppliers of fuel from limiting or allocating fuel available to resellers because such reseller was prevented by the supplier from purchasing the minimum quantities of fuel required by contract, unless such allocation or limitations are done in a reasonable and nondiscriminatory method. This section further prohibits a supplier from limiting or allocating the quantity of fuel available to resellers under contract for more than 5 days, unless the limitations are applied in a reasonable and nondiscriminatory manner among all resellers.

Section 7 prohibits a refiner or supplier from fixing the retail price of motor fuel at a retail outlet supplied by such refiner or supplier. Explicitly excluded from this prohibition is any counseling concerning retail prices by a refiner or supplier, provided that no threat or coercion is used in the counseling. Price fixing at retail outlets operated by the refiner or supplier is also explicitly excluded. Subsection (2) of this section prohibits a supplier from imposing any material modification in the contractual arrangements during the term of the contract, unless such modification is made in good faith and based upon reasonable business practice.

Section 8 of the bill prohibits sellers from offering rebates if the effect of such rebates is to injure competition, unless a rebate on proportionately equal terms is offered to all persons purchasing for resale in a market area. Any rebate received by a wholesaler must be offered or given to any retail outlet supplied by the wholesaler. Exempted from this section is any rebate made in good faith to meet the same or a comparable rebate of a competitor.

Section 9 of the bill exempts from coverage of the Act the following retail sales by a refiner: (1) clearance sales; (2) final business liquidation sales; (3) sales made pursuant to court order; and, (4) grand opening sales to introduce a new or remodeled business not to exceed three days.

Section 10 provides for a civil penalty for violations of the Act of \$1000 per day, per violation, not to exceed \$50,000. Under this section violators are also liable for attorney's fees and subject to injunctive relief. Subsection 2 of this section authorizes the Department of Agriculture and Consumer Services to investigate any complaints regarding violations of the Act. Results of such investigation are to be turned over to the Department of Legal Affairs. The Department of Legal Affairs may further investigate such complaint, and if warranted, bring a civil suit against the violator.

Section 11 provides relief for any person injured as a result of a violation of the Act. Such relief includes an action for declaratory judgment, injunction, and actual damages. On the application for a temporary restraining order or a preliminary injunction, the court in its discretion may require a bond not to exceed \$50,000. In addition, in an action for damages, the court may treble any actual damages. The court shall award a reasonable attorney's fee to the prevailing plaintiff and may award a reasonable attorney's fee to the prevailing defendant.

Section 12 provides the statute of limitations for actions brought under this Act. For the Department of Legal Affairs any action must be brought within two years after the alleged violation occurred or should have reasonably been discovered. For private actions this period is one year, except for a private action brought under Section 5 of the Act for unlawful price discrimination which has a two year statute of limitation.

Section 13 repeals section 526.151, F.S., the retail divorcement statute.

Section 14 provides that the provisions of section 526.151, F.S., shall not be enforced against any person for a violation which occurred while the statute was in effect. Any enforcement actions brought before the effective date of this Act shall be dismissed.

Section 15 of the bill requires the Division of Consumer Services to annually report to the Legislature any complaints filed under this Act, and to study the operation of the Act to determine whether it serves the best interest of consumers. Such study is to be presented to the Speaker of the House and President of the Senate no later than November 1987.

Section 16 provides that this Act shall take effect upon becoming a law.

II. ECONOMIC IMPACT:

A. Public:

The economic impact of this bill in the public sector is indeterminable, though such impact may be felt by four different groups: refiners, jobbers (suppliers), retail service stations, and consumers.

Refiners

Refiners will be affected by provisions of this bill prohibiting them from selling fuel below cost at a retail outlet; by the provisions prohibiting discriminating in price among

contemporaneous buyers; and, by the provisions relating to rebates which require persons who offer rebates to offer such rebates to all persons purchasing in a market area. How these various provisions will affect the price of fuel is dependent upon the refiners themselves. Since the bill defines a refiner's cost as its posted terminal price plus labor and rent attributable to operation of a retail outlet, refiners will have a great deal of flexibility in determining their "cost" and therefore their floor price of fuel.

Refiners could also be affected by the provisions of the bill prohibiting sellers of fuel from selling to different contemporaneous resellers at different prices. To the extent that such sellers are currently selling to different purchasers at different prices, this bill will require that they equalize such prices which should mean that under this bill some purchasers may have to pay higher prices while others may receive a price break. Again, how this translates into the price of fuel is indeterminable at the present time because it depends on how disparate each individual refiner currently treats their purchasers of fuel and how they will change their pricing practices as a result of this bill.

The impact of the rebate provisions is similarly indeterminable at the present time since no one knows how refiners will react to these provisions. It could have the effect of doing away with rebates altogether since refiners may be reluctant to give rebates to jobbers who may already be receiving price breaks (relative to retail outlets) in their price of fuel. On the other hand, they may continue to give rebates while increasing the price of fuel to jobbers.

Since refiners under the provisions of this Act have some degree of flexibility and a great deal of discretion with respect to their pricing practices, at this time it is impossible to determine how refiners will react to these provisions, and accordingly how the price of fuel will be impacted.

Refiners should be positively affected by the provision of this bill which repeals s. 526.151, F.S., the retail divorcement statute, which would have prohibited refiners from operating more than 3% of their retail service outlets.

Suppliers

Suppliers, like refiners, will be affected by the provisions of this bill relating to price discrimination and rebates. Like refiners also, the economic impact of this bill on suppliers is somewhat within their own discretion. The rebate provision may significantly affect suppliers to the extent that

it requires such suppliers to pass on any rebate received to the retail outlets supplied by the supplier. The economic impact of this is difficult to determine since it will depend on how refiners react to the rebate provisions. As with refiners, the economic impact of this bill on suppliers is impossible to determine at this time.

Retail Outlets

Retail outlets will be affected by this bill. Those retail outlets operated by refiners will be prohibited from selling fuel below cost. The impact of this provision will depend in part on the extent to which refiner retail outlets currently sell fuel below cost. Other retailers will be affected by the provisions which prohibit them from buying fuel from suppliers at a price different from that which the supplier offers to other contemporaneous purchasers at the retail level in a market area. To the extent that refiners offer rebates to suppliers, retail outlets supplied by such suppliers will be positively affected by the provision in the rebate section of the bill which require the supplier to pass the rebate on to the retail outlets they supply. Again, as with refiners and jobbers, how the economic impact of these provisions will translate into the price of fuel is impossible to determine at the present time.

Consumers

Finally, consumers may be affected by the provisions of this Act. Such affect however is dependent upon how refiners, suppliers, and retail outlets react to its provisions. Since it is impossible to determine how such persons will react, it is impossible to determine how consumers will be affected. It should be noted, however, that according to the Legislative intent of this bill, the Act is intended to enhance competition in the marketing of motor fuel in order to maximize benefits to consumers. The Division of Consumer Services is required by this bill to conduct a study, to be completed no later than November 1987, to determine whether this Act serves the best interest of consumers. Presumably if it is found that the Act does not serve the best interest of consumers, it will be amended by the Legislature in order to ensure that such interest is served.

B. Government:

As with the economic impact in the public sector, the economic impact in the government sector is indeterminable at the present time. The Department of Agriculture and Consumer Services will be impacted by two sections of this bill. Section

10 requires this Department to investigate (without subpoena powers) any complaints filed under the Act. The economic impact of this provision is currently indeterminable since the number of complaints that will be filed and investigated is unknown. This Department will also be impacted by Section 15 of the bill which requires it to annually report to the Legislature any complaints filed, and to conduct a study by November 1987 to determine whether the Act serves the best interest of consumers. The cost of such reporting and study is indeterminable.

The Department of Legal Affairs will be affected by the provision of this bill which authorizes it to investigate complaints turned over to it by the Department of Agriculture and Consumer Services and to bring civil suit against violators of the Act. The Department of Legal Affairs will be able to recover attorney's fees in any suit filed under this Act in which it prevails. As with the Department of Agriculture and Consumer Services, the economic impact on the Department of Legal Affairs is dependent on the number of complaints turned over and the number of civil suits filed. Accordingly, such impact is indeterminable at this time.

III. COMMENTS:

Statement of Substantial Changes Made In Committee Substitute:

This bill, like House Bill 690, repeals s. 526.151 (The Retail Divorcement Statute). Unlike House Bill 690 this bill creates the Motor Fuel Marketing Practices Act which prohibits four different sales practices when the effect of such practice is to injure competition. These four acts are as follows:

- (1) refiners selling motor fuel at a retail outlet below cost (Section 4);
- (2) any person selling or any person receiving for resale any motor fuel at a price lower than the seller offers to persons purchasing contemporaneously, unless such price differential is due to a difference in the cost of sale or delivery (Section 5);
- (3) discriminatory allocations of fuel by suppliers for more than five days (Section 6); and,
- (4) sellers offering rebates to persons purchasing for resale unless the same rebate is offered to all persons purchasing for resale in a market area. However, any rebate or concession received by a wholesaler must be passed on to any retail outlet supplied by the wholesalers (Section 8).

Exempted from the above prohibitions are refiner sales below cost, discriminatory pricing, and differentials in rebates, if

such acts are done in order to meet a competitor's price. Exempted from the coverage of (1) and (2) above are any isolated or inadvertent acts.

In addition to the above, section 7 of the bill prohibits refiners or suppliers from fixing the retail price of fuel at a retail outlet not operated by the refiner. It further prohibits suppliers from imposing any material modification in the contractual arrangements with a retail outlet during the term of the contract, unless such modification is made in good faith and based upon reasonable business practice.

Violators of the Act may be enjoined by the Department of Legal Affairs and/or fined up to \$50,000 by the Department. Individuals injured by a violation of the Act may bring a civil action for appropriate relief including an action for a declaratory judgment, injunctive relief, actual damages, and treble damages.

Section 15 of the bill requires the Division of Consumer Services to annually report to the Legislature any complaints filed under this Act, and to study the operation of the Act to determine whether it serves the best interest of consumers. Such study is to be presented to the Speaker of the House and President of the Senate no later than November 1987.

IV. LEGISLATIVE HISTORY:

A. Enacted Bill:

HB 690 was referred to the House Commerce Committee which sub-referred the bill to the Subcommittee on General Commerce. Without ever having been heard by the subcommittee, however, a compromise version of the bill was taken up by the full Commerce Committee on May 7, 1985. The compromise version of the bill was reported favorably by the full committee as a committee substitute. The committee substitute was placed on the House Calendar May 10, 1985, and on the Special Order Calendar on May 14, 1985. On May 17 the committee substitute was read for the first and second times. On May 20 it was read for the third time and passed by a vote of 114-0 (HJ 447).

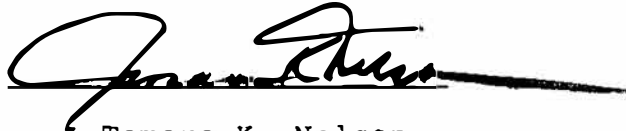
Received in Senate Messages on May 23, it was referred to the Senate Commerce Committee from whence it was withdrawn that same day, substituted for Senate Bill 237 and passed 35-0 (SJ 402). It was presented to the Governor on May 29, and signed by him on June 5, 1985.

B. Disposition of Companion:

Senate Bill 237 (which like House Bill 690 was a straight repeal of the retail divorcement statute) was referred to the Senate Commerce Committee. The bill was considered by that

committee on April 9, 1985. At that meeting, there was an amendment offered which struck everything after the enacting clause and inserted a compromise bill. This amendment, however, was not adopted because it was felt by certain members of the committee that it was too broad in its scope. Though it contained provisions similar to those in CS/HB 690, unlike CS/HB 690 it would have applied to commercial and government purchasers of motor fuel. Accordingly, the committee adopted the Senate Bill without amendment. The bill was placed on the Senate Calendar on April 11, 1985, where it remained until May 23. On that date, the bill was placed on the Senate Special Order Calendar and conformed to the House Bill. The House bill was then taken up in its stead while the Senate bill was laid on the table under the Rules.

V. PREPARED BY



Tamara K. Nelson

VI. STAFF DIRECTOR



Wyatt T. Martin



Florida House of Representatives

H. Lee Moffitt, Speaker Steve Pajcic, Speaker pro tempore
Committee on Commerce

Samuel P. Bell, III
Chairman

Dexter W. Lehtinen
Vice Chairman

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Ad Hoc Gasoline

Sept. 30, 1985

September 15, 1983

CONTACT: Rod Jones

904/488-7024

FOR IMMEDIATE RELEASE

TALLAHASSEE, FL.--- Representative Chris Meffert, D-Ocala, Chairman of the Banking and Commerce Subcommittee of the House Commerce Committee, announced today the formation of an ad hoc task force to conduct public meetings to determine the need for legislation requiring the "divorcement" of petroleum producers and refiners from the retail gasoline marketing industry.

Meffert said that he and Representatives Winston W. "Bud" Gardner, D-Titusville, and Tom Gallagher, R-Coconut Grove, would comprise the task force which will hold several public meetings around the state before reporting back to the Banking and Commerce Subcommittee later this year. The first meeting of the task force is scheduled for Friday, September 30, in the County Commission meeting room, Old Escambia County Courthouse, 215 South Palafox Place in Pensacola, beginning at 9:30 a.m. (CDT). Locations and dates of subsequent meetings will be announced later.

Meffert said that in the three years he has been chairman of the Banking and Commerce Subcommittee, "this issue has come up every year and we have never had time to deal with it adequately. This year we hope to provide ample opportunity for all of the interested parties to present their cases so that the subcommittee can have a thorough understanding of the issue before being asked to decide it."

-30-

to _____

Notice of
COMMITTEE MEETING
House of Representatives

September 23, 1983

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*Ad Hoc Gasoline
Sept. 30, 1985*

Ad Hoc Task Force on Retail Gasoline Divorcement* ~~XXXXXX~~ of
(strike if not applicable)

the Committee on Commerce

will meet in Committee Room SEE BELOW at SEE BELOW a.m.
p.m.

on SEE BELOW to consider :
(date)

*An Ad Hoc Task Force on Retail Gasoline Divorcement consisting of Representatives Chris Meffert, Chairman, Winston W. "Bud" Gardner and Tom Gallagher will hold public meetings at the locations and on the dates specified below to hear testimony on this subject from interested persons.

PENSACOLA Friday, September 30, 9:30 a.m. (CDT)
Commission Meeting Room, Old Escambia County
Courthouse, 215 S. Palafox Place
(Meeting previously announced by press release
dated September 15, 1983.)

MIAMI Thursday, October 20, 2:00 p.m.
City Hall, 3500 Pan American Drive

DAYTONA BEACH Friday, October 28, 9:30 a.m.
Daytona Beach Community College
Conference Room, Administration Building
1200 Volusia Avenue

NEITHER THE FULL COMMERCE COMMITTEE NOR ANY OF ITS SUBCOMMITTEES
WILL MEET THE WEEK OF OCTOBER 10-13.

Chris Meffert
Chairman

I certify this notice was received in the
Office of the Sergeant at Arms at 4:40 p.m.
o'clock, on September 23, 19 83.

Wanda H. H. H.
Sergeant at Arms

White - to be posted
Canary - Calendar
Pink - Computer
Goldenrod - your file

11-14(1976)

I certify this notice was filed by me
in the Office of the Sergeant at Arms and
the Office of the Clerk on September 23,
19 83 and copies have been sent to the
introducers of the bills listed thereon
as required by House Rules 6.2 and 6.4.

Christina J. H. H.
Committee Secretary

Meeting Notes

AD HOC TASK FORCE MEETING ON
RETAIL GASOLINE DIVORCEMENT

September 30, 1983
Pensacola, Florida

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Series 19 Carton 13
Ad Hoc/Gasoline
Sept 30, 1983

45 people present in audience (2-press)

9:33 Meffert's opening remarks

9:35 Ken Duffault - Allied Gasoline Retailers of Florida (AGRA)

90-95% independents (branded)
lease from supplies
1/2 by refiners
1/2 by jobbers

can't compete with suppliers, must exclude both refiners
and jobbers

--total divorcement
--moratorium on company stations

10:02 Carlton Jackson - Florida Petroleum Council

opposes divorcement legislation
235/11,400 outlets are company run by majors

5-6% by majors plus secondaries

under most lease arrangements dealer has a right of
first refusal to purchase

BEGIN TAPE 1 SIDE 2

10:15 Dan Elrod - Pilot Oil Corporation
James Haslam - Pilot Oil Corporation

1/2 owned by Marathon
causes problem unless they are exempt

10:24 George Van Dyke - Playground Shell Service, Inc.

runs a jobber-owned outlet

wants same price on the gas he buys

10:37 Leonard Hart - Escambia County School District

buy 1.5 million gal/year on competitive bidding
this year buy from independent jobber

10:43 Martin Tolliver - Kayo Oil Company, District Supervisor

Meeting Notes

AD HOC TASK FORCE MEETING ON
RETAIL GASOLINE DIVORCEMENT

September 30, 1983
Pensacola, Florida

10:47 Richard Puckett - Puckett Oil Company

jobber

volume discrimination being denied additional fuel

11:07 BEGIN TAPE 2

Ed Bauer - Montgomery Ward

owned by Mobil but buy from independent
jobbers based on price

11:11 Adjourned

Meeting Notes

AD HOC TASK FORCE MEETING ON
RETAIL GASOLINE DIVORCEMENT

October 20, 1983
Miami, Florida

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Series 19 Carton 1310
AdHoc/Gas. Inc.
Oct 20 83

2:15 Bill Lank, Jr. - Lank Oil Co.

Jobber, Miami
favors divorcement, but hedging
market share is dwindling
prices are too high - major concern

2:29 Paul Fazio

Gas. car wash
brought handout

2:40 William Call

Handout - What is a Jobber?
233 jobbers in Florida Petroleum Marketing Assoc.

BEGIN TAPE 1 SIDE 2

2:45 Gabriel Volante

Ind. Co. Owner

3:06 John Gillody

Sun refining marketing
reducing number of co. operations
Maj. are ind. dealer operators
opposes divorcement

3:18 Ana Yera - Tennaco Oil

Oppose
salary employee - satisfied with preset competition

3:21 Stephen Saks - Idp. car wash operator

concerned with posting prices

3:41 Ken Dufault - Allied Retailer Dealers

wants legislation preventing selling below cost

TAPE 2 SIDE 1

3:55 Al Jacobson

favors allied gasoline retailers

3:59 Irving Turetsky
 gasoline retailers-favors

4:03 Harold Hershoft

4:06 ADJOURN

Meeting Notes

AD HOC TASK FORCE MEETING ON
RETAIL GASOLINE DIVORCEMENT

October 28, 1983
Daytona Beach, Florida

45-50 present in audience

9:40 Opening

9:42 Albert Derden - Texaco

The state of competition in gasoline marketing
U.S. Dept. of Energy

Texaco-Orlando ('80-'83): 256M '80 gal. sold
 266 '81
 296 '82
 319 '83 (est) +25%

uses contractors and joint venturers--no company employees--

100M thru leasee retailers in '80
158M in '83

decline in number of outlets, but increase in vol/outlet

Harold Brown
Division Manager - New Orleans
Texaco

1960's - most revenue from production; losses in
marketing area
1980's - less profit from production marketing must
be profitable

(Rep. Gardner wants a glossary of terms--)
(Rep. Meffert wants a summary of testimony--)

10:28 Jim Fore - Lakeland
Fore Oil Co.
jobber (branded)

no need for divorcement on any level

10:31 Richard Jackson - Ocala

10:33 Michael Allen - Orlando

Independent Shell, no need for divorcement

10:35 Reid Hughes - Daytona Beach (jobber)

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Series 19 Carton 360

Ad Hoc Gasoline
Oct 28, 1983

10:50 Richard Fornell - Holly Hilly
Amoco and Shell Jobber (opponent)

10:51 Robert Bergstresser - Shell dealer
buys direct from Port Tampa

10:53 Sarah Jane Mullins - Shell dealer

10:54 George Akel - Union dealer-lessee
company station 2 miles away
sells below his cost
lease expiring - U76 wants a 300% rent increase -
min. gal. req.
no rebate policy

(PMPA: Petroleum Marketing Practices Act)

11:01 Bernie Simpkins - multiple jobber (4 lines)
problem stems from oversupply in combination with reduced demand

72% of gas sold is now self-serve

23% of gas sold is sold thru C-stores

problem is subsidization of a money losing outlet with
profits from other areas--

7-11 has bought Citgo

11:14 TAPE 2

11:14 Lynn Drake - St. Pete

11:18 Joseph Scuderi - Orlando Amoco
company station selling at retail below his cost

11:20 Randall Jones - Jacksonville
Pres. Barron Oil Co. (retailer)
V-P Ray Distributing (jobber)

60% through dealers
40% through direct retail (C-stores)

\$12,000/mo. income
\$7,500/mo. int. on investment
\$6,000/mo. amort.
\$ 750/mo. taxes
\$ 750/mo. utys.
\$15,000 net cost
\$ 3,000/mo. loss

11:38 John Clarty - Ocala (jobber)
vertical integration and its ability to transfer
economic power across lines of commerce

12:14 Dwight Lewis - Dealnd (jobber)
complains of competition from his supplier
(Gardner-question who's doing what
are jobbers paying more for supply than refiners are
selling it directly at retail)

12:21 Jay Robinson - Mobil independent dealer
competes againsta jobber-owned outlet
His supplier is undercutting his cost at retail.

12:38 Jerry Fox

12:38 Frank Weltz - Shell (District Manager)

1:04 TAPE 3

1:04 Gene Fresk - Shell Dealer
20 years as a lease dealer

1:15 James Van Diest - Tampa Shell Dealer
Have to pay taxes in advance

1:16 Chuck Widmaier

1:18 MEETING ADJOURNED

To _____

Notice of
COMMITTEE MEETING
House of Representatives

October 13, 1983

Joint Meeting of Ad Hoc Task Force on Retail
Gasoline Divorcement & Banking & Commerce subcommittee of
(strike if not applicable)

the Committee on Commerce

will meet in Committee Room 21 HOB (Morris Hall) at 9:00 a.m.
~~10:00~~

on Tues., November 1, 1983, to consider :
(date)

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Ad Hoc/Gasoline
Nov 1, 1985

Whether legislation should be considered to prohibit
producers, refiners or distributors of petroleum
products from engaging in the direct retail sale of
such products to the consuming public and to hear
testimony from interested persons on this question.

THE FULL COMMERCE COMMITTEE WILL NOT MEET THE
WEEK OF OCTOBER 31 - NOVEMBER 4.

Chris Neffert
Chairman

I certify this notice was received in
the Office of the Sergeant at Arms at
11:25 o'clock, on Oct. 13, 1983.

Chris E. Hankins
Sergeant at Arms

I certify this notice was filed by me in the
Office of the Sergeant at Arms and the Office
of the Clerk on Oct. 13, 1983, and copies
have been sent in compliance with House Rules.

Leita L. Faircloth
Committee Secretary

White - to be posted
Canary - Calendar
Pink - Computer
Goldenrod - your file

H-14(1982)

Joint Meeting of Ad Hoc Task Force on Retail Gasoline Divorcement and
Banking & Commerce Subcommittee Meeting, November 1, 1983, 21 HOB:

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9:05 AM TAPE 1 - SIDE A

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Rep. Meffert, Chairman, called the meeting to order.

Series 19 Carton 1310

9:07 AM Rod Jones, Staff Counsel, gives historical perspective on retail gasoline divorce-ment issue. He explained that a task force was formed to conduct public hearings around the state to determine the need for legislation re-quiring the "divorcement" of petroleum producers and refiners from the retail gasoline marketing industry. Public hearings were here in three (3) cities -- Pensacola, Miami, & Daytona Beach; which resulted in eight (8) hours of testimony from forty (40) people. He stated that dealers are sometimes forced to compete with those who sell the fuel.

9:15 AM Rep. Meffert invites testimony from the audience.

9:16 AM Mr. James Hinton, Jr., repre-senting Jim Hinton Oil Co. & Fla. Petro. Marketers Assoc., gives testimony -- he does not favor divorcement; he does support easier access to the courts.

9:21 AM Mr. Jim Griggs, independent Texaco dealer, Ft. Walton Beach, gives testimony. He says he is the last independent dealer left in Ft. Walton Beach area.

9:24 AM Rep. Gallagher questions Mr. Griggs.

9:25 AM Rep. M. E. Hawkins questions Mr. Griggs.

9:27 AM Rep. Danson questions Mr. Griggs.

9:30 AM Rep. Gardner questions Mr. Griggs about his investment.

Mr. Griggs stated that he has an investment of \$40,000.

9:32 AM Rep. Meffert inquired about Texaco's rebate policy.

Mr. Griggs stated that Texaco does not have a fixed rebate -- it is a variable rebate per month for the prior year -- Nov. '83 compared with Nov. '82 figures.

9:36 AM Mr. Albert L. Derden, representing Texaco USA, Orlando, gives testimony. He stated that 37% of gasoline sales are made on credit cards, which carries a 3% charge to customer.

9:50 AM Rep. Meffert questions Mr. Derden re. price surveys and rebates.

9:52 AM Rep. Gardner questions Mr. Derden.

Rep. Hargrett questions Mr. Derden.

9:54 AM TAPE 1 - SIDE B

Rep. Hargrett continues his questioning of Mr. Derden.

9:56 AM Rep. Gallagher questions Mr. Derden re price changes.

Joint Meeting of Ad Hoc Task Force on Retail Gasoline Divorcement and Banking & Commerce Subcommittee Meeting, November 1, 1983, 21 HOB, continued:

<p>9:56 AM Mr. Derden stated that the price could change twice in one week ($\frac{1}{2}$-cent to 1-cent change).</p>	<p>10:36 AM Rep. Hargrett questions Mr. Nutter re. rebate policy.</p>
<p>10:05 AM Rep. Hargrett questions Mr. Durdin.</p>	<p>Rep. Gardner chairs the Subcommittee meeting for Rep. Meffert.</p>
<p>10:06 AM Rep. Danson questions Mr. Durdin.</p>	<p>Mr. Charles D. Fuqua, representing Amoco Oil Co., Tampa gives testimony.</p>
<p>Mr. Durdin stated that the rebate is applied uniformly.</p>	<p>10:37 AM <u>TAPE 2 - SIDE A</u></p>
<p>10:09 AM Rep. Hargrett questions Mr. Durdin.</p>	<p>Rep. Gardner questions Mr. Fuqua.</p>
<p>Mr. Durdin stated that there is not a standard markup.</p>	<p>Rep. Gallagher questions Mr. Fuqua.</p>
<p>10:12 AM Rep. Meffert speaks to issue.</p>	<p>Rep. Hargrett questions Mr. Fuqua.</p>
<p>10:13 AM Ms. Pat Moricca, Longwood, FL, spoke in support of total divorcement. She spoke re. Maryland divorce-law statistics.</p>	<p>Rep. Silver questions Mr. Fuqua re. affect on the consumer.</p>
<p>10:15 AM Mr. John A. Nutter, representing AGRA, gives testimony (Chevron, Central FL). He stated that the option gas tax is unfair -- it creates unfair competition. He stated that his present rent is \$1,600 per month; projected to be \$2,400 next year.</p>	<p>10:44 AM Ms. Michelle Warren, representing Florida Chamber of Commerce, spoke against gasoline divorcement.</p>
<p>10:19 AM Rep. Gallagher questions Mr. Nutter.</p>	<p>10:45 AM Mr. Bob M. Collins, representing Exxon, Boca Raton, gives testimony against gasoline divorcement.</p>
<p>Mr. Nutter testifies re. rebates</p>	<p>10:55 AM Rep. Silver questions Mr. Collins re. stations Mr. Collins gave the following figures:</p>
<p>10:30 AM Rep. Gardner questions Mr. Nutter.</p>	<p>252 stations leased; 28 stations that are company salaried; & 300 stations -- jobbers.</p>
<p>Rep. Hawkins questions Mr. Nutter. Rep. Hawkins summarizes his intent of proposed legislation -- that nobody <u>could</u> sell below the wholesale cost.</p>	<p>10:56 AM Dr. Philip Sorensen, Professor, Fla. State Univ., gives testimony against divorcement. He had a handout of tables/charts supporting his testimony.</p>
	<p>Rep. Gallagher questions Dr. Sorensen.</p>

Joint Meeting of Ad Hoc Task Force on Retail Gasoline Divorcement and Banking
& Commerce Subcommittee Meeting, November 1, 1983, 21 HOB, continued:

10:56 AM Rep. Silver questions
Dr. Sorensen.

11:15 AM Mr. L. Carl Adams, repre-
senting Florida Petroleum
Marketers Association,
gives testimony.

Rep. Silver questions
Mr. Adams.

11:24 AM TAPE 2 - SIDE B

Rep. Meffert speaks re.
the public hearings (3)
held on this issue. He
cautioned those interested
to not rely on any Committee
Bill from his Banking &
Commerce Subcommittee to
resolve their problems --
that they should seek out
a Representative to sponsor
their proposed legislation
on this issue.

11:27 AM Rep. Gallagher moves to RISE.

By Representative Burned

This publication was produced at an average cost of 1.5 cents per single page for the information of members of the Legislature and the public.

1 A bill to be entitled
2 An act relating to petroleum products;
3 repealing s. 526.151, F.S., eliminating the
4 restriction upon the number of retail service
5 stations operated by producers or refiners or
6 subsidiaries thereof; eliminating the
7 requirement of uniform treatment of stations
8 supplied with respect to equipment rental
9 charges; providing an effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Section 526.151, Florida Statutes, is
14 hereby repealed.
15 Section 2. This act shall take effect upon becoming a
16 law.

HOUSE SUMMARY

Repeals the current restriction on producers or refiners of petroleum products or subsidiaries of such producers or refiners from operating, with company personnel, in excess of 3 percent of the total number of all classes of retail service stations selling its petroleum products, under its own brand or secondary brand. Repeals the requirement that every producer or refiner of petroleum products supplying gasoline and special fuels to retail service station dealers must apply all equipment rental charge uniformly to all retail service station dealers which they supply.

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Commerce Preliminary Working Draft

§1 Short Title.

This act shall be known and may be cited as the "Motor Fuel Marketing Practices Act."

§2 Legislative Findings and Intent.

The Legislature finds that fair and healthy competition in the marketing of motor fuel provides maximum benefits to consumers in Florida, and that certain marketing practices which impair such competition are contrary to the public interest. Predatory practices and, under certain conditions, discriminatory practices, are unfair trade practices and restraints which adversely affect motor fuel competition. It is the intent of the Legislature to encourage competition and promote the general welfare of Florida citizens by prohibiting such unfair practices.

§3 Definitions.

The following terms shall have the meanings ascribed to them in this section unless otherwise stated and unless the context or subject matter clearly indicates otherwise:

(1) **MOTOR FUEL.** Means petroleum products which are used for the propulsion of motor vehicles.

(2) **RETAIL OUTLET.** Means a facility (land and improvements) where motor fuel is offered for sale, at retail, to the motoring public.

(3) **SALE.** Means any transfer, gift, sale, offer for sale, or advertisement for sale in any manner or by any means whatsoever, including any transfer of motor fuel from a person to itself or an affiliate at another level of distribution, but shall not include product exchanges at the wholesale level of distribution.

(4) REFINER. Means any person engaged in the production or refining of motor fuel, whether such production or refining occurs in this state or elsewhere, and includes an affiliate of such refiner with respect to such affiliate's sale of motor fuel.

(5) AFFILIATE. Means and includes any person whose stock is more than fifty percent owned by, or who (regardless of stock ownership) is controlled by, or who (regardless of stock ownership) is under common control with, any refiner.

(6) POSTED TERMINAL PRICE. Means a refiner'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, his posted terminal price shall be deemed to be no lower than the lowest posted terminal price of motor fuel of like grade and quality of any other refiner selling to the wholesale class of trade in the general trade area.

(7) REFINER COST. Means a refiner's posted terminal price plus state, federal and local taxes and inspection fees applicable to motor fuel and freight charges to its retail outlet, and direct labor costs and reasonable rental value of the retail outlet attributable to the retail sale of motor fuel by the refiner. If motor fuel is sold with another item, at a combined price, refiner cost shall also include the cost of the other

item and direct labor costs and reasonable rental value of the retail outlet attributable to the retail sale of the item by the refiner.

§4 Predatory Practices Unlawful; Exceptions.

(1) It shall be unlawful for any refiner engaged in commerce in this state to sell any grade or quality of motor fuel at a retail outlet below refiner cost, where the effect tends to injure competition. An isolated, inadvertent incident shall not be a violation of this Act.

(2) A refiner's sale below refiner cost in good faith to meet an equally low retail price of a competitor selling motor fuel of like grade which can be used in the same motor vehicle, or of the same or similar items in combination with motor fuel of like grade which can be used in the same motor vehicle, is not a violation of this Act.

§5 Discriminatory Practices Unlawful; Exceptions.

(1) It shall be unlawful for any person engaged in commerce in this state to sell for resale or knowingly receive for resale any grade of motor fuel at a price lower than the price which the seller contemporaneously sells motor fuel of like grade and quality to another person on the same level of distribution, in the same class of trade, within the same market area, where the effect tends to injure competition. An isolated, inadvertent incident shall not be a violation of this Act.

(2) A sale of motor fuel of like grade and quality at different prices to persons at the same level of distribution is not a violation of this Act if the difference in price is due to a difference in the cost of sale or delivery resulting from differing methods or quantities in which the grade of motor fuel is sold or delivered.

(3) A sale made in good faith to meet an equally low price of a competitor selling motor fuel of like grade which can be used in the same motor vehicle is not a violation of this Act.

§6 Discriminatory Allocations Unlawful.

It shall be unlawful for a supplier engaged in commerce in this state to limit or allocate the quantity of motor fuel available to a reseller purchasing under contract from such supplier because such reseller was prevented by such supplier from purchasing the minimum quantities such reseller was obligated to purchase from such supplier in the immediately preceding year, unless the limitations or allocations are applied in a reasonable and non-discriminatory manner among all resellers supplied by such supplier under contract in a general trade area and the supplier's own retail outlets.

It shall also be unlawful for a supplier to limit or allocate for more than five (5) days the quantity of motor fuel available to a reseller purchasing under contract from such supplier, unless the limitations or allocations are applied to a reasonable and non-discriminatory manner among all resellers supplied by such supplier under contract in a general trade area and the supplier's own retail outlets.

§7 Unfair Practices Unlawful.

(1) Except for refiner operated retail outlets, it shall be unlawful for a refiner to attempt to impose, directly or indirectly, the retail price of motor fuel at a retail outlet supplied by such refiner.

(2) It shall be unlawful for a supplier supplying motor fuel to a person for resale and leasing a retail outlet to the person to impose any material modification in the contractual arrangements during the term of the contract resulting in material modification of the leased retail outlet unless made in good faith and based upon reasonable business practices.

Certain Rebates Unlawful.

It shall be unlawful for any seller to offer or give, or any purchaser to knowingly receive, a rebate or concession of any kind in connection with the sale of motor fuel for resale to a person when the seller does not provide, on proportionately equal terms, the same rebate or concession to all persons purchasing, at the same level of distribution, in a market area, where the effect is to injure competition.

§9 Exempt Sales.

The provisions of this Act shall not apply to the following retail sales by a refiner: (a) a bona fide clearance sale for the purpose of discontinuing trade in such motor fuel; (b) a final business liquidation sale; (c) a sale of the refiner's motor fuel by a fiduciary or other officer under the order or direction of any court; (d) sales made during a grand opening to introduce a new or remodeled business not to exceed three (3) days, which grand opening shall be held within sixty (60) days from the date the new or remodeled business begins operation.

§10 Enforcement; Civil Penalties; Injunctive Relief.

(1) Any person who knowingly violates this Act shall be subject to a civil penalty not to exceed One Thousand Dollars (\$1,000) per violation. Each day that a violation of this Act occurs shall be considered a separate violation, but no civil penalty shall exceed Fifty Thousand Dollars (\$50,000). Any such person shall also be liable for attorney's fees and shall be subject to injunctive relief.

(2) The Department of Agriculture and Consumer Services shall investigate any complaints regarding violations of this Act. The Department of Agriculture and Consumer Services may request but shall not require the production of records or subpoena records or testimony. After completion of an investigation, the Department of

Agriculture and Consumer Services shall give the results of its investigation to the Department of Legal Affairs. The Department of Legal Affairs may then subpoena relevant records or testimony if it determines that the Department of Agriculture and Consumer Services' investigation shows a violation has likely occurred.

(3) The civil penalty imposed hereunder may be assessed and recovered in a civil action brought by the Department of Legal Affairs in any court of competent jurisdiction. If the Department of Legal Affairs prevails in a civil action, the court may award it reasonable attorneys' fees as it deems appropriate. All funds recovered by the Department of Legal Affairs shall be paid to the Treasury of the State of Florida.

§11 Enforcement; Private Actions; Injunctive Relief.

(1) Any person injured as a result of an act or practice which violates this Act may bring a civil action for appropriate relief, including an action for a declaratory judgment, injunctive relief and for actual damages.

(2) On the application for a temporary restraining order or a preliminary injunction, the court, in its discretion having due regard for the public interest, may require or dispense with the requirement of a bond, with or without surety, as conditions and circumstances may require. If a bond is required, the amount shall not be greater than Fifty Thousand Dollars (\$50,000).

(3) Any actual damages found to have resulted from violations of this Act may be trebled by the court.

(4) The court shall award a reasonable attorney's fee to the prevailing plaintiff and may award a reasonable attorney's fee to the prevailing defendant.

§12 Limitations Period for Actions.

Any action brought by the Department of Legal Affairs shall be brought within two (2) years after the alleged violation occurred or should reasonably have been

discovered. Any action brought by any other person shall be brought within one (1) year after the alleged violation occurred or should have reasonably been discovered, except that a private action brought under Section 5 for unlawful price discrimination shall be brought within two (2) years from the date the alleged violation occurred or should reasonably have been discovered.

§13 Severability. -

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

§14 Repeal of Restrictions.

Section 526.151, Florida Statutes is hereby repealed in its entirety. The provisions of §526.161, Florida Statutes shall not be enforced against any person, corporation, partnership, or other entity with respect to any alleged violations occurring during the time period that §526.151, Florida Statutes was in effect. Any enforcement action begun before the effective date of this Act shall be dismissed.

SECTION 15

(1) The Division of Consumer Services is hereby directed to compile a report pursuant to s. 570.544 of all compliants received by the Department of Agriculture and Consumer Services pursuant to this Act. Such report shall contain at least the information required in s. 570.544(6)2.-4. and shall be presented to the ^{Speaker of the House & President of the Senate} ~~Legislature~~ no later than January 1 of each year.

(2) The Division of Consumer Services is further directed to study the operation of this Act to determine whether it serves the ~~best~~ interest of consumers. Such study shall examine in detail the effect this Act has over gasoline prices in the State of Florida, both at the wholesale (i.e. refiners and jobbers) and retail levels of distribution; and, a comparison of the effect this Act has on prices in a vertical system of distribution versus a horizontal system of distribution. Such study shall contain recommendations for ^{Speaker of the House & President of the Senate} ~~Legislature~~ legislation, and shall be presented to the ~~Legislature~~ no later than November 1987.

§16 Effective Date.

This Act shall become effective upon becoming a law.

STORAGE NAME: sa-HB690

Date: April 10, 1985

Revised: _____

Final: _____

HOUSE OF REPRESENTATIVES
COMMITTEE ON COMMERCE
STAFF ANALYSIS

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BILL# 690 SPONSOR Beverly B. Burnsed

EFFECTIVE DATE On becoming law IDENTICAL/SIMILAR BILLS SB 237

RELATING TO Petroleum products, retail divorcement

OTHER COMMITTEES OF REFERENCE None

I. SUMMARY:

This bill repeals section 526.151, F.S., more commonly known as the retail divorcement statute. This statute prohibits a producer, refiner, or their subsidiary from operating with company personnel, in excess of 3 percent of the total number of the retail service stations selling its petroleum products, under its own brand or secondary brand. Though this statute was passed in 1974, it has never been enforced.

A. Current Law & Present Situation:

Section 526.151, F.S., has two substantive provisions, the first prohibits any producer or refiner or any subsidiary of any producer or refiner, from operating with company personnel, in excess of 3 percent of the total number of retail service stations selling its petroleum products. Because of this provision, this law has been referred to as the retail divorcement statute. The second substantive provision requires producers and refiners of petroleum products to apply all equipment rental charges uniformly to all retail service stations dealers which they supply. Violators of either of these provisions may be enjoined from such violations.

This section of the statutes was passed by the Legislature in 1974, during the oil crisis. At the time, there was concern that service stations operated by persons independent of the major oil company were receiving an inadequate supply of gas, while those stations operated by major oil companies were receiving a ready supply of gas. Apparently, the solution to this problem as expressed in section 526.151, F.S., was to restrict the number of service stations that producers or refiners could own.

Though this law was passed in 1974, it has never been enforced. This is because the constitutionality of the statute has been challenged since its passage. In 1975, in Exxon

Corporation v. Conner, (Cir. Ct. 2d Cir.) the statute was held unconstitutional and therefore was never enforced.

In 1984, another suit was brought relating to the statute. This one sought a writ of mandamus in order to require the Commissioner of Agriculture, Doyle Conner, to enforce it. The District Court of Appeal for the First District of Florida upheld the statute as constitutional and ordered that it be enforced. As support for its decision, the court cited Exxon v. Governor of Maryland, 437 U.S. 117 (1978). In the Maryland Exxon case the United States Supreme Court upheld as constitutional a Maryland statute which was very similar to section 526.151, F.S.

Though the First District Court of Appeal upheld the law as constitutional, it certified the case to the Florida Supreme Court. The Department of Agriculture declined to appeal the case however, so the District Court's opinion is controlling.

The Department of Agriculture began promulgating rules necessary to enforce the statute in late 1984. Those rules, which would have been effective in July 1985, are currently being challenged by various parties. The hearing date for these challenges is currently set for July 1 and 2, 1985.

B. Effect of Proposed Changes:

This bill repeals section 526.151, F.S. Accordingly, producers and refiners of petroleum products will not be required to divest themselves of the operation of any of their retail service stations.

II. ECONOMIC IMPACT:

A. Public:

The economic impact of this bill is difficult to determine, especially considering that to repeal the law amounts to maintaining the status quo. To date, there have been at least two studies conducted to determine the economic impact of the Florida retail divorcement statute. One study was commissioned by the American Petroleum Institute (which represents major oil refiners) and conducted by Dr. Philip E. Sorenson, Professor of Economics, Florida State University. This study concluded that enforcing section 526.151, F.S., will require the divorcement of 455 service stations at a cost of \$150 million. In addition, according to the report the retail prices for gasoline resulting from divorcement in Florida will increase between 1.75 cents and 2 cents a gallon.

A second study was commissioned by the Petroleum Marketers Association (which represents wholesalers and retailers) to respond to the Sorenson study. This study was conducted by Dr. Roger D. Blair, Professor of Economics, University of Florida.

Dr. Blair's preliminary evaluation concluded that the conclusions reached in Dr. Sorenson's study were without foundation. According to Dr. Blair, "Neither his use of economic theory nor his interpretation of the empirical evidence makes a case against retail divorcement."

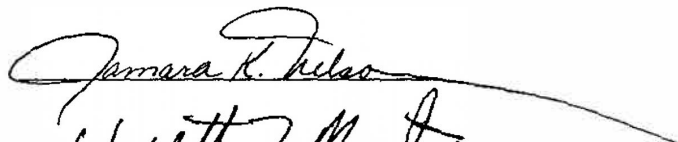
B. Government:

This bill may result in an insignificant savings in the government sector. Such savings should result from the fact that the bill alleviates the need for the Department of Agriculture and Consumer Services to continue with the rule promulgation process it is currently undertaking pursuant to enforcing S. 526.151, F.S. In addition, this bill will alleviate the need for the Department to defend challenges to the rules which are currently pending.

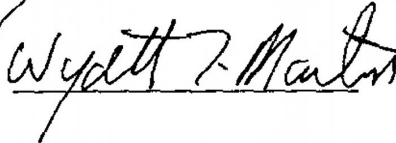
III. COMMENTS:

IV. AMENDMENTS:

V. PREPARED BY



VI. STAFF DIRECTOR



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170-494D-5-5

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1	A bill to be entitled	1:btc
2	An act relating to sale of motor fuel; creating	1.4
3	the Motor Fuel Marketing Practices Act;	
4	providing definitions; prohibiting predatory	1.5
5	practices which injure competition; prohibiting	1.6
6	sale of motor fuel at discriminatory prices	
7	which injure competition; prohibiting	1.8
8	discriminatory allocations; prohibiting certain	1.9
9	unfair practices in connection with retail	
10	outlets; prohibiting certain rebates which	1.10
11	injure competition; providing exemptions;	
12	providing for civil penalties and injunctive	1.13
13	relief; specifying duties of the Department of	
14	Agriculture and Consumer Services and the	1.14
15	Department of Legal Affairs; providing for	
16	private actions; providing for damages and	1.15
17	injunctive relief; providing for attorney's	
18	fees; providing limitations on actions;	
19	repealing s. 526.151, F.S., which provides	1.16
20	restrictions on operation of retail service	
21	stations by producers and refiners and requires	1.17
22	producers and refiners to apply equipment	
23	rental charges uniformly to retail service	1.18
24	station dealers; specifying effect on actions	
25	begun under said section before the effective	1.19
26	date of the act; requiring certain reports and	
27	studies; providing an effective date.	
28		
29	Be It Enacted by the Legislature of the State of Florida:	1:enc
30		
31		

1	Section 1. Short title.--This act may be cited as the	1.20
2	"Motor Fuel Marketing Practices Act."	1.21
3	Section 2. Legislative findings and intent.--The	1.22
4	Legislature finds that fair and healthy competition in the	1.23
5	marketing of motor fuel provides maximum benefits to consumers	
6	in Florida, and that certain marketing practices which impair	1.24
7	such competition are contrary to the public interest.	1.25
8	Predatory practices and, under certain conditions,	1.26
9	discriminatory practices, are unfair trade practices and	1.27
10	restraints which adversely affect motor fuel competition. It	1.28
11	is the intent of the Legislature to encourage competition and	
12	promote the general welfare of Florida citizens by prohibiting	1.29
13	such unfair practices.	
14	Section 3. Definitions.--As used in this act:	1.30
15	(1) "Motor fuel" means any petroleum product which is	1.31
16	used for the propulsion of motor vehicles.	1.32
17	(2) "Retail outlet" means a facility, including land	1.33
18	and improvements, where motor fuel is offered for sale, at	1.34
19	retail, to the motoring public.	
20	(3) "Sale" means any transfer, gift, sale, offer for	1.35
21	sale, or advertisement for sale in any manner or by any means	1.38
22	whatsoever, including any transfer of motor fuel from a person	
23	to itself or an affiliate at another level of distribution,	1.39
24	but does not include product exchanges at the wholesale level	1.40
25	of distribution.	
26	(4) "Refiner" means any person engaged in the	1.41
27	production or refining of motor fuel, whether such production	1.42
28	or refining occurs in this state or elsewhere, and includes an	
29	affiliate of such refiner with respect to such affiliate's	1.43
30	sale of motor fuel.	
31		

1	(5) "Affiliate" means any person whose stock is more	1.44
2	than 50 percent owned by, or who, regardless of stock	1.45
3	ownership, is controlled by, or who, regardless of stock	
4	ownership, is under common control with, any refiner.	1.46
5	(6) "Posted terminal price" means a refiner's posted	1.47
6	terminal price, by grade of motor fuel, to the wholesale class	1.48
7	of trade within a general trade area. If a refiner does not	1.49
8	have a posted terminal price in a general trade area, his	
9	posted terminal price shall be deemed to be no lower than the	1.50
10	lowest posted terminal price of motor fuel of like grade and	1.51
11	quality of any other refiner selling to the wholesale class of	
12	trade in the general trade area.	1.52
13	(7) "Refiner cost" means a refiner's posted terminal	1.53
14	price plus state, federal and local taxes and inspection fees	1.54
15	applicable to motor fuel, and freight charges to its retail	
16	outlet, and direct labor costs and reasonable rental value of	1.55
17	the retail outlet attributable to the retail sale of motor	1.56
18	fuel by the refiner. If motor fuel is sold with another item,	1.57
19	at a combined price, refiner cost shall also include the cost	1.58
20	of the other item and direct labor costs and reasonable rental	
21	value of the retail outlet attributable to the retail sale of	1.59
22	the item by the refiner.	
23	(8) "Competition" means the vying for motor fuel sales	1.60
24	between any two sellers in the same market area and at the	1.61
25	same level of distribution.	
26	Section 4. Predatory practices unlawful; exceptions.--	1.61
27	(1) It is unlawful for any refiner engaged in commerce	1.63
28	in this state to sell any grade or quality of motor fuel at a	1.64
29	retail outlet below refiner cost, where the effect is to	
30	injure competition. An isolated, inadvertent incident shall	1.67
31	not be a violation of this section.	

1	(2) A refiner's sale below refiner cost in good faith	1.68
2	to meet an equally low retail price of a competitor selling	1.69
3	motor fuel of like grade which can be used in the same motor	
4	vehicle, or of the same or similar items in combination with	1.70
5	motor fuel of like grade which can be used in the same motor	1.72
6	vehicle, is not a violation of this section.	1.73
7	Section 5. Discriminatory practices unlawful;	1.74
8	exceptions.--	
9	(1) It is unlawful for any person engaged in commerce	1.75
10	in this state:	
11	(a) To sell for resale any grade of motor fuel at a	1.76
12	price lower than the price at which the seller	
13	contemporaneously sells motor fuel of like grade and quality	1.77
14	to another person on the same level of distribution, in the	
15	same class of trade, and within the same market area as the	1.78
16	purchaser; or	
17	(b) To knowingly receive for resale any grade of motor	1.79
18	fuel at a price lower than the price at which the seller from	
19	which the motor fuel is purchased or received	1.80
20	contemporaneously sells motor fuel of like grade and quality	1.81
21	to another person on the same level of distribution, in the	
22	same class of trade, within the same market area as the	1.82
23	purchaser;	
24		
25	where the effect is to injure competition. An isolated	1.83
26	inadvertent incident shall not be a violation of this act.	
27	(2) A sale of motor fuel of like grade and quality at	1.84
28	different prices to persons at the same level of distribution	2.1
29	is not a violation of this section if the difference in price	
30	is due to a difference in the cost of sale or delivery	2.2
31		

1	resulting from differing methods or quantities in which the	2.3
2	grade of motor fuel is sold or delivered.	
3	(3) A sale made in good faith to meet an equally low	2.4
4	price of a competitor selling motor fuel of like grade which	2.5
5	can be used in the same motor vehicle is not a violation of	
6	this section.	2.6
7	Section 6. Discriminatory allocations unlawful.--	2.6
8	(1) It is unlawful for a supplier engaged in commerce	2.7
9	in this state to limit or allocate the quantity of motor fuel	2.8
10	available to a reseller purchasing under contract from such	
11	supplier because such reseller was prevented by such supplier	2.9
12	from purchasing the minimum quantities such reseller was	
13	obligated to purchase from such supplier in the immediately	2.10
14	preceding year, unless the limitations or allocations are	2.11
15	applied in a reasonable and nondiscriminatory manner among all	
16	resellers supplied by such supplier under contract in a	2.12
17	general trade area and the supplier's own retail outlets.	2.13
18	(2) It is also unlawful for a supplier to limit or	2.14
19	allocate for more than 5 days the quantity of motor fuel	2.15
20	available to a reseller purchasing under contract from such	
21	supplier, unless the limitations or allocations are applied in	2.16
22	a reasonable and nondiscriminatory manner among all resellers	2.17
23	supplied by such supplier under contract in a general trade	
24	area and the supplier's own retail outlets.	2.18
25	Section 7. Unfair practices unlawful.--	2.19
26	(1) It shall be unlawful for a refiner or other	2.20
27	supplier to fix or maintain the retail price of motor fuel at	
28	a retail outlet supplied by that refiner or supplier. Nothing	2.22
29	herein shall be construed to prevent a refiner or supplier	
30	from counseling concerning retail prices, provided no threat	2.23
31	or coercion is used in the counseling. This subsection shall	2.24

1	not apply to retail outlets operated by the refiner or	2.24
2	supplier.	
3	(2) It is unlawful for a supplier supplying motor fuel	2.25
4	to a person for resale and leasing a retail outlet to the	2.26
5	person to impose any material modification in the contractual	
6	arrangements during the term of the contract, including a	2.27
7	material modification of the leased retail outlet, unless such	2.28
8	modification is made in good faith and based upon reasonable	
9	business practices.	
10	Section 8. Certain rebates unlawful.--It is unlawful	2.29
11	for any seller to offer or give, or any purchaser to knowingly	2.30
12	receive, a rebate or concession of any kind in connection with	2.31
13	the sale of motor fuel for resale to a person when the seller	2.33
14	does not provide, on proportionately equal terms, the same	
15	rebate or concession to all persons purchasing for resale in a	2.34
16	market area, where the effect is to injure competition.	2.35
17	However, any rebate or concession received by a wholesaler	2.36
18	shall be offered or given to any retail outlet supplied by	2.37
19	such wholesaler, provided that a rebate or concession made in	
20	good faith to meet the same or a comparable rebate or	2.38
21	concession of a competitor shall not be a violation of this	
22	act.	2.39
23	Section 9. Exempt sales.--The provisions of this act	2.40
24	shall not apply to the following retail sales by a refiner:	2.41
25	(1) A bona fide clearance sale for the purpose of	2.42
26	discontinuing trade in such motor fuel.	2.43
27	(2) A final business liquidation sale.	2.44
28	(3) A sale of the refiner's motor fuel by a fiduciary	2.45
29	or other officer under the order or direction of any court.	2.47
30	(4) Sales made during a grand opening to introduce a	2.48
31	new or remodeled business not to exceed 3 days, which grand	2.49

1	opening shall be held within 60 days from the date the new or	2.50
2	remodeled business begins operations.	
3	Section 10. Enforcement; civil penalties; injunctive	2.51
4	relief.--	
5	(1) Any person who knowingly violates this act shall	2.52
6	be subject to a civil penalty not to exceed \$1,000 per	2.53
7	violation. Each day that a violation of this act occurs shall	2.54
8	be considered a separate violation, but no civil penalty shall	2.55
9	exceed \$50,000. Any such person shall also be liable for	2.56
10	attorney's fees and shall be subject to injunctive relief.	2.57
11	(2) The Department of Agriculture and Consumer	2.58
12	Services shall investigate any complaints regarding violations	2.59
13	of this act. The Department of Agriculture and Consumer	2.60
14	Services may request, but shall not require the production of,	2.61
15	or subpoena, records or testimony. After completion of an	2.62
16	investigation, the Department of Agriculture and Consumer	
17	Services shall give the results of its investigation to the	2.63
18	Department of Legal Affairs. The Department of Legal Affairs	2.64
19	may then subpoena relevant records or testimony if it	
20	determines that the Department of Agriculture and Consumer	2.65
21	Services' investigation shows a violation has likely occurred.	2.66
22	(3) The civil penalty imposed under this section may	2.67
23	be assessed and recovered in a civil action brought by the	2.69
24	Department of Legal Affairs in any court of competent	
25	jurisdiction. If the Department of Legal Affairs prevails in	2.70
26	a civil action, the court may award it reasonable attorneys'	2.71
27	fees as it deems appropriate. All funds recovered by the	2.72
28	Department of Legal Affairs shall be paid to the State	
29	Treasury.	
30	Section 11. Enforcement; private actions; injunctive	2.73
31	relief.--	

1	(1) Any person injured as a result of an act or	2.74
2	practice which violates this act may bring a civil action for	2.76
3	appropriate relief, including an action for a declaratory	
4	judgment, injunctive relief, and for actual damages.	2.77
5	(2) On the application for a temporary restraining	2.78
6	order or a preliminary injunction, the court, in its	2.79
7	discretion having due regard for the public interest, may	
8	require or dispense with the requirement of a bond, with or	2.80
9	without surety, as conditions and circumstances may require.	
10	If a bond is required, the amount shall not be greater than	2.81
11	\$50,000.	
12	(3) Any actual damages found to have resulted from	2.82
13	violations of this act may be trebled by the court.	2.83
14	(4) The court shall award a reasonable attorney's fee	2.84
15	to the prevailing plaintiff and may award a reasonable	3.1
16	attorney's fee to the prevailing defendant.	
17	Section 12. Limitations period for actions.--Any	3.2
18	action brought by the Department of Legal Affairs shall be	3.3
19	brought within 2 years after the alleged violation occurred or	
20	should reasonably have been discovered. Any action brought by	3.5
21	any other person shall be brought within 1 year after the	
22	alleged violation occurred or should have reasonably been	3.6
23	discovered, except that a private action brought under section	3.7
24	5 for unlawful price discrimination shall be brought within 2	
25	years from the date the alleged violation occurred or should	3.8
26	reasonably have been discovered.	
27	Section 13. Section 526.151, Florida Statutes, is	3.10
28	hereby repealed.	
29	Section 14. The provisions of s. 526.151, Florida	3.11
30	Statutes, shall not be enforced against any person,	3.13
31	corporation, partnership, or other entity with respect to any	

1	alleged violations occurring during the time period that s.	3.14
2	526.151, Florida Statutes, was in effect. Any enforcement	3.15
3	action begun before the effective date of this act shall be	
4	dismissed.	
5	Section 15. (1) The Division of Consumer Services is	3.17
6	directed to compile a report pursuant to s. 570.544, Florida	3.18
7	Statutes, of all complaints received by the Department of	
8	Agriculture and Consumer Services pursuant to this act. Such	3.20
9	report shall contain at least the information required by s.	
10	570.544(6)(b)2.-4., Florida Statutes, and shall be presented	3.21
11	to the Speaker of the House of Representatives and the	
12	President of the Senate no later than January 1 of each year.	3.23
13	(2) The Division of Consumer Services is directed to	3.24
14	study the operation of this act to determine whether it serves	3.25
15	the best interest of consumers. The study shall examine in	3.26
16	detail the effect this act has over gasoline prices in the	
17	state, both at the wholesale (i.e. refiners and jobbers) and	3.27
18	retail levels of distribution; and shall include a comparison	3.29
19	of the effect of this act on prices in a vertical system of	
20	distribution versus a horizontal system of distribution. The	3.31
21	study shall contain recommendations for legislation, and shall	
22	be presented to the Speaker of the House of Representatives	3.32
23	and the President of the Senate no later than November 1987.	
24	Section 16. This act shall take effect upon becoming a	3.33
25	law.	
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170-494E-5-5

CS/AB 690
As reported
Xo Clerk

1	A bill to be entitled	1:btc
2	An act relating to sale of motor fuel; creating	1.4
3	the Motor Fuel Marketing Practices Act;	
4	providing definitions; prohibiting predatory	1.5
5	practices which injure competition; prohibiting	1.6
6	sale of motor fuel at discriminatory prices	
7	which injure competition; prohibiting	1.8
8	discriminatory allocations; prohibiting certain	1.9
9	unfair practices in connection with retail	
10	outlets; prohibiting certain rebates which	1.10
11	injure competition; providing exemptions;	
12	providing for civil penalties and injunctive	1.13
13	relief; specifying duties of the Department of	
14	Agriculture and Consumer Services and the	1.14
15	Department of Legal Affairs; providing for	
16	private actions; providing for damages and	1.15
17	injunctive relief; providing for attorney's	
18	fees; providing limitations on actions;	
19	repealing s. 526.151, F.S., which provides	1.16
20	restrictions on operation of retail service	
21	stations by producers and refiners and requires	1.17
22	producers and refiners to apply equipment	
23	rental charges uniformly to retail service	1.18
24	station dealers; specifying effect on actions	
25	begun under said section before the effective	1.19
26	date of the act; requiring certain reports and	
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29	Be It Enacted by the Legislature of the State of Florida:	1:enc
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6	in Florida, and that certain marketing practices which impair	1.24
7	such competition are contrary to the public interest.	1.25
8	Predatory practices and, under certain conditions,	1.26
9	discriminatory practices, are unfair trade practices and	1.27
10	restraints which adversely affect motor fuel competition. It	1.28
11	is the intent of the Legislature to encourage competition and	
12	promote the general welfare of Florida citizens by prohibiting	1.29
13	such unfair practices.	
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15	(1) "Motor fuel" means any petroleum product which is	1.31
16	used for the propulsion of motor vehicles.	1.32
17	(2) "Retail outlet" means a facility, including land	1.33
18	and improvements, where motor fuel is offered for sale, at	1.34
19	retail, to the motoring public.	
20	(3) "Sale" means any transfer, gift, sale, offer for	1.35
21	sale, or advertisement for sale in any manner or by any means	1.38
22	whatsoever, including any transfer of motor fuel from a person	
23	to itself or an affiliate at another level of distribution,	1.39
24	but does not include product exchanges at the wholesale level	1.40
25	of distribution.	
26	(4) "Refiner" means any person engaged in the	1.41
27	production or refining of motor fuel, whether such production	1.42
28	or refining occurs in this state or elsewhere, and includes an	
29	affiliate of such refiner with respect to such affiliate's	1.43
30	sale of motor fuel.	
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1	(5) "Affiliate" means any person whose stock is more	1.44
2	than 50 percent owned by, or who, regardless of stock	1.45
3	ownership, is controlled by, or who, regardless of stock	
4	ownership, is under common control with, any refiner.	1.46
5	(6) "Posted terminal price" means a refiner's posted	1.47
6	terminal price, by grade of motor fuel, to the wholesale class	1.48
7	of trade within a general trade area. If a refiner does not	1.49
8	have a posted terminal price in a general trade area, his	
9	posted terminal price shall be deemed to be no lower than the	1.50
10	lowest posted terminal price of motor fuel of like grade and	1.51
11	quality of any other refiner selling to the wholesale class of	
12	trade in the general trade area.	1.52
13	(7) "Refiner cost" means a refiner's posted terminal	1.53
14	price plus state, federal and local taxes and inspection fees	1.54
15	applicable to motor fuel, and freight charges to its retail	
16	outlet, and direct labor costs and reasonable rental value of	1.55
17	the retail outlet attributable to the retail sale of motor	1.56
18	fuel by the refiner. If motor fuel is sold with another item,	1.57
19	at a combined price, refiner cost shall also include the cost	1.58
20	of the other item and direct labor costs and reasonable rental	
21	value of the retail outlet attributable to the retail sale of	1.59
22	the item by the refiner.	
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24	between any two sellers in the same market area and at the	1.61
25	same level of distribution.	
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27	(1) It is unlawful for any refiner engaged in commerce	1.63
28	in this state to sell any grade or quality of motor fuel at a	1.64
29	retail outlet below refiner cost, where the effect is to	
30	injure competition. An isolated, inadvertent incident shall	1.67
31	not be a violation of this section.	

1	(2) A refiner's sale below refiner cost in good faith	1.68
2	to meet an equally low retail price of a competitor selling	1.69
3	motor fuel of like grade which can be used in the same motor	
4	vehicle, or of the same or similar items in combination with	1.70
5	motor fuel of like grade which can be used in the same motor	1.72
6	vehicle, is not a violation of this section.	1.73
7	Section 5. Discriminatory practices unlawful;	1.74
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10	in this state:	
11	(a) To sell for resale any grade of motor fuel at a	1.76
12	price lower than the price at which the seller	
13	contemporaneously sells motor fuel of like grade and quality	1.77
14	to another person on the same level of distribution, in the	
15	same class of trade, and within the same market area as the	1.78
16	purchaser; or	
17	(b) To knowingly receive for resale any grade of motor	1.79
18	fuel at a price lower than the price at which the seller from	
19	which the motor fuel is purchased or received	1.80
20	contemporaneously sells motor fuel of like grade and quality	1.81
21	to another person on the same level of distribution, in the	
22	same class of trade, within the same market area as the	1.82
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24		
25	where the effect is to injure competition. An isolated	1.83
26	inadvertent incident shall not be a violation of this act.	
27	(2) A sale of motor fuel of like grade and quality at	1.84
28	different prices to persons at the same level of distribution	2.1
29	is not a violation of this section if the difference in price	
30	is due to a difference in the cost of sale or delivery	2.2
31		

1	resulting from differing methods or quantities in which the	2.3
2	grade of motor fuel is sold or delivered.	
3	(3) A sale made in good faith to meet an equally low	2.4
4	price of a competitor selling motor fuel of like grade which	2.5
5	can be used in the same motor vehicle is not a violation of	
6	this section.	2.6
7	Section 6. Discriminatory allocations unlawful.--	2.6
8	(1) It is unlawful for a supplier engaged in commerce	2.7
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11	supplier because such reseller was prevented by such supplier	2.9
12	from purchasing the minimum quantities such reseller was	
13	obligated to purchase from such supplier in the immediately	2.10
14	preceding year, unless the limitations or allocations are	2.11
15	applied in a reasonable and nondiscriminatory manner among all	
16	resellers supplied by such supplier under contract in a	2.12
17	general trade area and the supplier's own retail outlets.	2.13
18	(2) It is also unlawful for a supplier to limit or	2.14
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23	supplied by such supplier under contract in a general trade	
24	area and the supplier's own retail outlets.	2.18
25	Section 7. Unfair practices unlawful.--	2.19
26	(1) It shall be unlawful for a refiner or other	2.20
27	supplier to fix or maintain the retail price of motor fuel at	
28	a retail outlet supplied by that refiner or supplier. Nothing	2.22
29	herein shall be construed to prevent a refiner or supplier	
30	from counseling concerning retail prices, provided no threat	2.23
31	or coercion is used in the counseling. This subsection shall	2.24

1	not apply to retail outlets operated by the refiner or	
2	supplier.	
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4	to a person for resale and leasing a retail outlet to the	2.26
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6	arrangements during the term of the contract, including a	2.27
7	material modification of the leased retail outlet, unless such	2.28
8	modification is made in good faith and based upon reasonable	
9	business practices.	
10	Section 8. Certain rebates unlawful.--It is unlawful	2.29
11	for any seller to offer or give, or any purchaser to knowingly	2.30
12	receive, a rebate or concession of any kind in connection with	2.31
13	the sale of motor fuel for resale to a person when the seller	2.33
14	does not provide, on proportionately equal terms, the same	
15	rebate or concession to all persons purchasing for resale in a	2.34
16	market area, where the effect is to injure competition.	2.35
17	However, any rebate or concession received by a wholesaler	2.36
18	shall be offered or given to any retail outlet supplied by	2.37
19	such wholesaler. Provided that a rebate or concession made in	2.38
20	good faith to meet the same or a comparable rebate or	2.39
21	concession of a competitor shall not be a violation of this	
22	act.	2.40
23	Section 9. Exempt sales.--The provisions of this act	2.41
24	shall not apply to the following retail sales by a refiner:	2.42
25	(1) A bona fide clearance sale for the purpose of	2.43
26	discontinuing trade in such motor fuel.	2.44
27	(2) A final business liquidation sale.	2.45
28	(3) A sale of the refiner's motor fuel by a fiduciary	2.46
29	or other officer under the order or direction of any court.	2.48
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31	new or remodeled business not to exceed 3 days, which grand	2.50

1	opening shall be held within 60 days from the date the new or	2.51
2	remodeled business begins operations.	
3	Section 10. Enforcement; civil penalties; injunctive	2.52
4	relief.--	
5	(1) Any person who knowingly violates this act shall	2.53
6	be subject to a civil penalty not to exceed \$1,000 per	2.54
7	violation. Each day that a violation of this act occurs shall	2.55
8	be considered a separate violation, but no civil penalty shall	2.56
9	exceed \$50,000. Any such person shall also be liable for	2.57
10	attorney's fees and shall be subject to injunctive relief.	2.58
11	(2) The Department of Agriculture and Consumer	2.59
12	Services shall investigate any complaints regarding violations	2.60
13	of this act. The Department of Agriculture and Consumer	2.61
14	Services may request, but shall not require the production of,	2.62
15	or subpoena, records or testimony. After completion of an	2.63
16	investigation, the Department of Agriculture and Consumer	
17	Services shall give the results of its investigation to the	2.64
18	Department of Legal Affairs. The Department of Legal Affairs	2.65
19	may then subpoena relevant records or testimony if it	
20	determines that the Department of Agriculture and Consumer	2.66
21	Services' investigation shows a violation has likely occurred.	2.67
22	(3) The civil penalty imposed under this section may	2.68
23	be assessed and recovered in a civil action brought by the	2.70
24	Department of Legal Affairs in any court of competent	
25	jurisdiction. If the Department of Legal Affairs prevails in	2.71
26	a civil action, the court may award it reasonable attorneys'	2.72
27	fees as it deems appropriate. All funds recovered by the	2.73
28	Department of Legal Affairs shall be paid to the State	
29	Treasury.	
30	Section 11. Enforcement; private actions; injunctive	2.74
31	relief.--	

1	(1) Any person injured as a result of an act or	2.75
2	practice which violates this act may bring a civil action for	2.77
3	appropriate relief, including an action for a declaratory	
4	judgment, injunctive relief, and for actual damages.	2.78
5	(2) On the application for a temporary restraining	2.79
6	order or a preliminary injunction, the court, in its	2.80
7	discretion having due regard for the public interest, may	
8	require or dispense with the requirement of a bond, with or	2.81
9	without surety, as conditions and circumstances may require.	
10	If a bond is required, the amount shall not be greater than	2.82
11	\$50,000.	
12	(3) Any actual damages found to have resulted from	2.83
13	violations of this act may be trebled by the court.	2.84
14	(4) The court shall award a reasonable attorney's fee	3.1
15	to the prevailing plaintiff and may award a reasonable	3.2
16	attorney's fee to the prevailing defendant.	
17	Section 12. Limitations period for actions.--Any	3.3
18	action brought by the Department of Legal Affairs shall be	3.4
19	brought within 2 years after the alleged violation occurred or	
20	should reasonably have been discovered. Any action brought by	3.6
21	any other person shall be brought within 1 year after the	
22	alleged violation occurred or should have reasonably been	3.7
23	discovered, except that a private action brought under section	3.8
24	5 for unlawful price discrimination shall be brought within 2	
25	years from the date the alleged violation occurred or should	3.9
26	reasonably have been discovered.	
27	Section 13. Section 526.151, Florida Statutes, is	3.11
28	hereby repealed.	
29	Section 14. The provisions of s. 526.151, Florida	3.12
30	Statutes, shall not be enforced against any person,	3.14
31	corporation, partnership, or other entity with respect to any	

1	alleged violations occurring during the time period that s.	3.15
2	526.151, Florida Statutes, was in effect. Any enforcement	3.17
3	action begun before the effective date of this act shall be	
4	dismissed.	
5	Section 15. (1) The Division of Consumer Services is	3.18
6	directed to compile a report pursuant to s. 570.544, Florida	3.19
7	Statutes, of all complaints received by the Department of	
8	Agriculture and Consumer Services pursuant to this act. Such	3.21
9	report shall contain at least the information required by s.	
10	570.544(6)(b)2.-4., Florida Statutes, and shall be presented	3.22
11	to the Speaker of the House of Representatives and the	
12	President of the Senate no later than January 1 of each year.	3.24
13	(2) The Division of Consumer Services is directed to	3.25
14	study the operation of this act to determine whether it serves	3.26
15	the best interest of consumers. The study shall examine in	3.27
16	detail the effect this act has over gasoline prices in the	
17	state, both at the wholesale (i.e. refiners and jobbers) and	3.28
18	retail levels of distribution; and shall include a comparison	3.30
19	of the effect of this act on prices in a vertical system of	
20	distribution versus a horizontal system of distribution. The	3.32
21	study shall contain recommendations for legislation, and shall	
22	be presented to the Speaker of the House of Representatives	3.33
23	and the President of the Senate no later than November 1987.	
24	Section 16. This act shall take effect upon becoming a	3.34
25	law.	
26		
27		
28		
29		
30		
31		

Date: May 10, 1985
Revised: _____
Final: _____

HOUSE OF REPRESENTATIVES
COMMITTEE ON COMMERCE
STAFF ANALYSIS

Unreported
COPY
CS/HB 690
Reproduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R. A. GRAY BUILDING
Tallahassee, FL 32399-0250
Series 19 Carton 1443

BILL# CS/HB 690 SPONSOR Commerce, Burnsed & Morgan
EFFECTIVE DATE On becoming law IDENTICAL/SIMILAR BILLS SB 237
RELATING TO Petroleum products; retail divorcement
OTHER COMMITTEES OF REFERENCE None

I. SUMMARY:

Like House Bill 690, this bill repeals s. 526.151, F.S., the retail divorcement statute. However, unlike HB 690 this bill attempts to regulate the pricing of motor fuel by creation of the Motor Fuel Marketing Practices Act. The Act prohibits refiners from selling fuel at a retail outlet below cost; prohibits all persons from selling or buying fuel at discriminatory prices; and, prohibits suppliers from discriminatorily allocating fuel among resellers. Civil sanctions are provided for violations.

A. Current Law & Present Situation:

This bill attempts to encourage a competitive environment in the oil industry by prohibiting certain pricing practices. There are currently no laws at the state level specifically addressing such pricing practices. Chapter 542, the Florida Antitrust Act of 1980, prohibits restraints of trade and creation of monopolies. To the extent that any person or company violates the substantive provisions of the Act, such violator is subject to specified civil penalties. Section 526.151, F.S., prohibits refiners from operating more than 3% of their retail service stations. While no specific reference is made in the statute to pricing practices, it was apparently passed in reaction to the control exercised by such refiners during the oil embargo of the 1970's. This section of the statute (which is repealed by both HB 690 and CS/HB 690) was recently held constitutional by the District Court of Appeal for the First District of Florida on the basis of a United States Supreme Court decision.

Though there are no state laws specifically addressing price fixing, there are a number of federal laws which may be applicable. The Sherman Act prohibits: horizontal price fixing between competing suppliers; suppliers from setting a dealer's or distributor's resale prices; and, a supplier from using illegal methods to gain a monopoly in a geographic market. Section 2 of the Clayton Act, known as the Robinson-Patman Act, prohibits a

supplier from unfairly giving one dealer or distributor a price advantage over that dealer's or distributor's competitor. The Federal Trade Commission Act protects against "unfair methods of competition" and "unfair or deceptive trade practices."

The Petroleum Marketing Practices Act, though unrelated to particular pricing practices, governs to some extent the franchise relationship between suppliers, jobbers, and retail outlets. The Act sets out reasons for which a supplier can terminate or fail to renew its agreements with dealers or jobbers.

While all or some of these federal acts may provide recourse to persons harmed by anti-competitive pricing practices or franchising practices in the oil industry, apparently such recourse may prove to be very costly and lengthy. In addition, the standards of proof required by these acts may be difficult to meet.

B. Effect of Proposed Changes:

This bill creates the Motor Fuel Marketing Practices Act. The Act is composed of sixteen sections which provide as follows:

Section 1 provides the name of the act.

Section 2 expresses the Legislative findings and intent of the Act.

Section 3 provides definitions for the terms "motor fuel", "retail outlet", "sale", "refiner", "affiliate", "posted terminal price", "refiner cost", and "competition".

Section 4 prohibits refiners from selling motor fuel at a retail outlet below refiner cost, where the effect is to injure competition. ("Refiner cost" as defined in section 3(7) includes labor and rent value of the retail outlet attributable to the retail sale of fuel by the refiner.) Exempt from this prohibition are isolated and inadvertent sales, and sales made in good faith to meet an equally low price of a competitor.

Section 5 prohibits selling motor fuel to different persons on the same level of distribution at different prices, and buying motor fuel when the seller sells such fuel in violation of this section, where the effect is to injure competition. Exempted from this prohibition are: isolated and inadvertent sales, sales made in good faith to meet an equally low price of a competitor, and sales made at different prices if the price differential is due to a difference in the cost of sale or delivery of the fuel.

Section 6 of the bill prohibits suppliers of fuel from limiting or allocating fuel available to resellers because such

reseller was prevented by the supplier from purchasing the minimum quantities of fuel required by contract, unless such allocation or limitations are done in a reasonable and nondiscriminatory method. This section further prohibits a supplier from limiting or allocating the quantity of fuel available to resellers under contract for more than 5 days, unless the limitations are applied in a reasonable and nondiscriminatory manner among all resellers.

Section 7 prohibits a refiner or supplier from fixing the retail price of motor fuel at a retail outlet supplied by such refiner or supplier. Explicitly excluded from this prohibition is any counseling concerning retail prices by a refiner or supplier, provided that no threat or coercion is used in the counseling. Price fixing at retail outlets operated by the refiner or supplier is also explicitly excluded. Subsection (2) of this section prohibits a supplier from imposing any material modification in the contractual arrangements during the term of the contract, unless such modification is made in good faith and based upon reasonable business practice.

Section 8 of the bill prohibits sellers from offering rebates if the effect of such rebates is to injure competition, unless a rebate on proportionately equal terms is offered to all persons purchasing for resale in a market area. Any rebate received by a wholesaler must be offered or given to any retail outlet supplied by the wholesaler. Exempted from this section is any rebate made in good faith to meet the same or a comparable rebate of a competitor.

Section 9 of the bill exempts from coverage of the Act the following retail sales by a refiner: (1) clearance sales; (2) final business liquidation sales; (3) sales made pursuant to court order; and, (4) grand opening sales to introduce a new or remodeled business not to exceed three days.

Section 10 provides for a civil penalty for violations of the Act of \$1000 per day, per violation, not to exceed \$50,000. Under this section violators are also liable for attorney's fees and subject to injunctive relief. Subsection 2 of this section authorizes the Department of Agriculture and Consumer Services to investigate any complaints regarding violations of the Act. Results of such investigation are to be turned over to the Department of Legal Affairs. The Department of Legal Affairs may further investigate such complaint, and if warranted, bring a civil suit against the violator.

Section 11 provides relief for any person injured as a result of a violation of the Act. Such relief includes an action for declaratory judgment, injunction, and actual damages. On the application for a temporary restraining order or a preliminary injunction, the court in its discretion may require a bond not to exceed \$50,000. In addition, in an action for damages, the court

may treble any actual damages. The court shall award a reasonable attorney's fee to the prevailing plaintiff and may award a reasonable attorney's fee to the prevailing defendant.

Section 12 provides the statute of limitations for actions brought under this Act. For the Department of Legal Affairs any action must be brought within two years after the alleged violation occurred or should have reasonably been discovered. For private actions this period is one year, except for a private action brought under Section 5 of the Act for unlawful price discrimination which has a two year statute of limitation.

Section 13 repeals section 526.151, F.S., the retail divorcement statute.

Section 14 provides that the provisions of section 526.151, F.S., shall not be enforced against any person for a violation which occurred while the statute was in effect. Any enforcement actions brought before the effective date of this Act shall be dismissed.

Section 15 of the bill requires the Division of Consumer Services to annually report to the Legislature any complaints filed under this Act, and to study the operation of the Act to determine whether it serves the best interest of consumers. Such study is to be presented to the Speaker of the House and President of the Senate no later than November 1987.

Section 16 provides that this Act shall take effect upon becoming a law.

II. ECONOMIC IMPACT:

A. Public:

The economic impact of this bill in the public sector is indeterminable, though such impact may be felt by four different groups: refiners, jobbers (suppliers), retail service stations, and consumers. Refiners will be affected by provisions of this bill prohibiting them from selling fuel below cost at a retail outlet, by the provisions prohibiting discriminating in price among contemporaneous buyers, and by the provisions relating to rebates which require persons who offer rebates to offer such rebates to all persons purchasing in a market area. How these various provisions will affect the price of fuel is dependent upon the refiners themselves. Since the bill defines a refiner's cost as its posted terminal price plus labor and rent attributable to operation of a retail outlet, refiners will have a great deal of flexibility in determining their "cost" and therefore their floor price of fuel.

Refiners could also be affected by the provisions of the bill prohibiting sellers of fuel from selling to different contemporaneous resellers at different prices. To the extent that such sellers are currently selling to different purchasers at different prices, this bill will require that they equalize such prices which should mean that under this bill some purchasers may have to pay higher prices while others may receive a price break. Again, how this translates into the price of fuel is indeterminable at the present time because it depends on how disparate each individual refiner currently treats their purchasers of fuel and how they will change their pricing practices as a result of this bill. The impact of the rebate provisions is similarly indeterminable at the present time since no one knows how refiners will react to these provisions. It could have the effect of doing away with rebates altogether since refiners may be reluctant to give rebates to jobbers who may already be receiving price breaks (relative to retail outlets) in their price of fuel. On the other hand, they may continue to give rebates while increasing the price of fuel to jobbers.

Since refiners under the provisions of this Act have some degree of flexibility and a great deal of discretion with respect to their pricing practices, at this time it is impossible to determine how refiners will react to these provisions, and accordingly how the price of fuel will be impacted.

Refiners should be positively affected by the provision of this bill which repeals s. 526.151, F.S., the retail divorcement statute, which would have prohibited refiners from operating more than 3% of their retail service outlets.

Suppliers, like refiners, will be affected by the provisions of this bill relating to price discrimination and rebates. Like refiners also, the economic impact of this bill on suppliers is somewhat within their own discretion. The rebate provision may significantly affect suppliers to the extent that it requires such suppliers to pass on any rebate received to the retail outlets supplied by the supplier. The economic impact of this is difficult to determine since it will depend on how refiners react to the rebate provisions. As with refiners, the economic impact of this bill on suppliers is impossible to determine at this time.

Retail outlets will be affected by this bill. Those retail outlets operated by refiners will be prohibited from selling fuel below cost. The impact of this provision will depend in part on the extent to which refiner retail outlets currently sell fuel below cost. Other retailers will be affected by the provisions which prohibit them from buying fuel from suppliers at a price different from that which the supplier offers to other contemporaneous purchasers at the retail level in a market area. To the extent that refiners offer rebates to suppliers, retail outlets supplied by such suppliers will be

positively affected by the provision in the rebate section of the bill which require the supplier to pass the rebate on to the retail outlets they supply. Again, as with refiners and jobbers, how the economic impact of these provisions will translate into the price of fuel is impossible to determine at the present time.

Finally, consumers may be affected by the provisions of this Act. Such affect however is dependent upon how refiners, suppliers, and retail outlets react to its provisions. Since it is impossible to determine how such persons will react, it is impossible to determine how consumers will be affected. It should be noted, however, that according to the Legislative intent of this bill, the Act is intended to enhance competition in the marketing of motor fuel in order to maximize benefits to consumers. The Division of Consumer Services is required by this bill to conduct a study, to be completed no later than November 1987, to determine whether this Act serves the best interest of consumers. Presumably if it is found that the Act does not serve the best interest of consumers, it will be amended by the Legislature in order to ensure that such interest is served.

B. Government:

As with the economic impact in the public sector, the economic impact in the government sector is indeterminable at the present time. The Department of Agriculture and Consumer Services will be impacted by two sections of this bill. Section 10 requires this Department to investigate (without subpoena powers) any complaints filed under the Act. The economic impact of this provisions is currently indeterminable since the number of complaints that will be filed and investigated is unknown. This Department will also be impacted by Section 15 of the bill which requires it to annually report to the Legislature any complaints filed, and to conduct a study by November 1987 to determine whether the Act serves the best interest of consumers. The cost of such reporting and study is indeterminable.

The Department of Legal Affairs will be affected by the provision of this bill which authorizes it to investigate complaints turned over to it by the Department of Agriculture and Consumer Services and to bring civil suit against violators of the Act. The Department of Legal Affairs will be able to recover attorney's fees in any suit filed under this Act in which it prevails. As with the Department of Agriculture and Consumer Services, the economic impact on the Department of Legal Affairs is dependent on the number of complaints turned over and the number of civil suits filed. Accordingly, such impact is indeterminable at this time.

III. COMMENTS:

Statement of Substantial Changes Made In Committee Substitute:

This bill, like House Bill 690, repeals s. 526.151 (The Retail Divorcement Statute). Unlike House Bill 90 this bill creates the Motor Fuel Marketing Practices Act which prohibits four different sales practices when the effect of such practice is to injure competition. These four acts are as follows:

- (1) Refiners selling motor fuel at a retail outlet below cost (Section 4);
- (2) any person selling or any person receiving for resale any motor fuel at a price lower than the seller offers to persons purchasing contemporaneously, unless such price differential is due to a difference in the cost of sale or delivery (Section 5);
- (3) discriminatory allocations of fuel by suppliers for more than five days (Section 6); and,
- (4) sellers offering rebates to persons purchasing for resale unless the same rebate is offered to all persons purchasing for resale in a market area. However, any rebate or concession received by a wholesaler must be passed on to any retail outlet supplied by the wholesalers (Section 8).

Exempted from the above prohibitions are refiner sales below cost, discriminatory pricing, and differentials in rebates, if such acts are done in order to meet a competitor's price. Exempted from the coverage of (1) and (2) above are any isolated or inadvertent acts.

In addition to the above, section 7 of the bill prohibits refiners or suppliers from fixing the retail price of fuel at a retail outlet not operated by the refiner. It further prohibits suppliers from imposing any material modification in the contractual arrangements with a retail outlet during the term of the contract, unless such modification is made in good faith and based upon reasonable business practice.

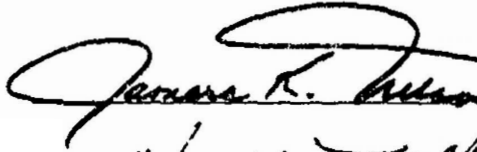
Violators of the Act may be enjoined by the Department of Legal Affairs and/or fined up to \$50,000 by the Department. Individuals injured by a violation of the Act may bring a civil action for appropriate relief including an action for a declaratory judgment, injunctive relief, actual damages, and treble damages.

Section 15 of the bill requires the Division of Consumer Services to annually report to the Legislature any complaints filed under this Act, and to study the operation of the Act to

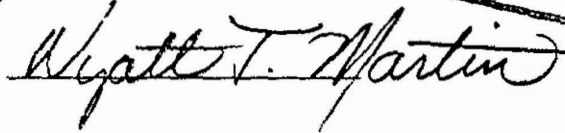
determine whether it serves the best interest of consumers. Such study is to be presented to the Speaker of the House and President of the Senate no later than November 1987.

IV. AMENDMENTS:

V. PREPARED BY

A handwritten signature in cursive script, appearing to read "James R. Turner".

VI. STAFF DIRECTOR

A handwritten signature in cursive script, appearing to read "Wyatt T. Martin".

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Branning</u> <i>ms</i>	<u>Cain</u> <i>NC</i>	1. <u>COM</u>	_____
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT:

Petroleum Products Dealers

BILL NO. AND SPONSOR:

SB 237 by
Senators Fox and Jenne**COPY**

reproduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R. A. GRAY BUILDING
Tallahassee, FL 32399-0250
Series 18 Carton 1505

I. SUMMARY:

A. Present Situation:

In 1974, the Legislature enacted ch. 74-387, Laws of Florida, the "Retail Divorcement Law," in the closing hours of the session. Section 526.151, Florida Statutes, provides that no producer, refiner, or a subsidiary of any producer or refiner, may operate, with company personnel, more than 3 percent of the total number of retail service stations selling its own brand or secondary brand of petroleum products. This section further requires that producers or refiners of petroleum products which supply gasoline and special fuels to retail service station dealers must apply all equipment rental charges uniformly to those dealers which they supply. Any service station which is operated by a producer or refiner who obtains more than 90 percent of its unrefined petroleum products to be refined from another producer or refiner is exempt from this section.

In 1975, Judge Ben Willis of the Second Judicial Circuit in Leon County ruled that s. 526.151, F.S., was unconstitutional. In his ruling he stated that this law was an unlawful exercise of the state's police power, denied producers and refiners equal protection of the laws, and was unconstitutionally vague. This decision was never appealed. As a result, the statute has never been enforced.

In July of 1984, the First District Court of Appeal for Florida reversed the 1975 decision and certified several questions to the Florida Supreme Court. As a result of this recent ruling, the Department of Agriculture and Consumer Affairs has proceeded to promulgate rules in order to implement s. 526.151, F.S. Subsequent to the hearing on the proposed rules, the Department's authority to promulgate such rules was challenged. The rule issue has been turned over to the Division of Administrative Hearings.

Section 526.151, F.S., is now scheduled to take effect on July 1, 1985.

B. Effect of Proposed Changes:

This bill would repeal s. 526.151, F.S., Florida's Retail Divorcement Law.

II. ECONOMIC IMPACT AND FISCAL NOTE:**A. Public:**

There is considerable disagreement as to the economic impact that would occur if the Retail Divorcement Law takes effect in July, 1985.

Those opposed to the Retail Divorcement Law (and therefore in favor of its repeal) include many of the major and smaller oil refiners and producers. Included are such major companies as Shell, Gulf, Mobil, Texaco, Exxon, etc. Smaller companies include Tenneco, USA, Hess, etc.

In opposing the Retail Divorcement Law, several studies are referenced which strongly support repeal of this law. The most recent such report was done by Dr. Philip Sorenson, an economics professor at Florida State University. His conclusions are based on his findings of the situation in Maryland where such a divorcement law has been in effect since 1979. Based on his findings, he concludes that:

- (1) Retail divorcement will increase gasoline prices by \$.017 to \$.02 per gallon. This could cost Florida consumers about \$100 million per year.
- (2) Retail divorcement will stifle competition. By removing a significant portion of the refiner operated stations and outlets, you remove a competitive force which has helped to keep prices to the consumer in balance.
- (3) Retail divorcement would force the closing and sale of many stations and outlets, forcing as many as 3,000 employers to suffer the loss of not only jobs but seniority and medical benefits. In addition, the sales of \$150 million in company property could cause significant capital losses to the refiner-owners.

Those in favor of retail divorcement (enforcement of the current statute) include mainly independent dealers and jobbers. Much of the predicted impact by refiners of enforcing the statute has been rebutted through studies of their own. In response to Dr. Sorenson's report, Dr. Roger Blair, an economics professor at the University of Florida, has sharply criticized Dr. Sorenson's conclusions and understanding of economic theory.

In his report, Dr. Blair concludes that divorcement will not eliminate competition. The law does not preclude a refiner from owning the physical property - the land, pumps, buildings, etc. All that is required is that the station be operated by a lessee dealer rather than a company employee. The refiner operators will be replaced by lessee dealers resulting in the same number of competitors.

On the issue of rising gasoline prices, Dr. Blair indicates that Dr. Sorenson may have erred in his interpretation of the empirical data regarding the Maryland experience. The gasoline prices in the Baltimore area were compared to the U. S. as a whole. Generally, prices rose faster in the U. S. as a whole than in Baltimore. In addition, the dealer margins rose less than the Consumer Price Index for the same period, thereby actually decreasing the dealer margins during the divorcement period in Maryland.

Dr. Blair further concludes that if Florida consumers had paid the Maryland gasoline prices rather than the U. S. prices, they would have saved \$.033 per gallon resulting in a saving of over \$170 million.

B. Government:

No significant impact.

III. COMMENTS:

Technical errors - none noted.

IV. AMENDMENTS:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Branning</u> <i>LB</i>	<u>Cain</u> <i>AC</i>	1. <u>COM</u>	<u>Fav.</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT:

Petroleum Products Dealers

BILL NO. AND SPONSOR:

SB 237 by
Senators Fox and Jenne**COPY**

reproduced by

FLORIDA STATE ARCHIVES

DEPARTMENT OF STATE

R. A. GRAY BUILDING

Tallahassee, FL 32399-0250

Series 18 Carton 1505I. SUMMARY:

A. Present Situation:

In 1974, the Legislature enacted ch. 74-387, Laws of Florida, the "Retail Divorcement Law," in the closing hours of the session. Section 526.151, Florida Statutes, provides that no producer, refiner, or a subsidiary of any producer or refiner, may operate, with company personnel, more than 3 percent of the total number of retail service stations selling its own brand or secondary brand of petroleum products. This section further requires that producers or refiners of petroleum products which supply gasoline and special fuels to retail service station dealers must apply all equipment rental charges uniformly to those dealers which they supply. Any service station which is operated by a producer or refiner who obtains more than 90 percent of its unrefined petroleum products to be refined from another producer or refiner is exempt from this section.

In 1975, Judge Ben Willis of the Second Judicial Circuit in Leon County ruled that s. 526.151, F.S., was unconstitutional. In his ruling he stated that this law was an unlawful exercise of the state's police power, denied producers and refiners equal protection of the laws, and was unconstitutionally vague. This decision was never appealed. As a result, the statute has never been enforced.

In July of 1984, the First District Court of Appeal for Florida reversed the 1975 decision and certified several questions to the Florida Supreme Court. As a result of this recent ruling, the Department of Agriculture and Consumer Affairs has proceeded to promulgate rules in order to implement s. 526.151, F.S. Subsequent to the hearing on the proposed rules, the Department's authority to promulgate such rules was challenged. The rule issue has been turned over to the Division of Administrative Hearings.

Section 526.151, F.S., is now scheduled to take effect on July 1, 1985.

B. Effect of Proposed Changes:

This bill would repeal s. 526.151, F.S., Florida's Retail Divorcement Law.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

There is considerable disagreement as to the economic impact that would occur if the Retail Divorcement Law takes effect in July, 1985.

Those opposed to the Retail Divorcement Law (and therefore in favor of its repeal) include many of the major and smaller oil refiners and producers. Included are such major companies as Shell, Gulf, Mobil, Texaco, Exxon, etc. Smaller companies include Tenneco, USA, Hess, etc.

In opposing the Retail Divorcement Law, several studies are referenced which strongly support repeal of this law. The most recent such report was done by Dr. Philip Sorenson, an economics professor at Florida State University. His conclusions are based on his findings of the situation in Maryland where such a divorcement law has been in effect since 1979. Based on his findings, he concludes that:

- (1) Retail divorcement will increase gasoline prices by \$.017 to \$.02 per gallon. This could cost Florida consumers about \$100 million per year.
- (2) Retail divorcement will stifle competition. By removing a significant portion of the refiner operated stations and outlets, you remove a competitive force which has helped to keep prices to the consumer in balance.
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Those in favor of retail divorcement (enforcement of the current statute) include mainly independent dealers and jobbers. Much of the predicted impact by refiners of enforcing the statute has been rebutted through studies of their own. In response to Dr. Sorenson's report, Dr. Roger Blair, an economics professor at the University of Florida, has sharply criticized Dr. Sorenson's conclusions and understanding of economic theory.

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Dr. Blair further concludes that if Florida consumers had paid the Maryland gasoline prices rather than the U. S. prices, they would have saved \$.033 per gallon resulting in a saving of over \$170 million.

B. Government:

No significant impact.

III. COMMENTS:

Technical errors - none noted.

IV. AMENDMENTS:

None.

By: Senators Fox and Jenne

This publication was produced at an annual cost of \$8.78 per printed page to inform members of the Legislature and the public of proposed legislation.

1 A bill to be entitled
2 An act relating to petroleum products dealers;
3 repealing s. 526.151, F.S., relating to
4 operating restrictions on retail service
5 stations; providing an effective date.
6
7 Be It Enacted by the Legislature of the State of Florida:
8
9 Section 1. Section 526.151, Florida Statutes, is
10 hereby repealed.
11 Section 2. This act shall take effect July 1, 1985 or
12 upon becoming a law, whichever occurs later.
13
14
15
16 *****
17 SENATE SUMMARY
18 Removes restrictions relating to operation of retail
19 service stations by petroleum producers or refiners.
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CODING: Words stricken are deletions; words underlined are additions.

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DEPARTMENT OF STATE

R. A. GRAY BUILDING

Tallahassee, FL 32399-0250

Series _____ Carton _____

1 A bill to be entitled
2 An act relating to motor fuel marketing;
3 providing a short title; providing legislative
4 intent; providing definitions; prohibiting
5 certain below-cost sales or transfers;
6 prohibiting discriminatory prices; prohibiting
7 below-cost sales; prohibiting certain rebates;
8 exempting certain sales of motor fuels;
9 providing penalties and enforcement; providing
10 for the award of attorneys' fees; providing
11 severability; repealing s. 526.151, F.S., which
12 imposes restrictions on petroleum products
13 dealers; providing an effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Short title.--This act may be cited as the
18 "Motor Fuel Marketing Practices Act."
19 Section 2. Legislative findings and intent.--It is
20 hereby declared that marketing of motor fuel in the state is
21 affected with the public interest. It is the intent of the
22 Legislature to encourage fair and honest competition and to
23 safeguard the public against creation of monopolies or unfair
24 methods of competition in transactions involving the sale of
25 motor fuel in this state. Under certain conditions, the
26 advertising, offering for sale, or sale of motor fuel below
27 the seller's cost tends to substantially lessen competition
28 and is contrary to the public interest. Furthermore, under
29 certain conditions, the sale or transfer of motor fuel of like
30 grade and quality by a seller to resellers who are in
31 competition with each other at different prices constitutes an

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Series 12 Carton 1505

1 unfair trade practice and is contrary to the public interest.
2 The policy of the state is to promote the general welfare
3 through the prohibition of such sales.

4 Section 3. Definitions.--As used in this act, the
5 term:

6 (1) "Motor Vehicle" means any vehicle which is
7 propelled by an internal combustion engine and is used on or
8 off the road or on the waterways.

9 (2) "Motor fuel" means any petroleum product which is
10 used for the propulsion of motor vehicles.

11 (3) "Sale" means any transfer, gift, sale, offer for
12 sale, or advertisement for sale in any manner or by any means
13 whatsoever, including any transfer of motor fuel from a person
14 to itself or an affiliate at another level of distribution,
15 but does not include product exchanges at the wholesale level
16 of distribution.

17 (4) "Competition" means any person who competes with
18 another person in the same market area at the same level of
19 distribution.

20 (5) "Refiner" means any person engaged in the
21 production or refining of motor fuel, whether such production
22 or refining occurs in this state or elsewhere, and includes an
23 affiliate of such refiner with respect to such affiliate's
24 purchase of motor fuel from such refiner.

25 (6) "Motor fuel cost" means the cost of motor fuel to
26 a seller, as follows:

27 (a) As applied to a refiner, the refiner's posted
28 terminal price, by grade of motor fuel, to the wholesale class
29 of trade within a general trade area. In the event a refiner
30 does not regularly sell to the wholesale class of trade in a
31 general trade area or does not post such a terminal price, its

1 cost of motor fuel shall be no lower than the lowest posted
2 terminal price, within the prior 48 hours, of motor fuel of
3 like grade or quality of any other refiner having motor fuel
4 readily available for sale to the wholesale class of trade
5 within within the same general trade area. The refiner's cost
6 of motor fuel, as defined above, shall apply to all sales made
7 by the refiner to any other person, regardless of class or
8 trade or ultimate use.

9 (b) As applied to refiners selling at levels of
10 distribution beyond the terminal, the transfer price, as
11 defined in subsection (7), at either the time of transfer or
12 within 5 days prior to the date of sale by the refiner selling
13 at the other level of distribution, whichever is less, less
14 credit card allowances, trade discounts, and rebates actually
15 received, to which shall be added all applicable state,
16 federal, and local taxes, inspection fees, credit card
17 processing fees, and freight charges not otherwise included in
18 the cost of the motor fuel.

19 (c) As applied to all other sellers, the seller's:

20 1. Invoice cost, or replacement cost of the motor
21 fuel, in the quantity last purchased, available from the same
22 supplier, within 5 days prior to the date of sale by the
23 seller, whichever is less; or

24 2. Transfer price, as defined in subsection (7), at
25 either the time of transfer or within 5 days prior to the date
26 of sale by the seller, whichever is less,

27
28 less credit card allowances, trade discounts and rebates
29 actually received, to which shall be added all applicable
30 state, federal, and local taxes, inspection fees, credit card

31

1 processing fees, and freight charges not otherwise included in
2 the cost of the motor fuel.

3 (7) "Transfer price" means the price at which motor
4 fuel is sold by a person to itself or to an affiliate for
5 resale at another level of distribution, which shall be deemed
6 to be not less than the seller's cost of motor fuel, as
7 determined under subsection (6).

8 (8) "Blended fuels cost", with regard to blended fuels
9 qualifying for any tax exemption under state or federal law,
10 means the seller's cost of blended fuel, which shall not be
11 less than the motor fuel cost, as determined under subsection
12 (6), of the seller's nonexempt grade of motor fuel used as a
13 component in the particular grade of blended fuel, which
14 component fuel is of comparable grade and is freely
15 substitutable for the particular grade of blended fuel,
16 notwithstanding a difference in octane rating, and is
17 regularly offered for sale in the same trade area. If the
18 nonexempt component fuel is not a grade of motor fuel
19 regularly offered for sale, the seller's motor fuel cost shall
20 be that of the seller's comparable nonexempt grade of motor
21 fuel regularly offered for sale in the general trade area. If
22 a seller does not sell comparable nonexempt products, the
23 motor fuel cost of the seller shall not be less than the cost
24 of motor fuel for comparable nonexempt motor fuel of another
25 seller at the same level of distribution within the same
26 general trade area at the time of the sale or within 48 hours
27 prior to the date of the sale.

28 (9) "Motor fuel retail outlet" means a facility where
29 motor fuel is offered for sale to the general public and
30 introduced directly into motor vehicles for immediate use and
31 consumption.

1 (10) "Direct operating costs" means the following
2 costs incurred by a seller of motor fuel at a motor fuel
3 retail outlet: direct labor costs incurred in the sale of
4 motor fuel; and rental value based upon a reasonable rate for
5 the property, including the land and all improvements thereon.
6 For purposes of determining such rental value, the value of
7 the property shall be the current value shown on the tax roll
8 of the county tax appraiser. The direct operating costs
9 applicable to a motor fuel retail outlet shall be determined
10 by allocating the above costs among accounting periods, by
11 apportioning such costs between motor fuel and non-motor fuel
12 sales or services offered at the motor fuel retail outlet, and
13 by apportioning those costs properly attributable to motor
14 fuel sales equally to each gallon of motor fuel sold. At
15 motor fuel retail outlets at which motor fuel and non-motor
16 fuel products or services are sold, direct labor and rental
17 costs at the outlet shall be reasonably and consistently
18 apportioned between motor fuel and non-motor fuel sales and
19 services. In the absence of proof of a greater or lesser
20 amount, 25 percent of the above costs shall be allocated to
21 motor fuel sales.

22 (11) "Affiliate" means any person owned, controlled
23 by, or under control with, any other person.

24 Section 4. Below-cost sales or transfers unlawful.--It
25 shall be unlawful for any person engaged in commerce in this
26 state to sell any grade or quality of motor fuel below such
27 person's motor fuel cost thereof, plus, in the case of a motor
28 fuel retail outlet, its direct operating costs at the motor
29 fuel retail outlet, where the effect of such sale is to injure
30 competition. It shall also be unlawful for any person engaged
31 in commerce in this state to knowingly purchase or receive any

1 grade or quality of motor fuel at a price below the seller's
2 motor fuel cost, where the effect of such transaction is to
3 injure competition. An isolated, inadvertent incident shall
4 not be considered a violation of this section.

5 Section 5. Unlawful discriminatory prices affecting
6 competition.--It shall be unlawful for any person engaged in
7 commerce in this state to sell or knowingly receive any grade
8 of motor fuel at a price lower than the price which the seller
9 contemporaneously sells motor fuel of like grade and quality
10 to another person on the same level of distribution, in the
11 same class of trade, within the same market area, where the
12 effect is to injure competition. An isolated, inadvertent
13 incident shall not be considered a violation of this section.

14 Section 6. Unlawful below cost combination sales.--
15 Sales involving two or more items, at least one of which is
16 motor fuel, at a combined price, and sales involving any gift
17 or concession of a thing of value, shall be unlawful if below
18 the total cost, plus, in the case of motor fuel retail
19 outlets, the direct operating costs applicable to all
20 products, gifts, and concessions included in such
21 transactions, where the effect is to injure competition. An
22 isolated, inadvertent incident shall not be considered a
23 violation of this section.

24 Section 7. Rebates unlawful.--It shall be unlawful for
25 any seller to offer or give a rebate or concession of any kind
26 in connection with the sale of motor fuel to a person ^{for resale} when the
27 seller does not provide the same rebate or concession to all
28 persons purchasing for resale in a market area, where the
29 effect is to injure competition. An isolated, inadvertent
30 incident shall not be considered a violation of this section.

31

1 Section 8. Exceptions; cost differentials; meeting
2 competition.--

3 (1) A sale of motor fuel of like grade and quality at
4 difference prices to persons at the same level of distribution
5 is not a violation of this act if the difference in price is
6 due to a difference in the cost of sale or delivery resulting
7 from differing methods or quantities in which the grade of
8 motor fuel is sold and delivered.

9 (2) A sale made in good faith to meet an equally low
10 price of a competitor in the same market area on the same
11 level of distribution selling the same or a similar product of
12 like grade which can be freely substituted for the product
13 being sold is not a violation of this act.

14 Section 9. Exempt sales.--

15 (1) The provisions of this act shall not apply to a
16 sale made;

17 (a) As a bona fide clearance sale for the purpose of
18 discontinuing trade in such motor fuel;

19 (b) Where motor fuel is sold upon the final
20 liquidation of a business;

21 (c) Where motor fuel is sold by a fiduciary or other
22 officer under the order or direction of any court;

23 (d) As a grand opening to introduce a new business not
24 to exceed 3 days, which grand opening shall be held within 60
25 days from the date the new business begins operations; or

26 (e) To end users of motor fuel for the end user's own
27 use and not for resale or transfer, if the end user purchases
28 100,000 or more gallons per month (totaling all of the end
29 user's purchases from the motor fuel seller throughout the
30 United States), and such purchases are made pursuant to a
31 contract with the motor fuel seller which covers purchases of

1 motor fuel over an area consisting of at least 3 states, and
2 at least 25,000 gallons per month of such motor fuel are
3 delivered in the state.

4 (2) With regard to sales under paragraphs (a), (b), or
5 (c) of subsection (1), all advertising and invoices in
6 connection therewith shall state the reason for the sale and
7 the quantity to be sold. All such sales shall be kept
8 separately on the books of the seller.

9 Section 10. Enforcement; civil penalties; injunctive
10 relief.--

11 (1) Any person who knowingly violates this act shall
12 be subject to a civil penalty not to exceed \$1,000 per
13 violation. Each day that a violation of this act occurs shall
14 be considered a separate violation, but no civil penalty shall
15 exceed \$50,000. Any such person shall also be liable for
16 attorney's fees and shall be subject to injunctive relief.

17 (2) The Department of Agriculture and Consumer
18 Services shall investigate any complaints regarding violations
19 of this act. The Department of Agriculture and Consumer
20 Services may request, but shall not require the production of
21 or subpoena, records or testimony. After completion of an
22 investigation, the Department of Agriculture and Consumer
23 Services shall give the results of its investigation to the
24 Department of Legal Affairs. The Department of Legal Affairs
25 may then subpoena relevant records or testimony if it
26 determines that the Department of Agriculture and Consumer
27 Services' investigation shows a violation has likely occurred.

28 (3) The civil penalty imposed hereunder may be
29 assessed and recovered in a civil action brought by the
30 Department of Legal Affairs in any court of competent
31 jurisdiction. If the Department of Legal Affairs prevails in

1 a civil action, the court may award it reasonable attorneys'
2 fees as it deems appropriate. All funds recovered by the
3 Department of Legal Affairs shall be paid to the State
4 Treasury.

5 Section 11. Enforcement; private actions; injunctive
6 relief.--

7 (1) Any person injured as a result of an act or
8 practice which violates this act may bring a civil action for
9 appropriate relief, including an action for a declaratory
10 judgment, injunctive relief, and for actual damages.

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.

18 (3) Any actual damages found to have resulted from
19 violations of this act may be trebled by the court.

20 (4) The court shall award a reasonable attorney's fee
21 to the prevailing plaintiff and may award a reasonable
22 attorney's fee to the prevailing defendant.

23 Section 12. Limitations period for actions.--Any
24 action brought by the Department of Legal Affairs shall be
25 brought within 2 years after the alleged violation occurred or
26 should reasonably have been discovered. Any action brought by
27 any other person shall be brought within 1 year after the
28 alleged violation occurred or should have reasonably been
29 discovered, except that a private action brought under section
30 5 for unlawful price discrimination shall be brought within 2
31

1 years from the date the alleged violation occurred or should
2 reasonably have been discovered.

3 Section 13. Severability.--If any provision of this
4 act or the application thereof to any person or circumstance
5 is held invalid, the invalidity shall not affect other
6 provisions or applications of the act which can be given
7 effect without the invalid provision or application, and to
8 this end the provisions of this act are declared severable.

9 Section 14. Repeal of restrictions.--

10 (1) Section 526.151, Florida Statutes, is hereby
11 repealed.

12 (2) The provisions of section 526.151, Florida
13 Statutes, shall not be enforced against any person with
14 respect to any alleged violations occurring during the time
15 period that section 526.151, Florida Statutes, was in effect.
16 Any enforcement action begun before the effective date of this
17 act shall be dismissed.

18 Section 15. This act shall take effect upon becoming a
19 law.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Branning</u> <i>LB</i>	<u>Cain</u> <i>MC</i>	1. <u>COM</u>	<u>Fav.</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT:

Petroleum Products Dealers

BILL NO. AND SPONSOR:

SB 237 by
Senators Fox and Jenne
(See CS/HB 690)

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DEPARTMENT OF STATE

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Series 18 Carton 1505I. SUMMARY:

A. Present Situation:

In 1974, the Legislature enacted ch. 74-387, Laws of Florida, the "Retail Divorcement Law," in the closing hours of the session. Section 526.151, Florida Statutes, provides that no producer, refiner, or a subsidiary of any producer or refiner, may operate, with company personnel, more than 3 percent of the total number of retail service stations selling its own brand or secondary brand of petroleum products. This section further requires that producers or refiners of petroleum products which supply gasoline and special fuels to retail service station dealers must apply all equipment rental charges uniformly to those dealers which they supply. Any service station which is operated by a producer or refiner who obtains more than 90 percent of its unrefined petroleum products to be refined from another producer or refiner is exempt from this section.

In 1975, Judge Ben Willis of the Second Judicial Circuit in Leon County ruled that s. 526.151, F.S., was unconstitutional. In his ruling he stated that this law was an unlawful exercise of the state's police power, denied producers and refiners equal protection of the laws, and was unconstitutionally vague. This decision was never appealed. As a result, the statute has never been enforced.

In July of 1984, the First District Court of Appeal for Florida reversed the 1975 decision and certified several questions to the Florida Supreme Court. As a result of this recent ruling, the Department of Agriculture and Consumer Affairs has proceeded to promulgate rules in order to implement s. 526.151, F.S. Subsequent to the hearing on the proposed rules, the Department's authority to promulgate such rules was challenged. The rule issue has been turned over to the Division of Administrative Hearings.

Section 526.151, F.S., is now scheduled to take effect on July 1, 1985.

B. Effect of Proposed Changes:

This bill would repeal s. 526.151, F.S., Florida's Retail Divorcement Law.

II. ECONOMIC IMPACT AND FISCAL NOTE:**A. Public:**

There is considerable disagreement as to the economic impact that would occur if the Retail Divorcement Law takes effect in July, 1985.

Those opposed to the Retail Divorcement Law (and therefore in favor of its repeal) include many of the major and smaller oil refiners and producers. Included are such major companies as Shell, Gulf, Mobil, Texaco, Exxon, etc. Smaller companies include Tenneco, USA, Hess, etc.

In opposing the Retail Divorcement Law, several studies are referenced which strongly support repeal of this law. The most recent such report was done by Dr. Philip Sorenson, an economics professor at Florida State University. His conclusions are based on his findings of the situation in Maryland where such a divorcement law has been in effect since 1979. Based on his findings, he concludes that:

- (1) Retail divorcement will increase gasoline prices by \$.017 to \$.02 per gallon. This could cost Florida consumers about \$100 million per year.
- (2) Retail divorcement will stifle competition. By removing a significant portion of the refiner operated stations and outlets, you remove a competitive force which has helped to keep prices to the consumer in balance.
- (3) Retail divorcement would force the closing and sale of many stations and outlets, forcing as many as 3,000 employees to suffer the loss of not only jobs but seniority and medical benefits. In addition, the sales of \$150 million in company property could cause significant capital losses to the refiner-owners.

Those in favor of retail divorcement (enforcement of the current statute) include mainly independent dealers and jobbers. Much of the predicted impact by refiners of enforcing the statute has been rebutted through studies of their own. In response to Dr. Sorenson's report, Dr. Roger Blair, an economics professor at the University of Florida, has sharply criticized Dr. Sorenson's conclusions and understanding of economic theory.

In his report, Dr. Blair concludes that divorcement will not eliminate competition. The law does not preclude a refiner from owning the physical property - the land, pumps, buildings, etc. All that is required is that the station be operated by a lessee dealer rather than a company employee. The refiner operators will be replaced by lessee dealers resulting in the same number of competitors.

On the issue of rising gasoline prices, Dr. Blair indicates that Dr. Sorenson may have erred in his interpretation of the empirical data regarding the Maryland experience. The gasoline prices in the Baltimore area were compared to the U. S. as a whole. Generally, prices rose faster in the U. S. as a whole than in Baltimore. In addition, the dealer margins rose less than the Consumer Price Index for the same period, thereby actually decreasing the dealer margins during the divorcement period in Maryland.

REVISED: June 12, 1985

BILL NO. SB 237

DATE: March 29, 1985

Page 3

Dr. Blair further concludes that if Florida consumers had paid the Maryland gasoline prices rather than the U. S. prices, they would have saved \$.033 per gallon resulting in a saving of over \$170 million.

B. Government:

No significant impact.

III. COMMENTS:

Technical errors - none noted.

IV. AMENDMENTS:

None.

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ALLOCATION PROVISION

- o Any form of legislated allocation controls works to the detriment of consumers:
 - Rigid rules will eventually result in an overabundance of motor fuel in some areas and undersupply in others;
 - This was clearly seen during federal allocation controls and was acknowledged by the Department of Energy as contributing to the problems of managing the shortage;
 - Flexibility of suppliers is essential in shortage situations, even mild ones, to handle emergency needs; i.e., ambulances, fire departments, etc., and to make sure that motor fuel is available where it is needed by the motoring public.
- o The language of HB 690 is vague and complex and we are not sure what changes it may eventually cause. However, it appears to legislate an allocation situation which will distort and intensify any shortage situation for the public:
 - Distributors have multiple types of outlets for their sales. Retail outlets do not and must rely on the people that come to them;
 - During a mild shortage, some retail outlets will need more than contract volume, while others can't sell all of theirs. Therefore, providing the same percentage allocation to each retail outlet and distributor will result in a greater percentage of the volume going to the distributor class of trade to the detriment of customers of the retail outlets;
 - It was this type of situation during the shortages of the 70's which caused longer lines at service stations in metropolitan areas than in the rural areas that are predominately served by distributors.
- o Even in periods of adequate supply, the allocation provision, under one of several interpretations, could work to the detriment of consumers by substituting legislation for the normal workings of the marketplace. Take, for example, the situation that occurs when a branded service station is closed:
 - The majority of consumers who shopped at the closed store will typically transfer their purchases to other service stations of the same brand, thus increasing the volume of those stores. The percentage increase, however, varies dramatically between the stores in the market area. In other words, the volume of the closed store is reallocated to other locations by consumers.

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FILES 1935

- Most suppliers let the market work by allowing their dealers to lift volume commensurate with their requirements. (As stated above, the amount of additional volume a dealer (or company-operated station) can take is limited by the demand of customers coming to them.)
- Since distributors have the ability to sell large quantities of volume into the spot market or other non-traditional channels, it would be impossible to allow resellers all the volume they asked for at all times.
- As a result, if this legislation is enacted, it is probable that some service stations, even in times of adequate supply, would be unable to provide all consumer demands.

BACKGROUND INFORMATION
RETAIL GASOLINE DIVORCEMENT ISSUE

In 1974, the Legislature enacted Section 526.151, F.S. which, with some exceptions, provided that "no producer, refiner, ...shall operate, with company personnel, in excess of 3% of the total number of all classes of retail service stations selling its petroleum products..." Additionally, the law states that every producer or refiner shall apply rental charges for equipment leased to all leasees equally.

This statute was held unconstitutional in 1975 in Exxon Corporation vs. Conner, (Cir. Ct. 2d Cir. 1974), and therefore was never enforced. However, this never set well with independent gasoline station owners and the distributors or jobbers. Through their efforts, legislation was routinely filed, in one form or another, to prohibit the major oil refiners from owning and operating retail gasoline stations in Florida. This legislation never progressed very far. However, in the fall of 1983 an Ad Hoc Task Force of the Banking and Commerce Subcommittee of the House Commerce Committee was formed to consider the issue of retail gasoline divorcement. The task force membership included Representatives Gardner and Gallagher with Representative Meffert as the Chairman. Hearings were held in Pensacola, Daytona, and Miami and testimony was received from interested parties. Representative Meffert presented the findings of the committee (orally - there were no written findings at Representative Meffert's request) that there was no need, at that time, to consider enacting legislation which would prohibit major oil refiners from owning and operating retail gasoline stations. Remember, when Representative Meffert presented these findings, section 526.151, which is now going to be enforced, was thought to be null.

In 1984, in State ex rel., Gas Kwick, Inc. vs. Doyle Conner, 9 FLW 1607 (Fla. 1st DCA July 27, 1984) the statute was held constitutional based on a 1978 United States Supreme Court Decision (See, Exxon v. Governor of Maryland, 437 U.S.117(1978)). Though the 1st DCA has certified this issue to the State Supreme Court the Department of Agriculture, the state agency charged with enforcing the statute, has declined to appeal the case. Accordingly, based on the District Court's opinion, the Department of Agriculture is now in the process of promulgating rules to implement the statute.

The major oil refiners through their association, the Petroleum Council, are in the process of persuading members of the Legislature to introduce a bill which would repeal section 526.151, F.S.

WTM/bgh

RETAIL PRICES OF UNLEADED REGULAR SELF-SERVE GASOLINE ¹

	June 1980	September 1980	November 1980	January 1981	February 1981 ²
Atlanta	\$1 3121	\$1 2381	\$1 2344	\$1 3080	\$1 3953
Norfolk	1 2253	1 2285	1 2059	1 2461	1 3327
Baltimore	1 2441	1 2189	1 1934	1 2400	1 3279
Washington, D.C.	1 2620	1 2602	1 2504	1 3038	1 3853
Philadelphia	1 2561	1 2355	1 2334	1 2994	1 3700
U.S. average	1 2461	1 2254	1 2181	1 2773	1 3290

¹ Per gallon prices reported by the Lundberg Letter
² Reflect discounts

NUMBERS OF RETAIL SERVICE STATIONS

	Maryland	Percent	Region ¹	Percent	United States ¹	Percent
January 1979	3,480		57,200		170,600	
March 1981	3,286		46,800		136,700	
Net loss	194	5.6	10,400	18	33,900	20

¹ Lundberg Letter, Mar 20, 1981

Mr. BEDELL. Thank you very much, Mr. Goldstein.

Any questions, Mr. Mavroules?

Mr. MAVROULES. Thank you, Mr. Chairman. Mr. Goldstein, thank you for your very candid report and testimony before the committee. You realize, of course, that probably some time today and tomorrow there will be others who will be coming before the committee, and perhaps giving us the other view of what we ought to do.

Mr. GOLDSTEIN. Oh, yes, sir.

Mr. MAVROULES. Therefore, it is important that I, on behalf of the committee, get you on record and, therefore, I have prepared a few questions for you.

Mr. GOLDSTEIN. Ask me anything you want, sir. I would be glad to answer if I can.

Mr. MAVROULES. Very well. Let's go back to your prepared testimony where you indicated that the average gasoline prices in Baltimore have been as low or lower than what is found in comparable cities and other States.

Mr. GOLDSTEIN. That's right, sir.

Mr. MAVROULES. Do you dispute that? Those who claim that divorcement legislation would increase the cost of gasoline to consumers? I would like your personal opinion.

Mr. GOLDSTEIN. I absolutely don't agree with that. We have had the experience in Maryland now. We are the first State to pass the law and that was the very same statement they made to the respective committees of our State legislature, when they opposed this legislation. It hasn't worked that way.

Mr. MAVROULES. The reason I asked—it might be somewhat repetitive but I think it is important we have it on the record. OK?

Mr. GOLDSTEIN. Yes, sir.

Mr. MAVROULES. Some people have suggested that if major integrated refiners are barred from direct operation of retail outlets

526.111 Prohibited display of gasoline prices; penalty.—

(1) It is unlawful for any person, firm, or corporation to display, or allow to be displayed on his premises, any sign, placard, or other advertisement relating to the retail price of gasoline unless numerals thereon indicating fractions or portions of a whole number are at least half the size of the largest whole number on such sign, and no such price of gasoline shall be advertised without the tax included. No such person, firm, or corporation shall be required to post prices pursuant to this section.

(2) Violation of the provisions of this section shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, 2 ch. 57-826, s. 508, ch. 71-136 s. 4, ch. 79-163

526.121 Pricing restrictions; separation of gasolines.—

(1) The posting at retail service stations of a different price for the same grade of gasoline dispensed from one pump than from another pump supplied from a common storage at the same service station when represented to be and is sold as the same quality of gasoline is unlawful.

(2) This section shall not be construed to prohibit a price differential between self-service pumps and attendant-controlled pumps supplied from a common storage at the same service station.

History.—s. 1, ch. 67-506 s. 7, ch. 74-162.

526.131 Injunction against violations.—In addition to the remedies provided in this part, and notwithstanding the existence of any adequate remedy at law, the Department of Agriculture and Consumer Services is authorized to make application for injunction to a circuit court or circuit judge and such circuit court or circuit judge shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this part or from failing or refusing to comply with the requirements of this part or any rule or regulation duly promulgated, such injunction to be issued without bond.

History.—s. 1 ch. 70-437, s. 1, ch. 70-439

526.141 Self-service gasoline stations; attendants; regulations.—

(1) This section authorizes the establishment of self-service gasoline stations.

(2) A "self-service gasoline station" shall be that portion of property where flammable and combustible liquids used as motor fuels are stored and subsequently dispensed from fixed, approved dispensing equipment into the fuel tanks of motor vehicles by persons other than the service station attendant.

(3) All self-service gasoline stations shall have at least one attendant on duty while the station is open to the public. The attendant's primary function shall be the proper administration, supervision, observation, and control of the dispensing of flammable and combustible liquids used as motor fuels while such liquids are actually being dispensed. It shall be the responsibility of the attendant to prevent the dis-

persing of flammable and combustible liquids used as motor fuels into portable containers unless such container bears a seal of approval of a nationally recognized testing agency; to control sources of ignition; and immediately to handle accidental spills and fire extinguishers if needed. The attendant on duty shall be mentally and physically capable of performing the functions and assuming the responsibility prescribed in the subsection.

(4)(a) The "attendant-control area" is that area reserved for the placing of the attendant, which shall be not more than 100 feet from the dispensing area and shall contain the fire-extinguishment equipment and emergency controls.

(b) The "dispensing area" is that area where the pumps used to dispense flammable and combustible liquids used as motor fuels are located. The dispensing area shall at all times be in clear view of the attendant, and the placing or allowing of any obstruction to vision between the dispensing area and the attendant control area shall be prohibited. The attendant shall at all times be able to communicate with persons in the dispensing area. Emergency controls shall be installed at a location acceptable to the authority having jurisdiction, but controls shall not be more than 100 feet from dispensers. Operating instructions and warning signs shall be conspicuously posted in the dispensing area.

(5) Every full-service gasoline station offering self-service at a lesser cost shall require an attendant employed by the station to dispense gasoline from the self-service portion of the station to any motor vehicle properly displaying an "exemption entitlement parking permit" as described in s. 320.0848 when the person to whom such permit has been issued is the operator of the vehicle and such service is requested.

(6) All self-service equipment used to dispense gasoline shall be approved by a nationally recognized testing agency. The dispensing nozzle shall be an automatic-closing type without a hold-open latch.

(7) The Insurance Commissioner, under his powers, duties, and functions as State Fire Marshal, shall promulgate rules and regulations for the administration and enforcement of this section. An inspection of the self-service gasoline station and operations shall be made and approved under his authority and rules and regulations thereby promulgated.

History.—s. 1, 2, 3, 4, 5, 6, ch. 74-162, s. 1, ch. 80-205.

526.151 Petroleum products dealers; restrictions.—

(1) After October 1, 1974, no producer, refiner, or a subsidiary of any producer or refiner, shall operate, with company personnel, in excess of 3 percent of the total number of all classes of retail service stations selling its petroleum products, under its own brand or secondary brand.

(2) Every producer or refiner of petroleum products supplying gasoline and special fuels to retail service station dealers shall apply all equipment rental charges uniformly to all retail service station dealers which they supply.

(3) This section shall not apply to any service sta-



APPENDIX C

Table 3.

TREND IN THE NUMBER OF RETAIL OUTLETS IN FLORIDA AND THE U.S.

<u>Number of Retail Outlets Selling Gasoline</u>	<u>1973</u>	<u>1982</u>	<u>% Change</u>
Florida	13,558	11,406	- 16%
U.S.	332,900*	212,800*	- 36%

<u>Number of Convenience Stores Selling Gasoline</u>	<u>1973</u>	<u>1982</u>	<u>% Change</u>
Florida	420	1,880	+ 448%
U.S.	6,210	18,330	+ 295%

Sources: Florida Department of Agriculture; U.S. Department of Energy, Title III Report, May 1980, p. 177; Florida Retail Grocer's Association, Ocala; Roscoe's "Dollars per Day" survey of convenience stores; National Petroleum News, Feb. 1983, p.9.

*Number of retail outlets is higher than that reported for the U.S. in the National Petroleum News Factbooks and in Lundberg Letter, Oct. 8, 1982, because it includes unconventional outlets such as convenience stores and sellers whose sales volume is less than 50 percent gasoline-related.

THESE AMENDMENTS HAVE BEEN OFFERED BY EXXON, CHEVRON, SHELL, AND TEXACO. IT IS THEIR POSITION THAT IF THESE AMENDMENTS ARE ADOPTED, THEY WILL NOT OPPOSE THE BILL. THEY ARE OFFERING A TOTAL OF EIGHT AMENDMENTS WHICH AFFECT THE BILL AS FOLLOWS:

Section 6 -- Allocations:

Amendments 1, 3, 4, and 21 amend the allocations section by striking the words "limit or" in order to clarify that this section is only intended to cover allocations of fuel and not limitations. This will allow refiners to limit quantities of fuel as long as they do not allocate.

Amendment 2 changes the word "prevent" in this section to "prohibit". Therefore, this section will make it unlawful for a supplier to allocate fuel to a reseller because the reseller was prohibited by the supplier from purchasing a minimum quantity of fuel in the preceding year. The drafters feel that "prevent" may be too broadly interpreted. A reseller could claim she was prevented from buying fuel on the basis of a price increase.

Section 8 -- Rebates:

Amendment 6 reinserts "in the same class of trade, on the same level of distribution" back into the rebate section.

Section 9 -- Exempt Sales:

Amendment 7 strikes the word "retail" which would make these exemptions applicable to all sales (not just all retail sales) by a refiner.

Amendment 8 explicitly exempts sales made to any federal or state governmental body or subdivision thereof, from inclusion in this bill. According to the drafters, although this bill only covers sales to resellers and therefore implicitly excludes the vast majority of sales to governments, some governments are resellers of fuel (e.g. the federal government buys fuel which is sold to military families on military bases) and should also be excluded from coverage of this Act.

SEE BACK OF FORM FOR INSTRUCTIONS

If amendment is text of other bill or bills,

CS/ HB...690.

Insert: Bill No(s).

SB

DO NOT USE FELT TIP PEN

Member Amendment No

Representatives (PLEASE PRINT)

..... offered the following amendment.

Amendment On page ..5... line. ..9..

2. STRIKE: limit or
- 3... ..
- 4
5.
- 6.....
- 7 ..
- 8.....
- 9 ..
- 10.....
- 11..
- 12..
- 13.
- 14.
- 15.
- 16 ..
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- 19 ..
- 20.....
- 21.
- 22 ..
- 23 ..
- 24

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BACK OF THIS FORM

Senate Action:

House Action:

House Amendment

If amendment is text of other bill or bills,

CS/HB . 690.....

Insert Bill No(s).

SB

DO NOT USE FELT TIP PEN

Member Amendment No.

Representatives

(PLEASE PRINT)

offered the following . amendment

Amendment

On page 5 , line 11

2. STRIKE: prevented....
3. INSERT: prohibited..
- 4 ..
- 5 ..
- 6 ..
- 7 ..
- 8 ..
- 9 ..
- 10 ..
- 11 ..
- 12 ..
- 13 ..
- 14 ..
- 15 ..
- 16 ..
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- 21 ..
- 22 ..
- 23 ..
- 24 ..

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BACK OF THIS FORM

Senate Action.

House Action.

House Amendment ...

SEE BACK OF FORM FOR INSTRUCTIONS

3

If amendment is text of other bill or bills,

CS/HB .690.....

insert. Bill No(s).....

SB.

DO NOT USE FELT TIP PEN

Member Amendment No

Representatives

(PLEASE PRINT)

..... offered the following..... amendment

Amendment

On page. 5....., line.. 14.

2.. STRIKE: limitations or.....

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BACK OF THIS FORM

Senate Action:

House Action:

House Amendment

SEE BACK OF FORM FOR INSTRUCTIONS

4

If amendment is text of other bill or bills,

CS/HB. 690

insert: Bill No(s)

SB

DO NOT USE FELT TIP PEN

Member Amendment No

Representatives ..

(PLEASE PRINT)

..... offered the following

..... amendment

Amendment

On page.... 5, line.... 18

- 2 STRIKE: limit or
- 3
- 4
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BACK OF THIS FORM

Senate Action.

House Action:

House Amendment

If amendment is text of other bill or bills,

CS/HB..690.....

insert Bill No(s)

SB

DO NOT USE FELT TIP PEN

Member Amendment No

Representatives {PLEASE PRINT}

..... offered the following amendment

Amendment

On page ..5.. , line...21.. , ..

- 2.. STRIKE: .. limitations or ..
- 3 ..
- 4 ..
- 5 ..
- 6 ..
- 7 ..
- 8 ..
- 9 ..
- 10 ..
- 11 ..
- 12 ..
- 13 ..
- 14 ..
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BACK OF THIS FORM

Senate Action:

House Action:

House Amendment

SEE BACK OF FORM FOR INSTRUCTIONS

6

If amendment is text of other bill or bills,

CS/HB 6,90...

insert. Bill No(s)

SB.....

DO NOT USE FELT TIP PEN

Member Amendment No

Representatives

(PLEASE PRINT)

offered the following amendment.

Amendment

On page ...6.. ..., line....15.,... ..

2..after "resale" INSERT: in the same class of trade, on the same level

3. of distribution

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BACK OF THIS FORM

Senate Action:

House Action:

House Amendment

REPRODUCED FROM THE
If amendment is text of other bill or bills,
Insert Bill No(s)

7
CS/HB .690.....
SB.....

DO NOT USE FELT TIP PEN

Member Amendment No

Representatives

(PLEASE PRINT)

..... offered the following amendment

Amendment

On page. 6 . . . , line.. 24.

2. STRIKE: retail
- 3.
- 4.
- 5.
- 6.
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- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
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Senate Action

House Action

House Amendment

SEE BACK OF FORM FOR INSTRUCTIONS

If amendment is text of other bill or bills,

insert Bill No(s) . . .

CS/HB... 690.....

SB.....

DO NOT USE FELT TIP PEN

Member Amendment No

Representatives (PLEASE PRINT)

..... offered the following..... amendment

Amendment On page. 7. . . . , line....3. . . .

2. INSERT: (5) Sales made to any Federal or state governmental body or

3. subdivision thereof.

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FOR YOUR OWN PROTECTION, DO NOT USE PRINTED BILL OR REDUCED COPY OF BILL
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SEE INSTRUCTIONS ON
BACK OF THIS FORM

Senate Action:

House Action.

House Amendment



Florida House of Representatives

H. Lee Moffitt, Speaker Steve Pajcic, Speaker pro tempore
Committee on Commerce

Samuel P. Bell, III
Chairman

Dexter W. Lehtinen
Vice Chairman

MEMORANDUM

July 22, 1983

TO: Rod Jones

FROM: Robin Hassler *RH*

SUBJECT: Gasoline Retail Divorcement Overview

- I. Introduction
- II. Divorcement
 - A. Overview
 - B. Exxon v. Maryland
 - C. Federal Undertakings
 - 1. House Resolution 1755
 - 2. DOE Study
 - D. Advocates
 - 1. Maryland
 - 2. The Industry Advocates - Retailers and Jobbers
 - E. The Opponents

1. American Petroleum Institute
2. Studies
 - a. Sorenson
 - b. Umbeck

F. Florida and Divorcement

1. Section 526.151 and Exxon v. Conner
2. Gas Kwick v. Conner
3. Recent Statistics

III. Conclusion

I. Introduction

The purpose of this memorandum is to give you an overview of the gasoline divorcement issue. Opponents and advocates of divorcement legislation are adamant in their views, we are deluged with "studies" and "conclusions" about divorcement. It is the intent of this overview to present the views of the courts, industry, other states and the federal government on divorcement and I hope, sort through some of the propaganda.

II. Divorcement

A. Overview

Divorcement, simply stated, usually requires major oil refiners to "divorce" themselves from the direct retail sale of gasoline and petroleum products. Some divorcement laws cover

major and smaller refiners. These refiners are still allowed to lease retail stations, but most divorcement legislation positively forbids direct control over gasoline retail operations.

In the past, the only advocates of divorcement were the independent dealers. They claimed that they were being squeezed out of business by their suppliers, the major oil refiners or "majors," who not only controlled their cost of doing business (by raising rents, credit card charges, and other fees associated with the retail industry) but ^{who also were able to sell} ~~also-by-selling~~ gasoline cheaper. (The majors' stations are operated by salaried employees and, because the middle person-retailer is absent, gas sold by them is not as expensive.) The independents claim, therefore, that the intent is to clear the market for refiner retailing only.

The jobbers, agents who buy gasoline from the refiners and then sell it to independents, were divorcement fence-straddlers. Their position was by and large secure, for among other things, their profits were guaranteed up to deregulation in 1981. However, with deregulation and market movements, jobbers now are hurting and apparently have joined forces against the majors.

The majors' opposition has been successful, as national and most state divorcement legislation has not passed. (The majors' roles are explored further below.)

B. United States Case Law: Exxon Corp. v. Governor of Maryland, 437 U.S. 117 (1978)

The issue in this case was whether a Maryland statute that mandated divorcement and required producers or refiners to extend voluntary price allowances violated the ^{United States} Constitution, various federal anti-trust statutes or both. The United States Supreme Court responded negatively and held that:

1. The law did not violate due process as it bore a "reasonable relation" to the state's legitimate purpose in controlling the gasoline retail market.

2. The law did not violate the Commerce Clause because although the burden fell only on interstate companies, there was no absolute prohibition against interstate independent dealers. Nor was there a distinction made between instate and out-of-state petroleum products.

Hence, absent a showing by a challenger that Congress has prohibited the state from regulation, that the regulation is discriminatory or that interstate commerce is burdened, the state may regulate.

As concerns violation of the Robinson-Patman and Sherman Acts, the Court also held in favor of the defendant state. Plaintiffs claimed injury based on the "voluntary allowance" portion of Maryland's law. This portion required the refiners to

apportion petroleum products to all retailers equally. However, the Court stated that this practice would not contravene federal law for two reasons. First, Robinson-Patman does not guarantee the right to engage in discriminatory pricing for the purpose of stimulating competition (it only allows it in some instances). Second, a conflict with the "spirit" of the Sherman Act and the anti-competitive result of the statute is not substantial enough to invalidate the state's law.

Blackman's dissent is a powerful rejection of the majority's holding. He takes a "realistic" look at the statute and states that as the statute in effect will discriminate against only out-of-state retailers, it violates the commerce clause, and hence should be stricken.

This is the "classic" divorcement debate, and the majority resolves it clearly in favor of the state. It is important to note that the Court's decision is based on legal grounds only. As repeated in the course of the opinion, it does not sit to pass judgment on the wisdom of the measure.

C. Federal Undertakings

1. House Resolution 1755

The Congress has not passed divorcement legislation, but it is a perennial issue of mounting concern. This term HR 1755 has been filed in House. The resolution amends the Small Business

Act to provide special loan guarantees to small businesses for the purchase of service stations and to provide for divorcement. The House Committee on Small Business has held extensive hearings on the issue of divorcement over the past few years and has taken a strong position in favor of small business and hence in favor of divorcement. In fact, Chairman Bedell of the Small Business Committee has commented that on the hearing findings: "...every year we have seen compelling evidence that major oil companies are using their vast economic power to slowly crush the independent sector of the gasoline marketing industry." (Congressional Record, Vol. 129, No. 24, March 2, 1983).

To date, HR 1755 has 80 sponsors and has yet to be heard in subcommittee. The staff is optimistic about the bill's chances for success.

In fact, Marc H. Rosenberg, former staff director of that committee, offered his views for divorcement to the Pennsylvania Senate Committee on Environmental Resources and Energy. (I recommend his statement to you for an overview of divorcement issues.) Here is a brief sketch of why he says divorcement is needed:

1. There is not a high degree of competition in the gasoline retail marketplace because of its unique nature--the suppliers compete with those whom they supply. Refiners can control those they supply through leasing, credit card and other

costs as well as through the price of petroleum products. Thus the unilateral supply structure is harmful to competition.

2. Divorcement would not lead to the removal of high-volume "gas-and-go" stations. There is nothing inherent in these stations to make them operable only by majors. In fact in several states, including Florida, they are successfully operated by independents and jobbers.

3. Divorcement has no real effect on gas prices. This hotly debated issue is not resolved at present and he suggests Maryland's prices are neither higher nor lower across the board than in other cities.

What does effect gas prices is subsidization. Also referred to as predatory "costing," subsidization squeezes the independents out of business, according to Rosenberg. Predatory costing forces dealers out of the back door (as opposed to predatory pricing of gasoline which would push them out of the front).

5. Anti-trust laws are not enough. Litigation is cumbersome and slow.

6. The relationship between the refiner and dealer is not best left to "private contract" law because of public policy concerns and the unique unilateral nature of the business.

7. Divorcement will not disrupt the entire market--it didn't in Maryland.

8. Refiners have increased their total market share of gasoline sold over the past few years. (I have not found figures to support this. Both nationwide and statewide it appears the majors are maintaining market shares at volume levels lower than independent retailers.)

In sum, divorcement is needed if one sees the government as protector of small retail marketers. He does see the government as such a protector and the effect of his statement is to dispel divorcement myths, expose red herrings and generally, give the small businessperson's position.

2. Department of Energy Study

In 1981, the U.S. Department of Energy released a two volume report on retail marketing practices. They analyzed the retail market in five metropolitan areas and found no evidence to support the claim that refiners are predatorily pricing gasoline and subsidizing the market. The refiners marketing techniques are done for "pecuniary" reasons. Further, one of the report's "key findings" has shown that the refiner's annual market share has increased at a rate lower than that of the unbranded marketers and jobbers. The report concludes with a

recommendation that no new legislation on retail divorcement, rack pricing or open supply should be passed.

(Note: I have not received this study yet but have seen its findings reflected in several other reports and hearing records.)

D. Advocates

1. Maryland

In 1979 Maryland's divorcement legislation became effective. Within the next two years, it was fully operational. The law was challenged in 1974 after its enactment and was upheld by the United States Supreme Court in Exxon Corp. v. Maryland. The Maryland legislation is detailed above and in general is similar to past proposed Florida legislation. It required that all refiners (as opposed to all major refiners as the federal law requires) withdraw from retail operations. There is no grandfather clause (as in the Virginia divorcement law) and the law pertains to only the operation of stations. Refiners may still own the stations and lease to dealers.

Louis L. Goldstein is Maryland's State Comptroller and he is charged with monitoring the effect of the legislation and gasoline consumption in general. Maryland maintains unequivocally that the law has been beneficial to both the consumer and dealer. Prices are lower (See Appendix A) and consumer conveniences are still present. That is, divorcement

has not resulted in shorter station hours, or a decline in convenience store/gas-and-go stations. Nor has there been a boycott or stoppage of refiner products into the state. (See Louis Goldstein, Maryland State Comptroller, Statement before the Subcommittee on Energy the U.S. House Committee on Small Business, March 31, 1981. p. 24.)

Divorcement opponents speak differently about the result of Maryland's legislation. They claim higher prices of over a nickel a gallon, a reduction in consumer choices (as an entire class of competitors is eliminated) and a decline in the quality of service.

These arguments are best articulated in three studies, commissioned by the refiners, which I will discuss in section D. "The Opponents."

2. The Industry Advocates - Retailers and Jobbers

After reading the above, it is probably easy for you to see the retailers' and jobbers' positions. They are in favor of the legislation. For all intents and purposes, they have combined lobbying forces and thus may be a formidable force.

The retailers' position was advocated by Mr. Rosenberg of the Committee on Small Businesses and by that committee's chair, Mr. Bedell (See above).

The jobbers' position is similar in that they both claim to be hostages to the refiners. In brief, here is a sketch of who jobbers are and what they do. Jobbers' positions vary as they usually perform both retail and wholesale functions. Jobbers may be "branded" if they sell under the trademark of the refiner supplier or "unbranded" if they sell under their private name. The jobber's function is to acquire petroleum products (usually at the refiner terminal) and then to distribute the product to other wholesalers or to store the product, extend credit to retail customers and perform other wholesale functions. Most wholesale gasoline is sold through to independent retailers.

Also, jobbers may own service stations, manage salary operated outlets or sell directly to bulk users such as governments, farmers and commercial enterprises.

Further, the jobber makes his or her profit at the "margin." This is the difference between the price the refiner charges after delivery to retail (tank wagon price) and the lower jobber buying price, or what the jobber pays at the terminal. The amount can vary depending on the service, jobber contract, and sales volume. The margin ranges from 2.0 to 2.5 cents per gallon. This margin is wholly dependent on the refiner.

To earn a margin, the jobber invests in transport and storage capital, personnel and retail outlet equipment. He or she is responsible for the finance cost of oil company credit

cards and for hauling the product from the terminal to jobber bulk plants and to customers. These are but some of the functions that determine jobber margin.

Hence, in many ways, jobbers are in competition with the majors and have a stake in the outcome of divorcement legislation [or in the presence of refiner operated stations]. And, if independents go out of business, a major jobber market source would be eliminated. (Although it may be assumed that jobbers will still be in business if divorcement is enacted -- they have been and will continue to be the "movers" of petroleum products.)

E. The Opponents

The sentiment against divorcement is advanced most cogently by the American Petroleum Institute. Their position is supported by several studies and theories.

1. American Petroleum Institute

On October 21, 1981, Griffin Bell addressed the Senate Judiciary Committee on behalf of the American Petroleum Institute. His statement is extensive, well articulated and, like the proponent's statements presented here by Marc Rosenberg, reflects the opponent's position well.

1. He quotes from the 1981 DOE Study to support his position that divorcement is unnecessary. That study maintains

that there is no evidence to support a charge of predatory pricing and further that the external market, more than any single factor, has forced the independents into bankruptcy. These external market forces include 1981 deregulation, consumer preference shifts, worldwide oil availability, the decline in oil consumption.

2. The full service station is in many ways an anachronism. Retail outlets like Sears or Wards now specialize in car care. Consumers are content to buy only gas from stations and pump it themselves. Divorcement, if passed, would preserve the anachronism. Mr. Bell's statement maintains that this cost to consumers could reach upwards of \$286 million per year.

3. Present anti-trust laws work well enough to protect consumers. The FTC, under the Clayton and Federal Trade Commission Acts, can issue and enforce divorcement, if necessary and refiners who violate these acts, are already liable for damages.

The Petroleum Market Practices Act also is in force to protect franchisees from abusive treatment by refiners.

4. He then details the gasoline market scenario that has forced many independents out of business. In the early 1970's and prior thereto, refiners were building and leasing many stations. The oil crisis and regulation that followed in the

70's it became highly un-profitable to maintain these stations. Market forces, therefore, were the prime determinants of independent retailers business failures. [What is not spelled out here is that these "market forces" in most instances usually were applied to the independent in a strong-arm but still legal fashion by the majors. For instance, once an unprofitable leasee station was targeted, the major would begin a file so that after several unsatisfactory inspections, rent increases, the prohibition of sale of any besides refiner products, etc., the independent would be faced with a refiner whose file on franchise contract violations and prohibitions was bulging and cash drawers that were anything but bulging. The refiner, then, could easily and legally close the station on the basis of the violations and unprofitability.]

5. Finally, he speaks against further regulation in general and, more specifically, special interest regulation, to solve the problem they face. For it clearly is not the government's job to protect the independents and other from the forces of competition.

2. Studies

This is an area that I report to you with some trepidation and uncertainty. The Sorenson, Umbeck and DOE Studies have been called "bunk" by divorcement proponents. Maryland's lower gas

price reports are similarly treated by opponents. Who to believe...?

a) The first of these studies is "Recent Changes in the Retail Gasoline Market in Florida and the Florida Jobber" by Dr. Philip E. Sorenson (Professor of Economics, Florida State University, March 1, 1983)

This is a good brief sketch of the scenario, the numbers and facts surrounding Florida's retail and wholesale petroleum product market. Dr. Sorenson concludes that there is little if any merit to the contention that divorcement is needed here. The market, he says, is the best price regulator.

Introducing divorcement legislation would have these effects:

- 1) the absence of competition of major refiners would drive prices up,
- 2) service hours would likely decrease, and
- 3) there would be less incentive to innovate marketing.

Further, divorcement would not end business failures and jobber bankruptcy. Jobbers and retailers have and continue to stay in business at a rate much better than most businesses.

The net reduction of jobbers is small--between 15 and 20 since 1981. And, many (30) new jobberships have formed as a result of mergers.

Also, the decline of gas consumption naturally has forced jobbers out of business. Although consumption is rising again, we can still expect bankruptcies.

Dr. Sorenson presents his findings and conclusions so strongly that one is left wondering how could anyone suggest that divorcement would work. Hence, I'm certain his study has been used (or will be used) widely by major and smaller oil refiners.

b) A second major study is "The Effects of Different Contractual Arrangements: The Case of Retail Gasoline Markets" by John M. Barron and John R. Umbeck (Purdue Univ, Oct. 1982).

[Note: This study, like the one preceding, was commissioned by the oil refiners.]

In this study, the authors present empirical data and offer a theoretical explanation of why Maryland's divorcement should result in higher prices for gasoline and shorter hours of operation. They base their theory on the cost effectiveness of a contract between a refiner and dealer versus that between a refiner and salaried employee.

The study is replete with econometric analyses and, I must admit, is beyond my ken. Nonetheless, it is an often referred to study and as such should be noted.

F. Florida's Experience with Divorcement

1. Section 526.151, Florida Statutes

Divorcement legislation was enacted in 1974 by the Florida Legislature (see Appendix B) and is still on the books. The law provides that after October 1, 1974, no producer, refiner or subsidiary thereof shall operate more than three percent of the total number of all classes of retail stations that sell its products. Second, the law states every producer or refiner shall apply rental charges for equipment leased to all leasees equally.

The law was challenged in 1974 in Exxon Corp. v. Conner, (Cir. Ct. 2d Cir. 1974). After a lengthy recitation of the law surrounding the state's duty to enact laws under its police power, Judge Willis rejected that theory to support the statute and decided that divorcement was not a valid exercise of police power.

He ruled further that interference with the private rights of the refiners to vertically integrate (and thus operate stations) is unconstitutional. Florida case law is cited in support. He also states that the law is vague and thus violates due process.

The opinion goes on to say that there seems to be an equal protection violation as well, but he does not say so definitively. He sees no merit in the claim by defendants that the law is preempted by the Federal Emergency Petroleum Allocation Act of 1973 and calls the Commerce clause question a "close" one and so reserves judgment on it.

It appears that Judge Willis ruled on Ch. 74-387, Laws of Florida, later s. 526.151, Florida Statutes, on state constitutional grounds. The case was never appealed.

These facts are important in light of the next development in divorcement law, Exxon v. Maryland, discussed above. In that case, the U.S. Supreme Court upheld virtually identical divorcement legislation and found for the defendant state. Judge Willis's holding was quite opposite. However, the Florida case was decided on state grounds, it was not expressly or explicitly overruled, and was never appealed. Both s. 526.151, Florida Statutes, and Exxon v. Conner remain "on the books."

However, the practical fact of the matter is that divorcement is constitutional and were the issue to arise again, the law likely would be upheld.

Subsequent to Exxon v. Maryland, in

~~this contention is the basis for the suit, Gas Kwick, Inc.~~
the ~~v. Conner, wherein~~ plaintiff has filed *a* writ of mandamus ~~in the~~ *suit requesting that* be issued by
second circuit to compel Doyle Conner to enforce s. 526.151,

the writ was denied under on the Exxon v. Louisiana case holding the statute unconstitutional. The court in so holding rejected the applicability of the U. S. Supreme Court case of Exxon v. Maryland. INSERT A

[a writ of mandamus is issued by a court to require specific action be undertaken] Florida Statutes (1981) as it is codified. The suit was recently filed and has not been heard.

The resolution of this issue will be interesting: it may remove the necessity for the enactment of other divorce legislation or may propell opponents to work for the repeal of that section.

C. Market Share Trends in Florida

The Governor's Energy Office conducted a study for the purposes of our investigation. The task was to evaluate the major refiner's market share of retail gasoline sold in Florida since 1979. The results show a trend toward relinquishment of the retail marketplace.

<u>Date</u>	<u>Percentage of volume of retail gasoline sold by major refiners</u>
Jan. 1979	64.7%
Jan. 1980	65.3
Jan. 1981	60.5
Jan. 1982	57.9
Jan. 1983	47.3

Thus, the market share for the refiners has fallen consistently, and that of the independent dealers has increased.

(Incidentally, the same has been happening on a nationwide basis.) The most natural question that flows from this is is refiner divorcement necessary if their market share is declining?

Also, as noted in the Sorenson study, the number of retail outlets in Florida has fallen 16% since 1973. This is in comparison to a 36% rate of failure on a nationwide scale. The figures are not drastic however; the rate of business failures on the whole is usually 20% of the total. Hence in Florida, retailers survive at a slightly higher rate. (see Appendix C for table).

Note also in that same study that the number of convenience stores selling gasoline has increased dramatically from 420 in 1973 to 1,880 in 1982. This is a 448% increase and also may account for declining independent retailers market. (Convenience store stations are typically owned and operated by refiners and jobbers but may be operated by independent dealers as well.)

III. Conclusions

The field of petroleum products marketing is extensive and complex. This has been an overview of some laws and marketing practices. Of course, there is much more to be done, questioned, answered and understood before the divorcement question is settled.

AKERMAN, SENTERFITT & EIDSON

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M E M O R A N D U M

REPLY TO Tallahassee

TO: Honorable Beverly B. Burnsed and
Honorable Herbert F. Morgan

FROM: J. Michael Huey *Jmh*

DATE: May 6, 1985

SUBJECT: Motor Fuel Marketing Practices Act -
Commerce Preliminary Working Draft

Introduction

We have seen significant motor fuel marketing changes in the past few years. Originally, refiners established a marketing network through engagement of independent wholesale marketers -- jobbers and consignees. These wholesale marketers operated as franchisees in particular geographical areas. They built bulk plants, purchased trucks, tractor-trailers, etc., and established sales contracts with retail dealers. These jobbers and consignees were required to use their best efforts to "sign up" branded dealers and were generally required to purchase minimum quantities of motor fuel each month from their refiner.

Sometime later, while jobbers and consignees continued to operate under contracts with refiners to purchase minimum quantities of fuel each year, these same refiners started supplying some service station dealers directly. This dual distribution system, obviously, had an adverse impact on the wholesale marketers but they could do nothing about it. While many of them had been assured that they would be the only distributor of a particular refiner's motor fuel products in an area, the contracts (prepared by the refiners) did not expressly preserve this promise. Most wholesale marketers' economic lives were so closely tied to their refiner that they had to accept the new dual distribution system imposed by the refiners. Fortunately, the wholesale marketer was allowed to purchase at a wholesale price (posted terminal price)

which was lower than the price the refiner sold to its direct-supplied dealers (dealer tankwagon price). Therefore, jobbers and consignees could continue to supply dealers who could remain relatively competitive with the direct-supplied dealers. Of course, the opportunity for continued growth by the jobbers and consignees was severely hampered as refiners chose to directly supply the more favorably located service stations.

During the past decade, refiners have introduced a third marketing system -- direct-operated retail outlets. These direct-operated outlets have been opened by refiners in direct competition with their own jobbers (and dealers purchasing from them) as well as the refiner-supplied dealers. Even today the jobbers and the refiner-supplied dealers generally have minimum purchase requirements, even though their own refiner/suppliers are "taking" their business away from them.

Wholesale marketers and independent dealers in Florida represent a group of dedicated family businesses. Most Florida motor fuel jobbers are second or third generation jobbers who have served their refiner/supplier diligently for many, many years. Likewise, there are a tremendous number of independent dealers who have marketed gasoline for a particular refiner at retail for many years.

Existing state and federal trade regulation laws have been only partially successful in preventing abuses by refiners in the marketing of motor fuel. Total vertical integration by refiners may not be per se, harmful, however, refiners have consistently used production and refining profits to subsidize their marketing efforts at their direct-operated outlets. Jobbers and independent dealers have been placed in a cost/price squeeze in what can only be interpreted as an attempt to drive them from the market.

Several states have enacted retail divorcement statutes to remove the refiner from the retail market. Other states have enacted legislation to prohibit unfair and anticompetitive practices by refiners, including subsidization of retail marketing by upstream profits and predatory pricing at retail. The legislative solution proposed by Florida's jobbers and dealers addresses the more blatant abuses currently present in the marketplace. The following is an attempt to address some of the provisions contained in your preliminary draft which we find objectionable.

Section 3 - Definitions

(a) There is no definition of competition. We have previously defined competition to mean competition between any two sellers so that an injury to a single retail dealer would be deemed an injury to competition. We presume with no definition of competition that you intended that the federal antitrust law standard be applied. That standard is more than a single competitor. Injury to competition is an injury to the competitive market generally, not necessarily indicated by injury to one or more specific competitors in the market. It is, of course, this broad standard and the consequent burden of proof that precludes federal antitrust actions against refiners by dealers today. The refiners we have been dealing with have agreed all along that an injury to a single dealer should be actionable.

(b) The definition of a posted terminal price for blended fuel has been eliminated. I presume this is intended to eliminate any flooring of refiners dealing in blended fuel (gasohol). Of course, there are presently substantial federal tax exemptions for gasohol and the Florida exemption remains intact also. The refiners with whom we have been dealing (including Southland) all agreed over a month ago that it was fair to regulate blended fuel in the fashion we set forth in our 4/25 draft (attached).

Section 6 - Discriminatory Allocations Unlawful

There is no justification for discriminatory limitations or allocations by suppliers. Therefore, the five-day window should be removed. You will note that this section applies to jobbers as well as refiners so we are not currently looking out for ourselves in wanting this provision removed. The Florida Petroleum Marketers Association has members who have been branded jobbers in excess of 20 years whose suppliers have directly told them they will not be allowed to expand further in their own markets and, accordingly, have been denied products while their refiner/suppliers have opened new stations and operated them directly or with dealers. This is simply wrong by anyone's standard.

Section 7 - Unfair Practices Unlawful

Under present federal law (the Petroleum Marketing Practices Act), refiners must renew contracts with dealers unless renewal is foreclosed by certain events. However, refiners have been "sticking it to dealers" in one of two ways:

- (a) Converting their stations to convenience stores, which the dealer probably doesn't

know how to run, thereby assuring his failure (and assuring that the refiner takes back the C-store and directly operates it thereafter); or

- (b) By raising the dealer's rent to an unreasonable level.

As "suppliers" also, the jobbers feel that the following paragraph is an appropriate subsection (2):

(2) It shall be unlawful for a supplier supplying motor fuel to a person for resale and leasing a retail outlet to the person to impose an unreasonable material modification in the contractual arrangements including a material modification of the leased retail outlet, unless such modification is made in good faith and based upon reasonable business practices.

Section 8 - Certain Rebates Unlawful

Section 8, as proposed, will "gut" the effect of Sections 4 and 6. Jobbers (and their dealers) are presently competing with their own refiner/suppliers in two ways--through the refiner's direct-operated units as well as through the refiner's direct-supplied dealers. In many markets, the refiners have not yet opened their direct-operated units but are only dual marketing, i.e., through jobbers as well as direct-supplied dealers. In these dual markets, the refiners give rebates to their direct-supplied dealers without providing proportionately equal rebates to their jobbers so that the jobbers can pass on rebates to their competing dealers. Remember, they are all the refiner's dealers, regardless of refiners now attempting to say a jobber-supplied dealer is not their dealer. As far as the jobbers are concerned, there is no justification for this discriminatory rebate situation. It is the refiner's way of engaging in predatory action to foreclose a jobber and his dealers from a market. After all, the refiner has established both of these marketing arms--the jobber being established first then having the refiner impose direct-supplied dealers in the same competitive market. To treat one dealer different from the other is discriminatory and unfair.

Our version of Section 8 (4/25 draft) prohibits unequal rebates to all persons purchasing for resale in a market, regardless of level of distribution. To require only equal rebates at the same level of distribution is to ignore this current abusive and discriminatory practice.

Furthermore, the rebate system can be used to get around the allocation prohibition in Section 6. It doesn't matter that a jobber and his dealers receive the same amount of product as his refiner is supplying to its direct-supplied dealers if that dealer is given such a competitive advantage, through rebates, that the jobber's dealers cannot sell their product.

Everyone attempting to compromise agreed to the rebate provision in our 4/25 draft until last week. Only Gulf (Sohio) objects now. In fact, several of the other refiners openly agreed that Section 8 of our draft was fair.

Section 9 - Exempt Sales

Section 9 (d) will be abused. After all, what is a "remodeled" business? At least remove "or remodeled."

Section 13 - Severability

We know that certain refiners will attack this law. Therefore, it has been our contention that the legislature should express the intent that regulation in this area is deemed necessary. In expressing this intent, we have urged you to declare that the substantive sections (Sections 4 through 8) are part and parcel of an overall regulatory scheme which better addresses the industry abuses than retail divorcement of refiners and that should any of the substantive sections be stricken or declared invalid that the legislature would deem divorcement to be preferable and, therefore, all provisions of the act should be stricken.

We recognize that this is a problem area and are not unsympathetic to the arguments of the refiners who direct operate. Accordingly, we suggest no severability section which, as you know, still favors these refiners.

Thanks for your interest, time and effort in this matter.

JMH/jk

Enclosure

THE ECONOMIC IMPACT OF
GASOLINE RETAIL DIVORCEMENT
UNDER FLORIDA STATUTES
SECTION 526.151

A Research Report Prepared by

Dr. Philip E. Sorensen
Professor of Economics
Florida State University

January 1985

284 5001

THE ECONOMIC IMPACT OF GASOLINE RETAIL DIVORCEMENT
UNDER FLORIDA STATUTES, SECTION 526.151

Background

Florida's gasoline retail divorcement law (Florida Statutes Section 526.151) was enacted by the Florida Legislature on the final day and in the final hour of the 1974 legislative session. There was practically no debate and little prior committee discussion. It became law without the governor's signature. It was enacted because Florida had just experienced its first and only gasoline crisis in the period between October 1973 and May 1974. The combination of the Arab crude oil embargo and hastily-drawn federal price control and allocation regulations resulted in periodic severe restrictions on the availability of gasoline in Florida over these months. At the height of the tourist season, visitors and residents alike were faced with long gasoline lines and unpredictable shut-downs of stations in evenings and on weekends. Many stations closed their doors for good as a new style of marketing gasoline began to evolve, replacing traditional low-volume (and high cost) neighborhood service stations with high-volume (low cost) "pumper"-style stations emphasizing self-service. Florida's tourist industry found itself in the midst of an economic depression. State tax revenues plummeted. The legislature was pressed to take action, to do something about the gasoline crisis. It was in this atmosphere of confusion and crisis that Florida's gasoline retail divorcement law was enacted.

In retrospect, it can now be seen that Florida's gasoline crisis was created not by the unwillingness of refiners to supply a sufficient quantity of gasoline to the state over the time period in question but, instead, by federal price control and allocation regulations. The allocation regulations were particularly damaging to Florida, where the rate of growth in gasoline sales was in excess of 10 percent in the first ten months of 1973, because the federal regulations forced refiners to limit their sales in any state to a fraction of the historical sales in that state in the base year 1972. Thus while low-growth states went through the months of the "energy crisis" with no gasoline problems, high-growth states, including Florida, suffered greatly during this period.

The ending of federal price control and allocation regulations in January 1981 has been followed by an extraordinary period of free and open competition in the markets for crude oil and gasoline. Despite increases in federal and state gasoline taxes amounting to about 9¢ per gallon in the U.S. since deregulation, the average retail price of gasoline has fallen by almost 20¢ per gallon (annual average) through 1984 (see Table 1), and is expected

to fall by at least another 5¢ per gallon in 1985.

In view of the remarkable display of the efficacy of competitive pressures in protecting the interests of consumers in the post-deregulation gasoline market, it is not surprising that most observers now agree that federal regulation of U.S. energy markets over the 1971-81 period greatly impaired our national productivity and reduced consumer welfare.

Despite abundant evidence that competition is thriving in the gasoline market under deregulation, Florida's citizens may soon find themselves facing an unwanted and unnecessary restriction on the freedom of a whole class of vigorous competitors to sell gasoline in their state--that is, if Florida's retail divorcement law of 1974 is reactivated. The reason this law has not previously been enforced is that it was declared to be unconstitutional by a Florida Circuit Court in 1975. It was revived in the summer of 1984 as a result of legal action by its proponents, who based their appeals on the decision by the U.S. Supreme Court (in Exxon, et al. v. Maryland, 1978) which said that a similar divorcement law passed in the state of Maryland in 1974 could be enforced in that state.

At this point, then, there is no question that Florida's retail divorcement law may legally be enforced by the state. The important questions for the people of Florida, however, are these:

Does gasoline retail divorcement truly serve the interests of the people of Florida?

Is Section 526.151 legislation that the people of Florida would willingly enact in 1985, given our much deeper knowledge of what constitutes appropriate economic policy toward the energy industry and our greater understanding of the effects of government regulation of energy markets?

Impact of the Maryland Divorcement Statute

After a five year delay pending legal appeals, Maryland's divorcement law was finally enforced by the state on July 1, 1979. Of the 248 refiner-operated stations in Maryland, 210 were sold off or closed while the remainder were permitted to continue in operation because of exemptions permitted by the statute. About 11 percent of the divorced stations were closed by their refiner-operators, while the remainder were sold to other retailers or converted to franchise operation. While the divorced stations represented only about 6 percent of the retail gasoline outlets in Maryland in 1979, they accounted for 10.3% of the gasoline sales in Maryland in that year.

Economic theory suggests that the elimination of a whole class of competitors from a retail market, as in the case of refiner divorcement in Maryland, will tend to increase the level of prices in the market. Two comprehensive studies of the effect on prices of the Maryland divorcement statute have concluded that this result has, indeed, been observed in that state.

In the first of these studies, researchers from Purdue University obtained detailed price histories for about 600 retail outlets in Maryland covering the time period January 1977 through January 1982. The stations in the study included 85 percent of the stations divorced together with over 400 stations which competed directly against those stations. The findings of the study were striking. Prices at the stations which were divorced had increased, on average, by about 2¢ to 6¢ per gallon as compared to prices at the directly competing stations. Moreover, prices at the directly competing stations had increased by about 0.7¢ to 3¢ per gallon as compared to the overall increase in prices in the marketplace. In total, according to the Purdue study, retail divorcement had cost consumers in Maryland over \$15 million per year in higher gasoline prices. (See J. Barron and J. Umbeck, "A Dubious Bill of Divorcement," Regulation, January/February 1983, pp. 29-33.)

A second study, conducted by the present writer, compared changes in the overall level of retail gasoline prices in Maryland in the post-divorcement period with changes in the average level of prices in the U.S. generally and in other East Coast cities. This study used Lundberg Survey data for prices of leaded and unleaded gasoline and for both self-service and full-service methods of sale. The study concluded that, on a weighted average basis, retail prices (with taxes excluded) had risen by 1.87¢ per gallon more in Maryland than in the U.S. generally over the period from July 1, 1979 through December 31, 1982. (See P. Sorensen, Additional Evidence on the Economic Impact of Refiner Divorcement from Retail Gasoline Marketing in Maryland, September 1983.)

Effect on Retail Prices of Florida Statute 526.151

The Florida divorcement statute permits exclusions and exemptions which are not allowed under the Maryland statute. These exclusions and exemptions have the result of weakening the market impact of divorcement, as compared to Maryland's law. At the same time, the nature of Florida's gasoline markets suggests that even the weaker form of divorcement prescribed in Section 526.151 will have a significant negative effect on the competitive process.

The Florida statute reads, in part, as follows: "...no producer, refiner, or a subsidiary of any producer or refiner, shall operate, with company personnel, in excess of 3 percent of the total number of all classes of retail service stations selling

its petroleum products, under its own brand or secondary brand." In addition, paragraph 3 of the statute exempts from the law any producer or refiner who "purchases or obtains more than 90 percent of the unrefined petroleum products to be so refined from another producer or refiner of petroleum products".

The "3 percent" exclusion and the "90 percent" exemption raise some complicated problems of legal definition which cannot now be precisely resolved. In order to estimate the economic impact of the divorcement law, assumptions must be made concerning these future legal definitions.

In analyzing the economic impact of the statute, the following assumptions have been made:

1. Stations operated "with company personnel" will be interpreted to include both salary-operated stations and stations owned by refiners but operated using contractor-supplied labor.
2. Refiners with 33 or fewer branded retail outlets in Florida (who are not exempted under the "90 percent" exclusion) will not be permitted to operate any stations in Florida using "company personnel".
3. An annual average level of refinery runs and production will be used to determine whether a producer-refiner is excluded under the "90 percent" exclusion.

Statistics on the total number of retail gasoline outlets, the number of refiner-operated retail outlets, and related data are presented in Table 3. As shown, only 26 percent of the 972 refiner-operated retail outlets in Florida in 1984 were controlled by the nine major refiners selling gasoline in Florida. Thus it is clear that the impact of the Florida divorcement statute will be most acutely felt by the smaller refiners.

Based upon responses from 30 refiners selling gasoline in Florida, 455 refiner-operated retail outlets in Florida may be divorced, using the criteria stated in the assumptions listed above. These will include 131 stations operated by major refiners and 324 stations operated by smaller refiners.

The 972 refiner-operated stations in Florida are located in 47 of Florida's 67 counties. The 455 stations to be divorced are likely to include stations located in at least 40 of these counties and, most particularly, all of the more populated counties in Florida.

Data from the refiner survey indicate that the 455 stations likely to be divorced sold 10.1 percent of the gasoline consumed in Florida in 1984. By way of comparison, the 210 stations divorced in Maryland sold 10.3 percent of the gasoline consumed in that state in 1979.

These market share comparisons would seem to indicate that divorcement had a greater impact on consumer prices in Maryland than would be expected in Florida. But this ignores the important factor of interstate competition between gasoline sellers in Maryland (particularly in the Baltimore area) and gasoline sellers in neighboring states, such as Virginia, where refiner-operated stations have not been divorced. In contrast to Maryland, Florida's gasoline sellers operate in isolated markets with little or no exposure to interstate competition. This factor should more than compensate for the slightly smaller market share of the stations to be divorced in Florida, permitting the Maryland findings relating to price increases to be used in estimating price increases in Florida.

Using the experience in Maryland as a guide, the estimated increase in retail prices in Florida resulting from the enforcement of Statute 526.151 will be approximately 1.87¢ per gallon. At 1984 levels of gasoline sales, these price increases will cost Florida consumers almost \$100 million per year.

These price increases are the equivalent of a major increase in taxes on Florida's drivers. But the benefits of this "tax" will not show up in the form of improved streets and highways but in the higher incomes earned by gasoline retailers not subject to divorcement.

Other Economic Impacts

The 455 stations to be divorced in Florida presently employ over 3,000 workers. Many of these workers earn high wages and have accumulated medical and retirement benefits which they will lose if their employers are forced out of business in Florida. While some of these workers might be re-employed by the firms which take over the divorced stations, these new employers are not likely to offer the kinds of benefits which workers enjoy in their current jobs.

The Purdue University study of the Maryland divorcement law (cited above) discovered that the stations which were divorced in that state significantly reduced the number of hours of operation each week when they were taken over by their new owners or operators. On average, the reduction in hours amounted to 8 hours per week. This finding suggests that divorcement in Florida would have the additional impact of making it more difficult for both residents and tourists to find gasoline in the late evenings or at other inconvenient times of the week.

Divorcement and the Taking of Property by the State

In his 1975 decision declaring Florida's divorcement statute to be unconstitutional, Judge Willis of the Second Judicial Circuit said, "...legislation damaging to one segment of a class of legitimate business and beneficial to another, with the general public not being served, is an invasion of the liberties involved in constitutional guarantees of the right to acquire, own and enjoy property. This statute serves no protection of the public welfare but is discriminatory to that segment of the petroleum retail service stations which are company owned."

The 455 stations to be divorced in Florida have a current market value exceeding \$150 million. The divorcement of this property from its current owners under "fire sale" conditions would undoubtedly result in major capital losses for the present owners. These owners invested their capital in Florida in the expectation of being afforded the equal protection of the law, and of being allowed to compete freely and fairly in the marketplace. Enforcement of Section 526.151 would have a chilling effect on Florida's investment climate, seriously impairing Florida's image as an open and competitive market.

Figure 1.

RETAIL GASOLINE OUTLETS IN FLORIDA

Source: Florida Department
of Agriculture

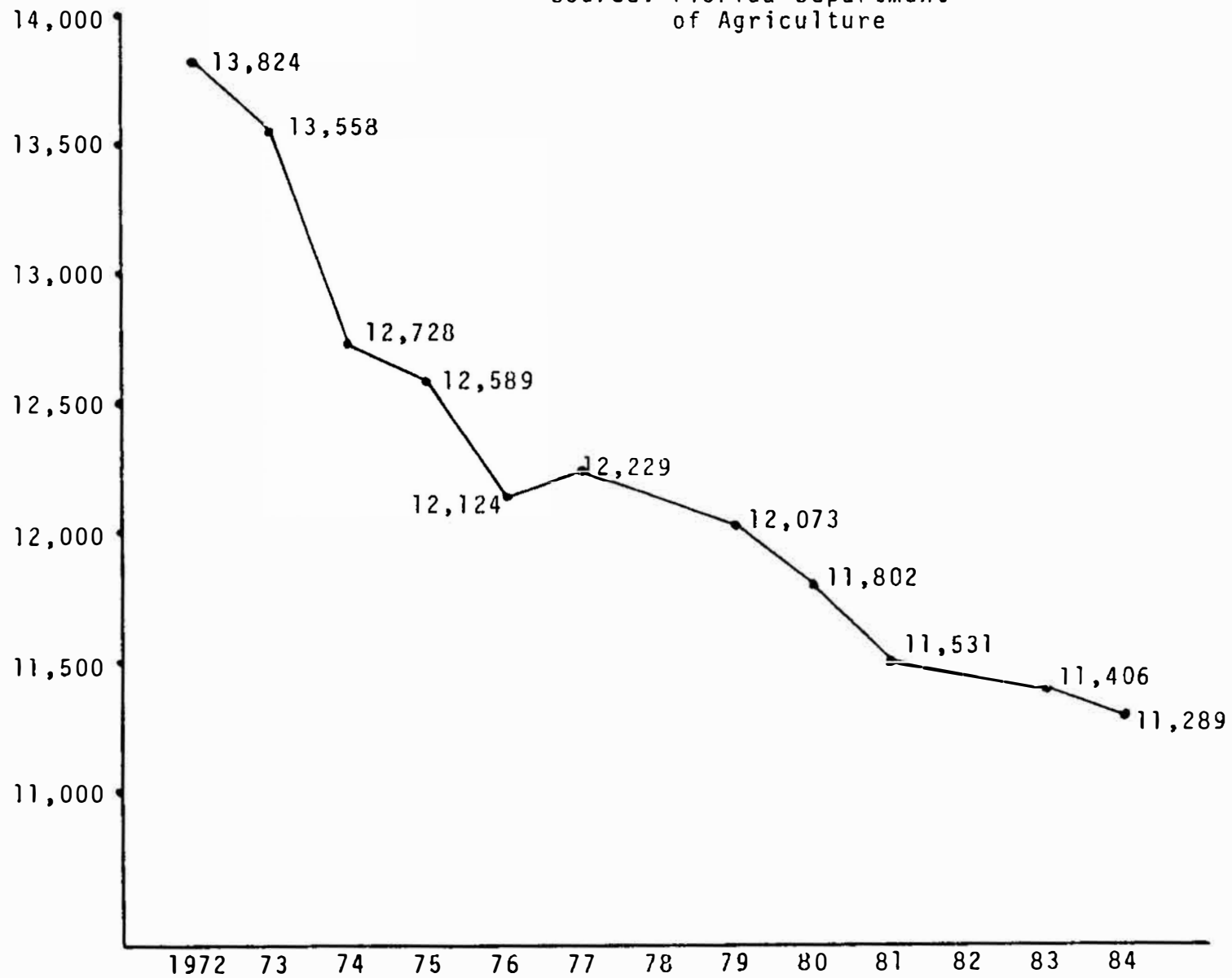


Table 1.

TREND OF REGULAR GRADE GASOLINE PRICES IN THE U.S.

<u>Year</u>	<u>Average Retail Price (Including Taxes)</u>	<u>Average Real Price* (Including Taxes)</u>
1960	31.13¢	35.10¢
1961	30.76	34.33
1962	30.64	33.82
1963	30.42	32.67
1964	30.35	32.67
1965	31.15	32.96
1966	32.08	33.00
1967	33.16	33.16
1968	33.71	32.35
1969	34.84	31.73
1970	35.69	30.69
1971	36.43	30.03
1972	36.13	28.83
1973	38.82	29.17
1974	52.41	35.48
1975	57.22	35.50
1976	59.47	34.88
1977	63.07	34.75
1978	65.71	33.63
1979	87.79	40.38
1980	121.72	49.32
1981	131.10	48.15
1982	122.23	43.21
1983	122.50	41.15
1984	112.70**	36.35**

Sources: Platt's Oil Price Handbook and Bureau of
Labor Statistics, Consumer Price Index

*Real prices are obtained by deflating actual prices
by the U.S. Consumer Price Index, with 1967=100.

**Preliminary estimate.

Table 2.

GASOLINE CONSUMPTION IN FLORIDA

Year	Gasoline Consumption (thousands of gallons)	Change from Prior Year
1972	3,881,305	+11.7%
1973	4,270,876	+10.0%
1974	4,122,323	- 3.5%
1975	4,263,012	+ 3.4%
1976	4,424,991	+ 3.8%
1977	4,602,161	+ 4.0%
1978	4,896,673	+ 6.4%
1979	4,848,852	- 1.0%
1980	4,745,282	- 2.1%
1981	4,779,306	+ 0.7%
1982	4,840,999	+ 1.3%
1983	5,078,234	+ 4.9%
1984	5,261,000*	+ 3.6%*

Sources: Florida Department of Revenue; Florida Department of Transportation; Federal Highway Administration.

*Estimated from nine month totals.

Table 3.

STATISTICS ON RETAIL GASOLINE OUTLETS IN FLORIDA, 1984

Total number of retail gasoline outlets in Florida, June 30, 1984	11,289
Total number of major brand retail outlets*	5,810
Refiner operated***:	250
Leased to dealers:	2,124
Jobber operated:	3,436
Number offering routine auto services:	4,288
Total number of smaller refiner brand retail outlets**	1,851
Refiner operated***:	722
Leased to dealers:	130
Jobber operated:	999
Number offering routine auto services:	407
Total number of convenience stores selling gasoline (also included in above totals)	2,828
Major refiner operated***:	168
Smaller refiner operated***:	518
Jobber operated:	1,006
Operated by chain retailers and others:	1,136

Shares of the market based upon total retail gasoline outlets in Florida in 1984	
Operated by nine major refiners***:	2.2 percent
Operated by smaller refiners***:	6.4 percent
Operated by dealers franchised by refiners:	20.0 percent
Operated by jobbers and others:	71.4 percent

Sources: Florida Department of Agriculture; Retail Grocers Association of Florida; survey of 30 refiners supplying gasoline to Florida.

*Includes Amoco, Chevron, Exxon, Gulf, Mobil, Phillips, Shell, Texaco, and Union. Gulf's operations in Florida will be transferred to Sohio in 1985.

**Includes such brands as Cheker, Citgo, Delta, Hess, Jet, Pilot, Spur, Super Test, Tenneco, and USA.

***Refiner operated stations include both salary operated and contract personnel operated stations.

Table 4.

THE ECONOMIC IMPACT OF REFINER DIVORCEMENT IN FLORIDA

Number of refiner-operated stations in Florida	972
Nine major refiners	250
Smaller refiners	722
Stations divorced under Statute 526.151	455
Nine major refiners	131
Smaller refiners	324
Number of Florida counties with refiner-operated stations	47
Market value of 455 stations which would be divorced under s. 526.151	\$150 million
Increase in retail prices for gasoline resulting from divorcement in Florida	1.75¢-2.0¢/gal.
Cost to consumers in Florida resulting from retail divorcement	\$100 million annually

Sources: See text of report.



Florida Petroleum Marketers Association Inc

209 Office Plaza • Tallahassee, Florida 32301 • Phone (904) 877-5178

MEMORANDUM

FROM: L. CARL ADAMS ^{LCA}
EXECUTIVE VICE PRESIDENT

DATE: MARCH 27, 1985

Recently Dr. Philip E. Sorensen, an economist with Florida State University, released a report concerning retail gasoline divorcement. Table 3 of that report made certain statements about market share and in particular stated that "jobbers and others" had a 71.7% share of the Florida market.

Attached please find a revised Table 3 prepared by Dr. Sorensen, along with a letter written to a Florida Petroleum Marketers Association jobber. Obviously the new Table 3 shows an entirely different picture than reflected in Dr. Sorensen's first report.

LCA/jh

Attachment

Table 3.

STATISTICS ON RETAIL GASOLINE OUTLETS IN FLORIDA--1984

Total number of retail gasoline outlets in Florida, June 30, 1984	11,289
--	--------

Total number of major brand retail outlets*	5,810
---	-------

Refiner operated**:	250
---------------------	-----

Leased to dealers:	2,124
--------------------	-------

Jobber operated***:	3,103
---------------------	-------

Open dealer operated:	333
-----------------------	-----

Total number of smaller refiner brand retail outlets****	1,851
---	-------

Refiner operated**:	722
---------------------	-----

Leased to dealers:	130
--------------------	-----

Jobber operated***:	980
---------------------	-----

Open dealer operated:	19
-----------------------	----

Other retail outlets operated by chain mar- keters and others	3,628
--	-------

Major brand retail gasoline outlets offering routine auto service:	4,288 (73.8%)
---	---------------

Smaller refiner brand gasoline outlets offer- ing routine auto service	407 (22%)
---	-----------

No. of convenience stores selling gasoline in Florida	2,828
--	-------

Major refiner operated**:	168
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Smaller refiner operated**:	518
-----------------------------	-----

Operated by others:	2,142
---------------------	-------

Share of the market based upon total number of retail outlets in Florida in 1984:	
--	--

Operated by nine major refiners**:	2.2 percent
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Operated by smaller refiners**:	6.4 percent
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Operated by lessee dealers of refiners:	20.0 percent
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Operated by jobbers***:	36.2 percent
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Operated by chain retailers & others:	32.2 percent
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Sources: Fla. Dept. of Agriculture; Retail Grocer's Assn. of Fla.,
survey of 30 refiners supplying gasoline to Florida.

Notes: *Includes Amoco, Chevron, Exxon, Gulf, Mobil, Phillips,
Shell, Texaco, and Union. (Gulf is now part of Sohio in Fla).
**Includes both salary and contract-operated stations.
***Includes dealers who lease stations from jobbers.
****Includes brands such as Cheker, Citgo, Delta, Fina, Hess,
Jet, Pilot, Spur, Super Test, Tenneco, USA, and Zippy.

MAR 15 REC'D

DR. PHILIP E. SORENSEN

2239 TRESCOTT DRIVE
TALLAHASSEE, FLORIDA 32312

(904) 385-9435

March 10, 1985

Mr. P. N. Risser, III
Risser Oil Corp.
5001 Park Blvd., Suite 200
Pinellas Park, Florida 33565.

Dear Mr. Risser:

Thank you for your letter of February 27. Permit me to try to answer some of your questions.

There are so many terms used in Table 3 that I can't easily determine which ones you would like to have defined. I think some of the confusion might have been caused by the organization of numbers in Table 3. I enclose a newer version of this table which makes it easier to understand what each set of numbers represents.

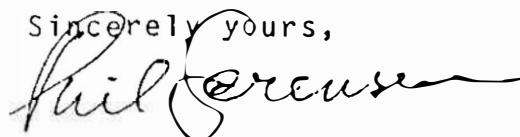
2. Most of the data in Table 3 were derived from a survey of 30 refiners who sell gasoline at the wholesale or retail level in Florida.* The Department of Agriculture of Florida provided the number for the total retail outlet count (11,289). The Retail Grocer's Association provided an estimate of the total number of C-Stores in Florida which sell gasoline.

3. Eleven companies are listed in the National Petroleum News as "Group One" integrated refiners. The nine companies on that list which market gasoline in Florida were included under my heading of "major refiners". These companies are distinguished from other refiners in having distribution channels in 30 or more states, national advertising, national credit cards, and an emphasis on brand quality.

4. My study is available from Carlton Jackson at the Florida Petroleum Council in Tallahassee. My 1983 study is out-of-print, but I provided a copy to the law firm representing the Florida Petroleum Marketer's Association, so I think you should be able to obtain a xerox copy from Carl Adams.

I hope that this information is of some use to you, and I wish you well in the difficult problem of staying alive in the gasoline market of the 1980's.

Sincerely yours,



Philip Sorensen

*The refiners who responded to this survey were promised that individual company data would remain proprietary.

A PRELIMINARY EVALUATION OF

Dr. Philip E. Sorensen's
The Economic Impact of Gasoline Retail
Divorcement Under Florida Statutes
Section 526.151

Dr. Roger D. Blair
Professor of Economics
University of Florida

March 1985

Introduction

I have been retained by the Florida Petroleum Marketers Association to provide an evaluation of Dr. Philip Sorensen's opinions on the economic effects of retail gasoline divorcement in Florida. At this time, my evaluation is incomplete. Nonetheless, I shall offer some preliminary analysis of Dr. Sorensen's work.¹

Based upon Dr. Sorensen's statements and writings, it is apparent that he is an outspoken critic of retail gasoline divorcement. His conviction is based upon his understanding of economic theory and his interpretation of the empirical evidence. Unfortunately, his understanding of economic theory seems flawed and his interpretation of the empirical evidence is subject to some dispute.

Summary of Alleged Impacts

Dr. Sorensen found four impacts that he feels can be traced to the implementation of Florida's divorcement law. These are as follows:

1. Current owners of stations to be divorced will suffer 'major capital losses' because the divorcement of their property will occur 'under 'fire sale' conditions.'
2. Employees of the stations to be divorced will be affected adversely.
3. The divorced stations will be open fewer hours.

¹Professor Sorensen's views are on record in the following:
a. "Competition in Gasoline Marketing in the U.S.," 1981.
b. "Additional Evidence on the Economic Impact of Refiner Divorcement from Retail Gasoline Marketing in Maryland," September 1983; and
c. "The Economic Impact of Gasoline Retail Divorcement under Florida Statutes Section 526.151," January 1985.

4. The retail price of gasoline will be higher.

As we shall see below, Dr. Sorensen's conclusions appear to be unfounded and are misleading. At best, his conclusions are the result of his own confusion. My observations are based on a preliminary analysis, and I will have more definite conclusions in the near future.

Alleged Capital Loss

Before exploring Dr. Sorensen's opinion, we should have a clear understanding of what Florida's retail gasoline divorcement law entails. The law precludes a petroleum refiner from operating, with company personnel, more than three percent of the retail service stations selling its branded products. The law does not preclude ownership of any physical property. Thus, a refiner that owns the land, the buildings, the pumps, and other necessary improvements need not sell these as a result of the divorcement law. All that the law requires is that the service station be operated by a lessee dealer rather than a company employee. Thus, there is no need for a sale at all much less a "fire sale". Dr. Sorensen has blatantly misrepresented the requirements and effect of Florida's retail divorcement statute in this regard.

In addition, the lessee dealer will pay a fair market value as rent for using the refiner's physical property. Competition among potential lessees will protect the refiner and insure that it will receive a fair market payment. In addition, the refiner will be able to sell its refined products to its lessee dealers. Consequently, Dr. Sorensen's concern that refiners will experience "major capital losses" is unfounded.

Alleged Impact on Employees

Dr. Sorensen points out that the 455 stations to be divorced presently employ over 3,000 workers. His concern is that these people will lose their jobs if the stations are divorced, but this concern seems unfounded to me. After all, the service stations are not going to disappear and will require staffing. If one presumes that the current owners - refiners - have staffed these stations efficiently, i.e., with the appropriate number of workers, the lessee dealers will still need the same number of people. If the current employees are worth keeping by the refiner operators of the stations, they will still be worth keeping after a change in ownership. As a consequence, no one who would not be fired by the refiner is likely to be fired by a lessee dealer.

If a person is fired by a lessee dealer, that job must be filled by someone else. Of course, the person losing his or her job is hurt, but the replacement employee is better off. On balance, one cannot conclude that there is a net loss.

As far as I can tell from Dr. Sorensen's papers, his concerns about employee loss of medical and retirement benefits is pure speculation since no evidence of this has been presented in any of Dr. Sorensen's papers.

Alleged Impact on Hours of Operation

Dr. Sorensen pointed to a study conducted by Barron and Umbeck that found that divorced stations were open eight fewer hours per week

following divorcement in Maryland.² He is concerned that divorcement in Florida will have the unfortunate effect of "making it more difficult for both residents and tourists to find gasoline in the late evening or at other inconvenient times of the week."

I have no way of knowing whether this is likely to happen in Florida, but we can consider the economics of the issue. A lessee dealer will remain open an extra hour if he expects on average to improve his profits by doing so. The same economic logic drives the decision of the refiner operator of a service station in principle. Now, suppose that the refiner has many stations. In order to simplify decisions, he may have standardized hours of operation for all of his stations or for classes of stations. If so, some stations may be open an inappropriate number of hours - too many or too few. When a single lessee dealer assumes operational responsibility, the hours of operation for each station will be determined on an individual basis. If a station cannot be operated profitably during certain hours on average, then it should not be open during those hours. Closing during unprofitable times will reduce costs and benefit consumers on average due to lower prices that result from the lower costs. No doubt, an occasional consumer will be inconvenienced, but that is true for all products. There is nothing special about gasoline in this regard.

²John Barron and John Unbeck published a summary of their study as "A Dubious Bill of Divorcement: The Case of Oil Refiners and Gas Stations" in Regulation, Jan.-Feb. 1983, pp.29-33.

Further, Dr. Sorensen conveniently ignores the fact that in their lease agreements refiners typically dictate hours of operation to their lessee dealers. Florida's retail divorcement law does not alter this current practice.

Alleged Impact on Retail Gasoline Prices

Dr. Sorensen's most dramatic concern is with the impact of divorcement on retail gasoline prices. He asserts that "[e]conomic theory suggests that the elimination of a whole class of competitors from a retail market ... will tend to increase the level of prices in the market." This is elementary economics. But it has nothing to do with the situation that divorcement will create. As we discovered above, divorcement does not eliminate any competition. The refiner operators will be replaced by lessee dealers and the number of competitors remains the same. Moreover, even if some refiners behaved in an economically irrational way and refused to permit their stations to be operated, competition would result in new stations opening. Consequently, Dr. Sorensen's application of economic theory to this situation is simply incorrect.

Dr. Sorensen's concern regarding price effects does not depend upon misapplied economic theory alone. It also depends upon some empirical research that he conducted using Maryland's experience with divorcement. His conclusion is as follows:

"Using the experience in Maryland as a guide, the estimated increase in retail prices in Florida resulting from the enforcement of Statute 526.151 will be approximately 1.87¢ per gallon. At 1984 levels of gasoline sales, these price

increases will cost Florida consumers almost \$100 million per year."

This is certainly an alarming statistic if it is accurate.

Dr. Sorensen's analysis and interpretation of the empirical data are subject to challenge in several regards. First, the 1.87¢ price differential is an average based upon an incomplete data set. Second, it is influenced by some early experience under divorcement. Third, there are no controls for other influences. In other words, Dr. Sorensen compared the changes in Baltimore with those in the United States as a whole and assumed that any differences were due to divorcement. This is a totally unacceptable way of conducting empirical research. It fails to meet the minimum standards of our profession.

I have not completed my own analysis of Dr. Sorensen's price data, but there are several points that can be made:

(1) At the beginning of the period analyzed by Dr. Sorensen, the price in Baltimore was 2.41¢ per gallon below the price for the U.S. as a whole. By the end of the period, the price differential had widened to 3.33¢ per gallon. Thus, the price for the U.S. rose more than the price for Baltimore over the entire period.

(2) According to Dr. Sorensen, dealer margin is an indicator of competitive vigor. At the beginning of Dr. Sorensen's period, the dealer margin in Baltimore was 1.08¢ per gallon below the dealer margin for the U.S. By the end of the period, the differential had risen to 1.34¢. Thus, Baltimore would appear to have become more - not less - competitive under divorcement.

(3) While dealer margins in Baltimore rose by 27.3 percent over the period examined, the Consumer Price Index rose by 35.3 percent. Thus, in real terms, the dealer margins actually decreased during the divorcement period in Baltimore.

(4) If one were to use the same standard of empirical research as Dr. Sorensen it could be shown that Florida consumers, paying the Baltimore price rather than the U.S. price, would save 3.33¢ per gallon for a total saving in excess of 170 million dollars.

Conclusion

Based upon my preliminary analysis of Dr. Sorensen's work, there appears to be no foundation for his conclusions. Neither his use of economic theory nor his interpretation of the empirical evidence makes a case against retail divorcement.



MEMORANDUM

The period Dr. Sorensen used to determine that gasoline prices in Maryland were 1.87¢ per gallon more than the average U.S. price was from July 1, 1979 - December 31, 1982. It should be pointed out that Federal controls on gasoline prices were not removed until January 1, 1981.

A more realistic computation is reflected for the period January 1, 1983 - December 31, 1983 in the attached materials. These figures, which more readily reflect the current market, demonstrate that gasoline prices in Baltimore, Maryland were actually lower than surrounding cities in the Northeast and lower than 65 major cities throughout the U.S.

As reflected in the attached article from the March 11, 1985 edition of the Oil Express (a national trade newspaper) this is not just an East coast problem. The California experience mentioned in the article suggests what happens when the major oil companies control the market place.

3/12/85

ESTIMATED AVERAGE DEALER PROFIT MARGIN PER GALLON
(in cents)

BALTIMORE VS. CITIES IN ITS REGION

<u>LOWEST PROFIT RANKING</u>	<u>SELF-SERVICE</u>		<u>UNLEADED</u>
	<u>CITY</u>	<u>LEADED</u>	
1	Philadelphia, PA	-.53	.92
2	Pittsburg, PA	-.39	1.74
3	Baltimore, MD	1.18	3.77
4	New Haven, CT	1.45	5.30
5	Wilmington, DE	1.63	4.01
6	Washington, DC	1.76	4.62
7	Newark, NJ	2.09	5.91
8	Manchester, NH	2.10	4.80
9	Norfolk, VA	2.96	5.53
10	Long Island, NY	3.54	6.49
11	Providence, RI	4.42	7.00
12	Boston, MA	8.79	12.17
REGIONAL AVERAGE (12 Representative Cities)		2.41	5.19
NATIONAL AVERAGE (12 Representative Cities)		2.74	6.32

AVERAGE RETAIL GASOLINE PRICES FOR 1983

BALTIMORE VS. CITIES IN ITS REGION

Source: January 1985 edition, 1984 National Petroleum News Factbook Issue. Price does not include federal or state taxes.

<u>LOWEST PRICE RANKING</u>	<u>CITY</u>	<u>SELF-SERVICE</u>	
		<u>LEADED</u>	<u>UNLEADED</u>
1	Wilmington, DE	107.06	113.41
2	Newark, NJ	107.63	115.15
3	Philadelphia, PA	109.01	114.46
4	Baltimore, MD	109.35	115.75
5	Pittsburg, PA	110.91	117.16
6	Boston, MA	111.29	118.28
7	Washington, DC	111.83	118.54
8	Norfolk, VA	113.31	119.58
9	New Haven, CT	114.03	121.77
10	Providence, RI	114.11	120.67
11	Manchester, NH	114.52	121.20
12	Long Island, NY	117.74	125.09
REGIONAL AVERAGE (12 Cities)		111.73	118.42
NATIONAL AVERAGE (65 Representative Cities)		111.37	118.81



Florida Petroleum Marketers Association Inc

209 Office Plaza • Tallahassee, Florida 32301 • Phone (904) 877-5178

CLIPPING FROM THE MARCH 11, 1985 OIL EXPRESS

4 • *Oil Express*

We need Chinese gas to survive, says Wickland

With upward of 90% of California's total gasoline supply concentrated in the hands of the majors, marketers need access to Chinese 'gas' and other cheap imports to survive, says West Coast marketer Roy Wickland.

Wickland says it's now impossible for PAD 5 marketers to get competitively-priced product from majors. Most refuse to sell to big independents. When they do, the 'gas' is priced high enough to ensure independents can't undercut the major's own branded operations.

And while some majors and independent refiners publicly oppose refined product imports, many are quietly importing for their own use, Wickland told an International hearing on the issue.

- In the last year, Tosco, Mobil, Texaco, Coastal States and Golden West Refining accounted for 20% of all gasoline and blendstock imports on the West Coast. Yet Golden West, Coastal and Tosco are among those claiming they can't compete with imported product.

- Arco, Chevron, Gulf, Shell and Union Oil accounted for another 37% of West Coast imports. Only 40% was brought in by Wickland and other small blenders.

Wickland has imported Chinese 'gas' since 1981 for blending and retailing at his own 100 company-op units and for sale to 750 small retail accounts.

Chinese 'gas' and other leaded naphtha imports are currently dutied at 1.25cts/gal. U.S. Customs wants to raise that tariff to 9.8% add valorem tax, which would mean a hike in duty to about 8.5cts/gal (OE 3/4).

Raising that tariff will "substantially increase" the cost of gasoline in the U.S., says China's government-owned Sinochem. China has exported 'gas,' mainly to the West Coast, since 1979. Imports rose from 180,000 metric tons in 1979 to 1.09 million metric tons last year.

Dozens of Chinese refineries have been upgraded in order to make fuel for U.S. markets. Since mid-1984, China has cut the lead content of its 'gas' to 0.8 gram/gal to meet California standards. The fuel is now a minimum 87 octane, says Yue Ze Min, Sinochem's petroleum manager.

Officers: President Bill Lank, Jr. • President Elect B.W. Simpkins • Treasurer Michael Lazzara • Vice President Charles Gimsley • Vice President Danny Miller
PMAA Director Joe Capitano • Executive Vice President Carl Adams

Directors: Dan Bryant • Jim Fore • Dick Fornell • Wilson Hinson • Deck Hull • Ed Koch, Jr. • Philip LeVasser • Wayne Levitt • Dwight Lewis • Richard Puckett • Bob Schwalb
• Michael Sparkman • Bob Tate • E.L. Williams • J. Hulon Williams III

STATEMENT ON
RETAIL GASOLINE DIVORCEMENT
UNDER FLORIDA STATUTES
SECTION 526.151

Dr. Roger D. Blair
Professor of Economics
University of Florida

April 1985

Introduction

I have been retained by the Florida Petroleum Marketers Association (FPMA) to provide my views on the economic effects of retail gasoline divorcement in Florida. As a part of this, I have also been asked to evaluate the contentions of Dr. Philip Sorensen, an outspoken critic of retail gasoline divorcement.

Aim of Divorcement Law

The Florida Petroleum Marketers Association is a trade association of firms that are engaged in the wholesaling and retailing of petroleum products in Florida. These firms are dependent upon the vertically integrated producers and refiners for their supplies of petroleum products.¹ At the same time, FPMA members are in direct competition with their vertically integrated suppliers who also sell petroleum products at wholesale and at retail. In other words, we find dual distribution in this industry with the vertically integrated firms in competition with some of their customers. As a result, the independent wholesalers and retailers are in a vulnerable position.

In particular, an independent² wholesaler is vulnerable to a supply squeeze and or a price squeeze at the hands of its supplier.³ In a supply squeeze, the integrated supplier refuses to sell to some or all

¹Integrated refiners account for some 86-90 percent of the gasoline supplied in the State of Florida. See Table 1.

²For purposes of this statement, I am following the convention of referring to non-integrated firms as "independent."

³For a brief analysis of price squeezes, see Eugene Singer, Antitrust Economics and Legal Analysis 95-99 (1981). The concept of a supply squeeze is analogous.

of the independent wholesalers. This can arise for a number of reasons: (a) during periods of short supply, the producer may restrict the quantities that are available to the independent wholesaler; (b) the supplier may be attempting to coerce the behavior of the independent wholesaler; or (c) the supplier may be attempting to extend its control over the wholesale stage. By denying supplies of gasoline to independent wholesalers the economic survival of these wholesalers may be jeopardized.

A price squeeze can be imposed upon a non-integrated wholesaler by an integrated dual distributor. The price charged by the refiner to the independent wholesaler puts a lower limit on the wholesaler's costs. At the same time, the price that the refiner charges in its role as a rival wholesaler puts an upper limit on what the independent wholesaler can charge. Obviously, the profit margin of an independent wholesaler can be compressed if the integrated firm raises its price to the independent without raising its price to its non-wholesaler customers. In the extreme, the integrated refiner may reduce the price offered to potential customers of the independent wholesaler below that charged to the independent wholesaler.

Retail gasoline divorcement under Florida Statutes §526.151 offers some measure of protection from supply and/or price squeezes and other predatory practices. It does this not by making such practices unlawful. Rather, it does this by removing some of the incentives for engaging in squeeze tactics. All divorcement does is prevent refiners from owning and operating their own retail stations. This reduces the incentive that a refiner may have for favoring one retail outlet over another. The statute does not provide complete protection, but it does offer partial protection.

Alleged Costs of Divorcement

Several costs of divorcement have been alleged by Dr. Philip Sorensen.⁴ I shall respond to three: (1) alleged price increases, (2) alleged capital losses, and (3) alleged employment consequences.

Alleged Price Increases. From the customer's perspective, the most important cost alleged by Dr. Sorensen is an increase in price. He has asserted that "[e]conomic theory suggests that the elimination of a whole class of competitors from a retail market ... will tend to increase the level of prices in the market."⁵ This is elementary economics. But it has nothing to do with the situation that divorcement will create. Divorcement does not eliminate any competition in the retail sale of gasoline. Refiner operators of retail gasoline stations will have to be replaced by lessee dealers and the number of competitors will remain the same. Moreover, even if some refiners elect to behave in an economically irrational fashion and refuse to permit their stations to be operated, competition will result in new stations opening. Consequently, Dr. Sorensen's application of economic theory to this situation is simply incorrect.

Dr. Sorensen's concern regarding price effects does not depend upon misapplied economic theory alone. It also depends upon some empirical research that he conducted using Maryland's experience with divorcement. His conclusion is as follows:

"Using the experience in Maryland as a guide, the estimated

⁴See Sorensen, "The Economic Impact of Gasoline Retail Divorcement Under Florida Statutes Section 526.151," (mimeo) January 1985.

⁵Ibid., p. 3.

increase in retail prices in Florida resulting from the enforcement of Statute 526.151 will be approximately 1.87¢ per gallon. At 1984 levels of gasoline sales, these price increases will cost Florida consumers almost \$100 million per year."⁶

This is certainly an alarming statistic if it is accurate.

Dr. Sorensen's analysis and interpretation of the empirical data are subject to challenge in several regards. First, the 1.87¢ price differential is an average based upon an incomplete data set. Second, it is influenced by some early experience under divorcement. Third, there are no controls for other influences. In other words, Dr. Sorensen compared the changes in Baltimore with those in the United States as a whole and assumed that any differences were due to divorcement. This is a totally unacceptable way of conducting empirical research. It fails to meet the minimum standards of our profession.⁷

To demonstrate the kind of problem that one may encounter by using Dr. Sorensen's approach, I have used the data that he presented in Tables 2, 3, and 4 pertaining to the United States, Boston, and Philadelphia, respectively.⁸ Using precisely his methodology and using his data, I have compared Boston price changes to the U.S. and

⁶Ibid., p. 5.

⁷For a discussion of how one should proceed to isolate the determinants of price and price changes, see Eckstein and Fromm, "The Price Equation," 58 American Economic Review 1159 (1968).

⁸See Sorensen, "Additional Evidence on the Economic Impact of Refiner Divorcement from Retail Gasoline Marketing in Maryland," (mimeo) 1983, which contains the data upon which Sorensen's estimate of 1.87¢ is based.

Philadelphia price changes to the U.S. in the same way that he compared Baltimore price changes to the U.S. The results are shown in Table 2. As we can see the average increase was 0.70 higher in Boston and 0.81 higher in Philadelphia. Using Dr. Sorensen's logic, we should attribute this to divorcement - except that neither Boston nor Philadelphia was subject to divorcement. If we cannot attribute these differences to divorcement, why should we attribute the Baltimore - U.S. difference to divorcement?

Alleged Capital Losses. Dr. Sorensen has pointed out that some 455 gasoline stations subject to divorcement have a market value in excess of \$150 million. Dr. Sorensen then alleges that "[t]he divorcement of this property from its current owners under 'fire sale' conditions would undoubtedly result in major capital losses for the present owners."⁹ This, of course, would be a serious consequence because such capital losses could have a chilling effect upon Florida's investment climate. Fortunately, Dr. Sorensen's concerns are unfounded. The current law precludes a petroleum refiner from operating, with company personnel, more than three percent of the retail service stations selling its branded products. The law does not preclude ownership of any physical property. Thus, a refiner that owns the land, the buildings, the pumps, and other necessary improvements need not sell these as a result of the divorcement law. All that the law requires is that the service station be operated by a lessee dealer rather than a company employee. Thus, there is no need for a sale at all much less a "fire sale."

⁹Sorensen, note 4 supra at p. 6.

In addition, the lessee dealer will pay a fair market value as rent for using the refiner's physical property. Competition among potential lessees will protect the refiner and insure that it will receive a fair market payment. In addition, the refiner will be able to sell its refined products to its lessee dealers. Consequently, Dr. Sorensen's concern that refiners will experience "major capital losses" in unfounded.

Alleged Impact on Employees. Dr. Sorensen points out that the 455 stations to be divorced presently employ over 3,000 workers. His concern is that these people will lose their jobs if the stations are divorced, but this concern seems unfounded to me. After all, the service stations are not going to disappear and will require staffing. If one presumes that the current owners - refiners - have staffed these stations efficiently, i.e., with the appropriate number of workers, the lessee dealers will still need the same number of people. If the current employees are worth keeping by the refiner operators of the stations, they will still be worth keeping after a change in ownership. As a consequence, no one who would not be fired by the refiner is likely to be fired by a lessee dealer.

If a person is fired by a lessee dealer, that job must be filled by someone else. Of course, the person losing his or her job is hurt, but the replacement employee is better off. On balance, one cannot conclude that there is a net loss to the Florida community.

As far as I can tell from Dr. Sorensen's papers, his concerns about employee loss of medical and retirement benefits is pure speculation since no evidence of this has been presented in any of his papers.

Conclusion

The current divorcement law offers some small measure of protection for Florida's independent wholesalers and retailers from potential predatory behavior. It is not ideal for this purpose, but it is something that may help these businesses. On the other hand, several adverse economic consequences have been conjectured by a representative of the refiners. As far as I can see, these conjectures are nothing more substantial than just that: conjectures. Neither Dr. Sorensen's use of economic theory nor his interpretation of the empirical evidence makes a persuasive case against retail gasoline divorcement.

Table 1
Sales as Reported to the Department of Agriculture^a

	1981	1982	1983	1984
Amerada Hess	8883	10568	10376	8922
American Petrofina	12349	10300	11975	7895
Amoco	37531	37693	41952	43067
Charter Marketing	2721	3395	3743	242
Chevron	52883	38750	35589	36758
Citgo/Southland	12617	11058	13465	52139
Exxon	21425	21606	20703	21290
Gulf	29665	27300	28820	25765
Koch	*	1196	1646	2390
La Gloria	1210	2420	2484	2173
Marathon	26885	22157	20881	15838
Mobil	15522	16661	16649	20381
Murphy	8863	12077	10767	8731
Phillips	22244	26159	18145	22206
Shell	31007	31135	36047	37951
Tenneco	16581	13258	12902	12846
Texaco	18347	21287	25578	21439
Triangle Refineries	4075	8792	9689	9065
Union	17469	15850	13822	10397
Total	340304	331662	335233	359495
State Total	381374	374697	378431	417866
Refiners' Share	89.2	88.5	88.6	86.0

a. Gallons are measured in thousands for September of each year indicated.

Table 2
Relative Changes in Retail Prices
For Gasoline

Year and Quarter	Boston v. U.S.A.	Philadelphia v. U.S.A.
1979, 3rd	0.44	1.42
4th	0.74	.08
1980, 1st	0.58	.81
2nd	2.04	1.60
3rd	1.87	1.47
4th	1.08	1.77
1981, 1st	-1.44	-1.56
2nd	*	*
3rd	*	*
4th	2.02	5.29
1982, 1st	3.68	5.47
2nd	-0.44	.27
3rd	-1.42	-3.86
4th	<u>-0.79</u>	<u>-3.04</u>
Average Increase	0.70	0.81

RETAIL GASOLINE DIVORCEMENT ISSUE - THE PLAYERS

FOR REPEAL OF SECTION 526.151:

Florida Petroleum Council - Carlton Jackson & Chris Jensen. The Petroleum Council represents the major oil refiners.

Mobil Oil - Wade Hopping

Tenaco, Marathon, and Conoco Oil - The law firm of Baggett & Laface. Barry Richard and Steve Ecenia will also be working on this issue.

Hess Oil - Paul Sanford

Southland Corporation - Ken Plante & Doug Bruce. Depending on whether or not the Department of Agriculture exempts them from the operation of 526.151 F.S., because of the exception in subsection (3) of the statute. At this time I would say that Southland's position is somewhat amorphous. They may be for outright repeal of the statute, or they may however, be for only amending the statute, or it is possible they may just lay low. However, I have included them under "for repeal" for safety's sake.

AGAINST REPEAL OF SECTION 526.151:

Petroleum Marketers - L. Carl Adams & Mike Huey

Allied Gasoline Retailers - Ken Dufault

Narrative

Carlton Jackson's Petroleum Council will be meeting on the 10th of January to discuss their strategy and decide for sure which legislator they will ask to sponsor the repeal of section 526.151. Additionally, they have hired Dr. Phil Sorensen from FSU to do a research project involving this area. This project should be available in two to three weeks.

WTM/bgh



Florida House of Representatives

Tallahassee

Beverly B. Burnsed
Representative, 45th District

Reply to:

☐ Post Office Box 1626
217 South Florida Avenue
Lakeland, Florida 33802
(813) 687-4666

☐ 320 The Capitol
Tallahassee, Florida 32301
(904) 488-2270

Committees

Commerce, Chairman
Appropriations
Corrections, Probation & Parole
Health Care & Insurance
Rules & Calendar

Thank you for your concern regarding full-service gasoline stations. This entire issue can be somewhat confusing, but as a patron of full-service gasoline stations, I too am quite concerned with its resolution.

This issue first arose back in 1974 during the gas crisis. At that time, the Legislature passed section 526.151, Florida Statutes (see enclosed copy), which limited the number of service stations a producer or refiner of petroleum products could operate, to 3% of their total service stations. Though this occurred prior to my election to the Legislature, apparently it was done in response to complaints about the inequitable distribution of gasoline among retail service stations. It seems that at the time those gas stations operated by producers or refiners received preferential treatment during the period of short supply. Although the law was passed to alleviate this unfair situation, it has never been enforced. The Commissioner of Agriculture, Doyle Conner, who is charged with enforcing the law, was sued in order to compel him to enforce it. In July, 1984, the First District Court of Appeal held that the law is constitutional and ordered that it be enforced. The Commissioner of Agriculture is currently formulating and writing the rules necessary to do so.

The issue is not so much whether a service station is self-service or full-service but rather who operates the station. If it is operated by an independent person, it is not affected by the law. However, if the station is operated by personnel of the oil producer or refiner, it may have to either be closed or turned over to an independent operator in order to comply with the law.

Naturally the oil producers and refiners who are going to have to sell or close some of their stations to comply with the law's 3% requirement are not pleased with the court's decision and would like to see the law either amended or repealed. So far no bill has been filed relating to this issue. If and when such a bill is filed, it will probably be referred to the Commerce Committee. At that time, a hearing will be held to determine the effect of amending or repealing the law on both consumers and oil producers and refiners. All interested persons will be given the opportunity to present testimony on the issue.

As Chairman of the House Commerce Committee and as a patron of full-service gasoline stations, I am interested in assuring that consumers will be protected.

Sincerely,

Beverly B. Burnsed

BBB:msc
Enclosure

G. M. W.

full

Bill No. 690

Place 317 Capitol

VOTE:

[illegible]

Total	
Nays	0

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Randy B. Barnes

<u>Name</u>	<u>Representing</u>	<u>Address</u>
<u>Douglas Lee</u>	<u>National Alliance of Senior Citizens</u>	<u>2525 Wilson Boulevard</u> <u>Arlington, VA 22201</u>
<u>Michael Moore</u>	<u>Himself</u>	<u>4104 Watrous Avenue</u> <u>Tampa, FL</u>
<u>Fred Baggett</u>	<u>Various Oil Companies</u>	<u>101 E. College Avenue</u> <u>Tallahassee, FL</u>
<u>Carlton Jackson</u>	<u>Petroleum Industries</u>	<u>325 John Knox Road,</u> <u>Tallahassee, FL</u>
<u>Albert Derden</u>	<u>Texaco Industries</u>	<u>201 Buttonwood Drive</u> <u>Orlando, FL</u>
<u>Bob Collins</u>	<u>Exxon</u>	<u>P.O. Box 9628</u> <u>Ft. Lauderdale, FL</u>
<u>Judith Romanko</u>	<u>Shell Oil Company</u>	<u>1503 B. 97th Avenue</u> <u>Tampa, FL 323</u>

(If additional persons, enter on reverse side and check here ✓)

James Costello	Mobil Oil Co.	
Frank Waltz	Shell Oil Co	2626 North Dundee Tampa, FL
Kay F. Thomas	Shell Oil Co	6612 N. Hubert Avenue Tampa, FL 33614
Roger D. Blair	FL Petroleum Marketers	4624 NW 15th Place Gainesville, FL
Bill Lank	Florida Petroleum Mark.	2733 N.E. 37th Dr. Ft. Lauderdale
William Riddle	Self	3999 E. BAY Drive Largo, FL
Denise Stonik	Self	11368-102nd Court North Seminole, FL
Ralph Haben	SOHIO	Box 669 Tallahassee, FL
Dorothy Russo	Self/Husband	7173 Orange Drive, #220 Ft. Lauderdale, FL
Bill McKnight	SSDF	805 Arrowhead Lane Brandon, FL
John Nutter		410 Ware Blvd. Tampa, FL
Ken DuFault	Service Station Dealers of Florida	410 Ware Blvd. Tampa, FL

BILL ACTION REPORT

(C3-75: File with Secretary of Senate)

(S) ~~(H)~~ BILL NO 237

COMMITTEE ON Commerce

DATE April 11, 1985

Date Reported 4/11/85

TIME 9:00 - 11:00

FINAL ACTION.

PLACE Committee Room "A"

XX Favorably with 0 amendments

OTHER COMMITTEE REFERENCES.
(In order shown)

 Favorably with Committee Substitute

 Unfavorably

OTHER: Temporarily Passed

 Reconsidered

 Not Considered

THE VOTE WAS.

Sen. Fox moved the bill.

FINAL BILL VOTE		SENATORS	Sen. Grant moves PCS		Amend. #1 McPherson							
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
X		BARRON, Dempsey J.		X								
X		DERATANY, Timothy D.	X									
X		FOX, Roberta		X								
NP		GIRARDEAU, Arnett E.	NP									
X		GORDON, Jack D.		X								
	X	LANGLEY, Richard H.	X									
X		MARGOLIS, Gwen		X								
X		MCPHERSON, Tom	X									
X		MEEK, Carrie P.		X								
X		SCOTT, James A.		X								
X		THOMAS, Pat	X									
	X	GRANT, Bill	X									
X		HAIR, Mattox	X									
10	2	TOTAL	6	6								
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

*Senate Commerce
Committee
meeting FILES*

4/11/85

(S. 18 / 1504)

re: SB 237

meeting tapes (3)

S. 625 / 336

(Attach additional page if necessary)

Please Complete: The key sponsor appeared (XX)
 A Senator appeared ()
 Sponsor's aide appeared ()
 Other appearance (XX)

BILL ACTION REPORT

(C3-75. File with Secretary of Senate)

(S) ~~(H)~~ BILL NO 237

COMMITTEE ON Commerce

DATE April 11, 1985

Date Reported 4/11/85

TIME 9:00 - 11:00

FINAL ACTION.

PLACE Committee Room "A"

XX Favorably with 0 amendments

OTHER COMMITTEE REFERENCES:
(In order shown)

 Favorably with Committee Substitute

 Unfavorably

OTHER: Temporarily Passed

 Reconsidered

 Not Considered

THE VOTE WAS.

Sen. Fox moved the bill.

FINAL BILL VOTE		SENATORS	Sen. Grant moves PCS		Amend. #1 McPherson							
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
X		BARRON, Dempsey J.		X								
X		DERATANY, Timothy D.	X									
X		FOX, Roberta		X								
NP		GIRARDEAU, Arnett E.	NP									
X		GORDON, Jack D.		X								
	X	LANGLEY, Richard H.	X									
X		MARGOLIS, Gwen		X								
X		McPHERSON, Tom	X									
X		MEEK, Carrie P.		X								
X		SCOTT, James A.		X								
X		THOMAS, Pat	X									
	X	GRANT, Bill	X									
X		HAIR, Mattox	X									
10	2	TOTAL	6	6								
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

*Senate Commerce
Committee
meeting FILES*

4/11/85

(S. 18/1504)

re: SB 237

meeting tapes (3)

S. 625/336

(Attach additional page if necessary)

Please Complete. The key sponsor appeared (XX)
 A Senator appeared ()
 Sponsor's aide appeared ()
 Other appearance (XX)

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580



OFFICE OF PUBLIC AFFAIRS
202-523-3830

FOR YOUR INFORMATION.....March 28, 1985

North Carolina's proposed Motor Fuel Marketing Act, currently before the state senate, would "injure competition and result in higher prices to consumers," the Federal Trade Commission staff has said in comments to the senate.

The Motor Fuel Marketing Act would prohibit gas suppliers — retailers, wholesalers and refiners — from selling gas "below cost" to gas stations.

Proponents say the legislation is needed to protect gas stations from the anticompetitive practices of gas suppliers, who they claim can "subsidize" their own gas stations by selling gas to them at lower prices than they do to franchised gas stations.

The FTC's Bureau of Competition, Consumer Protection and Economics said they were aware of no evidence that such practices exist. The bureau also said the legislation "would in no way enhance competition; it would simply preserve or increase profit margins for branded gasoline dealers."

As evidence, the staff cited a 1981 Department of Energy study that concluded there was no evidence that gas suppliers were "subsidizing" their own gas stations. A 1984 DOE study substantiated the 1981 findings.

The FTC staff concluded North Carolina should not enact the legislation because:

- there is no evidence that the anticompetitive practices that the legislation purports to correct actually exist;
- existing federal and state antitrust laws are sufficient to remedy such problems should they develop;
- the legislation would encourage frivolous lawsuits; and
- price competition would be severely restricted, resulting in higher prices for consumers.

Copies of the comments are available from the FTC's Public Reference Branch, Room 130, 6th St. and Pennsylvania Ave. N.W., Washington, D.C. 20580; 202-523-3598; TTY 202-523-3638.

News media copies are available from the Office of Public Affairs, Room 496, same address; 202-523-1848.

###

MEDIA CONTACT: Mario A. Baldessari, Office of Public Affairs,
202-523-1848

STAFF CONTACT: Walter Vandaele, Bureau of Consumer Protection,
202-523-3489

(negas)

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Comments of the Bureau of
Competition, Consumer Protection, and Economics
of the Federal Trade Commission

on

The North Carolina Motor Fuel Marketing Act

* * *

North Carolina Senate
March 27, 1985

Comments of the Bureaus of Competition,
Consumer Protection, and Economics of
the Federal Trade Commission

on

The North Carolina Motor Fuel Marketing Act¹

These comments present the views of the Federal Trade Commission staff on North Carolina Senate Bill No. 73, the "Motor Fuel Marketing Act," which would prohibit the sale of motor fuel "below cost." This bill appears markedly similar to legislation that has been unsuccessfully urged in the United States Congress,² as well as to minimum markup bills being considered in many state legislatures.³ Although such legislation is usually described by its proponents as necessary to protect gasoline dealers from the "monopolistic" and "predatory" practices of their suppliers, no evidence that such practices by gasoline suppliers exist has been found. In particular, S. 73 would in no way enhance competition; it would simply preserve or increase profit margins for branded gasoline dealers. Because S. 73 would

¹ These comments represent the views of the Bureaus of Competition, Consumer Protection, and Economics of the Federal Trade Commission and do not necessarily represent the views of the Commission or any individual Commissioner. The Commission, however, has authorized the submission of these comments.

² S. 326, a Bill To Require the Divorcement of Motor Fuel Service Stations, Hearings before the Senate Committee on the Judiciary, 97th Cong., 1st Sess. (1981).

³ See Oil & Gas Journal, at 41 (Jan. 21, 1985). Alabama passed such a bill in 1984. Tennessee's Governor Alexander vetoed a similar bill in the same year.

demonstrably injure competition and result in higher prices to consumers for all grades of gasoline and motor fuel, the Commission staff opposes passage of this bill.

Description of the Bill

S. 73 would prohibit retailers, wholesalers, and refiners from selling or offering to sell "motor fuel below cost or . . . at a price lower than the seller charges other persons . . . where the effect is to injure competition." [Section 6] For retailers and wholesalers, "cost" includes not only "the invoice or replacement cost of the motor fuel," but also "the cost of doing business." [Sections 4(15)-4(16)] The bill would also prohibit a refiner or wholesaler from charging itself or an affiliate a transfer price for motor fuel that is below the price charged to a purchaser who competes at the same distribution level. [Section 7] Sections 16 and 17 of the bill provide for injunctive relief, compensatory damages, and attorney fees for violations of the law, as well as a civil penalty of not more than \$10,000 for each violation. Section 18 provides that the burden of proof in a case shifts to the defendant upon a showing by the plaintiff that the plaintiff's cost of motor fuel plus the plaintiff's cost of doing business is greater than the posted retail price of the defendant retailer or wholesaler.

Likely Effect of the Motor Fuel Marketing Act

The Commission staff opposes the specific provisions of the bill on four major grounds: (1) there is no evidence that the anticompetitive practices the bill purports to correct exist; (2) existing antitrust laws are sufficient to remedy such problems should they develop; (3) frivolous lawsuits and perverse incentives for retailers and wholesalers would result; and (4) legitimate price competition would be severely hampered, raising prices to consumers.

With respect to its first objection, the Commission staff notes that the bill appears to assume that because refiners can "subsidize" their retail operations, a refiner that operates its own retail gas stations has an unfair advantage over the independent stations that it supplies. According to this view, integrated firms favor themselves by providing gasoline to their retail outlets at a below-cost transfer price, while requiring independent dealers to pay a higher price for their gasoline. Thus, independents are said to be at a competitive disadvantage.

We are aware of no evidence that such subsidization has occurred or is occurring. In fact, an examination of the state of competition in gasoline marketing in the U.S., both before and after the decontrol of petroleum refining and marketing in 1981, indicates that independent stations have not been the targets of anticompetitive practices by refiners. In 1978, Congress enacted Title III of the Petroleum Marketing Practices Act, 15 U.S.C. § 2841, requiring the Department of Energy ("DOE") to study whether the alleged "subsidization" of retail gasoline operations of

major refiners actually existed, and, if it did, whether the practice was predatory or anticompetitive. The DOE Secretary's final Report to Congress, published in January 1981,⁴ was based on extensive study of pricing data in several Standard Metropolitan Statistical Areas for 1978, as well as on internal oil company documents subpoenaed by the DOE staff. The study concluded that there was no evidence of such subsidization. In 1984, DOE published a report substantiating its 1981 findings.⁵

These DOE reports suggest that independent dealers and jobbers have not been abandoned by refiner-suppliers in favor of company-operated stations, nor have refiners engaged in "predatory subsidization." Lessee-dealers have continued to be by far the largest outlet for major, integrated refiner gasoline sales. In fact, the major, integrated refiners operate only 3.3 percent of the gasoline stations in the United States.⁶ Thus, the decline in the overall number of retail outlets and the intensification of competition among gasoline marketers can be attributed to decreased consumer demand for gasoline⁷ and a continuing trend toward the use of more efficient, high-volume retail outlets. Statistics published by DOE and industry

⁴ DOE, Final Report: The State of Competition in Gasoline Marketing, Jan. 1981.

⁵ DOE, Deregulated Gasoline Marketing: Consequences for Competition, Competitors, and Consumers, Mar. 1984 draft report.

⁶ Lundberg Letter, Vol. XI, No. 36, July 6, 1984, at 3.

⁷ DOE, Deregulated Gasoline Marketing: Consequences for Competition, Competitors, and Consumers, Mar. 1984 draft report, 21-26.

publications, such as the Lundberg Letter, indicate that since federal controls were removed in January 1981, the public has been the beneficiary of plentiful supplies and competitive prices for gasoline.

Second, even if refiners were to possess market power at some future point in time, the Sherman Act (15 U.S.C. §§ 1-7), Clayton Act (15 U.S.C. §§ 12-27), and FTC Act (15 U.S.C. §§ 41-58), along with existing state laws, provide ample enforcement tools to defeat anticompetitive conduct by refiners with market power. For example, since the Clayton Act, as amended by the Robinson-Patman Act, 15 U.S.C. § 13, outlaws price discrimination "where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce," there is no need for a state law prohibiting the sale of motor fuel "at a price lower than the seller charges other persons." [Section 6] Thus, to the extent that the bill seeks "to encourage fair and honest competition, and to safeguard the public against creation of monopolies or unfair methods of competition" [Section 3], these concerns are already adequately addressed by federal and state antitrust laws.

Third, the bill would provide incentives for industry members to impose costs on their competitors by bringing spurious lawsuits. Section 18(3) would permit a plaintiff retailer to make a prima facie case by showing that the plaintiff's purchase price plus his "cost of doing business" is higher than a competitor's posted retail price. The "cost of doing business" is defined to encompass "all costs," including advertising

expenses and the salaries of the "executives and officers" of the plaintiff, as well as "interest on borrowed capital, depreciation, selling cost, maintenance of equipment, [and] transportation or freight cost."⁶ [Section 4(17)] As a result, prima facie cases might be established solely on the basis of the cost and price differences normally observed between self-service and full-service gasoline outlets. Moreover, a service station owner could create a prima facie case simply by raising some of his own costs, such as his advertising expenses or his own salary, so that his station's costs exceed the price of his competitor's gasoline. In this manner, a plaintiff could shift the burden of proof to the defendant even in frivolous lawsuits. The threat to the defendant would be increased further by the fact that if the plaintiff could show some "injury" -- such as a drop in sales -- then the plaintiff could be able to obtain treble damages plus attorney's fees for prevailing in the case. [Section 17(b)]

The defenses outlined in section 8 of S. 73 may permit a defendant ultimately to rebut a prima facie case made out under section 18(3). However, the bill's shifting of the burden of proof would make it costly to defend such suits. Preparing an affirmative defense is likely to be particularly costly for

⁶ The method that the bill provides for calculating cost is not a conservative one. For example, in calculating the "cost of doing business," the rent component of cost is not the actual rent paid, but must be "no less than fair market value based on current use." Thus, if a retailer's rent is below some undefined determination of fair market value, a plaintiff may increase his "costs" by inflating his rent expenditure up to the "fair market value." [Section 4(17)]

outlets selling products in addition to motor fuel, such as food. Retailers would have to incur the expense of setting up accounting systems that allocate such costs as station lease costs, labor costs, power costs, taxes, and advertising between motor fuel sales and other sales. By creating a need for such systems, the bill would impose additional regulatory costs on retailers and consumers. Moreover, since the bill does not establish a system for cost allocation, the outcome of a lawsuit brought against a retailer could depend on which method of allocating costs the court happens to use.⁹

Finally, the bill will create a haven for inefficient marketers by discouraging dealers from engaging in vigorous price competition. As discussed above, section 18 creates a presumption of illegality whenever a dealer's acquisition price plus his other costs are higher than another dealer's retail price. The effect of this presumption could be to raise the prices of low-cost, low-price retailers and wholesalers -- either directly through lawsuits, or indirectly through the fear of potential lawsuits by private parties and the State. Moreover, by making it unlawful for any retailer to induce the purchase of motor fuel at a price less than the cost to the wholesaler, section 9(3) would discourage retailers from seeking the lowest

⁹ In addition, it appears that retailers would not have access to all of the information needed to avoid unlawful conduct. Section 9(3) of the bill would make it unlawful for any retailer to induce or attempt to induce the purchase of motor fuel at a price less than the cost to the wholesaler. This cost includes the wholesaler's cost of doing business. How a retailer is supposed to know his supplier's overhead expenses is not specified.

wholesale price available and passing the savings on to consumers. As a result, the price of gasoline is likely to go up for North Carolina consumers. This outcome would seem to be directly contrary to "the legislative intent to encourage fair and honest competition, and to safeguard the public against creation of monopolies or unfair methods of competition."

[Section 3] In fact, this bill would appear to create an unfair method of competition by allowing inefficient, high-cost firms to threaten their competitors into raising prices.

Under the complex, inconsistent provisions of S. 73, many refiners may be unwilling to risk litigation by undercutting their franchisees' prices. Consequently, the bill would discourage refiners from competing vigorously. The result, both on an intrabrand and interbrand basis, would be less flexible, more uniform, and higher prices. Hence, through its effect on refiner-pricing, S. 73 could lead to the same result as explicit collusion or price fixing: higher profits for both refiners and branded marketers, higher prices for consumers.

Conclusion

In short, the "Motor Fuel Marketing Act" would not enhance consumer welfare, but rather would serve to insulate high-cost retail gasoline dealers from competitive pressures. On the whole, the petroleum industry in North Carolina seems no more disposed to monopoly abuses or predatory behavior than any other industry, and does not seem to warrant remedial legislation of the type proposed here.

For these reasons, the staff of the Federal Trade Commission urges that the "Motor Fuel Marketing Act" not be enacted.

STATEMENT ON
RETAIL GASOLINE DIVORCEMENT
UNDER FLORIDA STATUTES
SECTION 526.151

Dr. Roger D. Blair
Professor of Economics
University of Florida

April 1985

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Introduction

I have been retained by the Florida Petroleum Marketers Association (FPMA) to provide my views on the economic effects of retail gasoline divorcement in Florida. As a part of this, I have also been asked to evaluate the contentions of Dr. Philip Sorensen, an outspoken critic of retail gasoline divorcement.

Aim of Divorcement Law

The Florida Petroleum Marketers Association is a trade association of firms that are engaged in the wholesaling and retailing of petroleum products in Florida. These firms are dependent upon the vertically integrated producers and refiners for their supplies of petroleum products.¹ At the same time, FPMA members are in direct competition with their vertically integrated suppliers who also sell petroleum products at wholesale and at retail. In other words, we find dual distribution in this industry with the vertically integrated firms in competition with some of their customers. As a result, the independent wholesalers and retailers are in a vulnerable position.

In particular, an independent² wholesaler is vulnerable to a supply squeeze and or a price squeeze at the hands of its supplier.³ In a supply squeeze, the integrated supplier refuses to sell to some or all

¹Integrated refiners account for some 86-90 percent of the gasoline supplied in the State of Florida. See Table 1.

²For purposes of this statement, I am following the convention of referring to non-integrated firms as "independent."

³For a brief analysis of price squeezes, see Eugene Singer, Antitrust Economics and Legal Analysis 95-99 (1981). The concept of a supply squeeze is analogous.

of the independent wholesalers. This can arise for a number of reasons: (a) during periods of short supply, the producer may restrict the quantities that are available to the independent wholesaler; (b) the supplier may be attempting to coerce the behavior of the independent wholesaler; or (c) the supplier may be attempting to extend its control over the wholesale stage. By denying supplies of gasoline to independent wholesalers the economic survival of these wholesalers may be jeopardized.

A price squeeze can be imposed upon a non-integrated wholesaler by an integrated dual distributor. The price charged by the refiner to the independent wholesaler puts a lower limit on the wholesaler's costs. At the same time, the price that the refiner charges in its role as a rival wholesaler puts an upper limit on what the independent wholesaler can charge. Obviously, the profit margin of an independent wholesaler can be compressed if the integrated firm raises its price to the independent without raising its price to its non-wholesaler customers. In the extreme, the integrated refiner may reduce the price offered to potential customers of the independent wholesaler below that charged to the independent wholesaler.

Retail gasoline divorcement under Florida Statutes §526.151 offers some measure of protection from supply and/or price squeezes and other predatory practices. It does this not by making such practices unlawful. Rather, it does this by removing some of the incentives for engaging in squeeze tactics. All divorcement does is prevent refiners from owning and operating their own retail stations. This reduces the incentive that a refiner may have for favoring one retail outlet over another. The statute does not provide complete protection, but it does offer partial protection.

Alleged Costs of Divorcement

Several costs of divorcement have been alleged by Dr. Philip Sorensen.⁴ I shall respond to three: (1) alleged price increases, (2) alleged capital losses, and (3) alleged employment consequences.

Alleged Price Increases. From the customer's perspective, the most important cost alleged by Dr. Sorensen is an increase in price. He has asserted that "[e]conomic theory suggests that the elimination of a whole class of competitors from a retail market ... will tend to increase the level of prices in the market."⁵ This is elementary economics. But it has nothing to do with the situation that divorcement will create. Divorcement does not eliminate any competition in the retail sale of gasoline. Refiner operators of retail gasoline stations will have to be replaced by lessee dealers and the number of competitors will remain the same. Moreover, even if some refiners elect to behave in an economically irrational fashion and refuse to permit their stations to be operated, competition will result in new stations opening. Consequently, Dr. Sorensen's application of economic theory to this situation is simply incorrect.

Dr. Sorensen's concern regarding price effects does not depend upon misapplied economic theory alone. It also depends upon some empirical research that he conducted using Maryland's experience with divorcement. His conclusion is as follows:

"Using the experience in Maryland as a guide, the estimated

⁴See Sorensen, "The Economic Impact of Gasoline Retail Divorcement Under Florida Statutes Section 526.151," (mimeo) January 1985.

⁵Ibid., p. 3.

increase in retail prices in Florida resulting from the enforcement of Statute 526.151 will be approximately 1.87¢ per gallon. At 1984 levels of gasoline sales, these price increases will cost Florida consumers almost \$100 million per year."⁶

This is certainly an alarming statistic if it is accurate.

Dr. Sorensen's analysis and interpretation of the empirical data are subject to challenge in several regards. First, the 1.87¢ price differential is an average based upon an incomplete data set. Second, it is influenced by some early experience under divorcement. Third, there are no controls for other influences. In other words, Dr. Sorensen compared the changes in Baltimore with those in the United States as a whole and assumed that any differences were due to divorcement. This is a totally unacceptable way of conducting empirical research. It fails to meet the minimum standards of our profession.⁷

To demonstrate the kind of problem that one may encounter by using Dr. Sorensen's approach, I have used the data that he presented in Tables 2, 3, and 4 pertaining to the United States, Boston, and Philadelphia, respectively.⁸ Using precisely his methodology and using his data, I have compared Boston price changes to the U.S. and

⁶Ibid., p. 5.

⁷For a discussion of how one should proceed to isolate the determinants of price and price changes, see Eckstein and Fromm, "The Price Equation," 58 American Economic Review 1159 (1968).

⁸See Sorensen, "Additional Evidence on the Economic Impact of Refiner Divorcement from Retail Gasoline Marketing in Maryland," (mimeo) 1983, which contains the data upon which Sorensen's estimate of 1.87¢ is based.

Philadelphia price changes to the U.S. in the same way that he compared Baltimore price changes to the U.S. The results are shown in Table 2. As we can see the average increase was 0.70 higher in Boston and 0.81 higher in Philadelphia. Using Dr. Sorensen's logic, we should attribute this to divorcement - except that neither Boston nor Philadelphia was subject to divorcement. If we cannot attribute these differences to divorcement, why should we attribute the Baltimore - U.S. difference to divorcement?

Alleged Capital Losses. Dr. Sorensen has pointed out that some 455 gasoline stations subject to divorcement have a market value in excess of \$150 million. Dr. Sorensen then alleges that "[t]he divorcement of this property from its current owners under 'fire sale' conditions would undoubtedly result in major capital losses for the present owners."⁹ This, of course, would be a serious consequence because such capital losses could have a chilling effect upon Florida's investment climate. Fortunately, Dr. Sorensen's concerns are unfounded. The current law precludes a petroleum refiner from operating, with company personnel, more than three percent of the retail service stations selling its branded products. The law does not preclude ownership of any physical property. Thus, a refiner that owns the land, the buildings, the pumps, and other necessary improvements need not sell these as a result of the divorcement law. All that the law requires is that the service station be operated by a lessee dealer rather than a company employee. Thus, there is no need for a sale at all much less a "fire sale."

⁹Sorensen, note 4 supra at p. 6.

In addition, the lessee dealer will pay a fair market value as rent for using the refiner's physical property. Competition among potential lessees will protect the refiner and insure that it will receive a fair market payment. In addition, the refiner will be able to sell its refined products to its lessee dealers. Consequently, Dr. Sorensen's concern that refiners will experience "major capital losses" in unfounded.

Alleged Impact on Employees. Dr. Sorensen points out that the 455 stations to be divorced presently employ over 3,000 workers. His concern is that these people will lose their jobs if the stations are divorced, but this concern seems unfounded to me. After all, the service stations are not going to disappear and will require staffing. If one presumes that the current owners - refiners - have staffed these stations efficiently, i.e., with the appropriate number of workers, the lessee dealers will still need the same number of people. If the current employees are worth keeping by the refiner operators of the stations, they will still be worth keeping after a change in ownership. As a consequence, no one who would not be fired by the refiner is likely to be fired by a lessee dealer.

If a person is fired by a lessee dealer, that job must be filled by someone else. Of course, the person losing his or her job is hurt, but the replacement employee is better off. On balance, one cannot conclude that there is a net loss to the Florida community.

As far as I can tell from Dr. Sorensen's papers, his concerns about employee loss of medical and retirement benefits is pure speculation since no evidence of this has been presented in any of his papers.

Conclusion

The current divorcement law offers some small measure of protection for Florida's independent wholesalers and retailers from potential predatory behavior. It is not ideal for this purpose, but it is something that may help these businesses. On the other hand, several adverse economic consequences have been conjectured by a representative of the refiners. As far as I can see, these conjectures are nothing more substantial than just that: conjectures. Neither Dr. Sorensen's use of economic theory nor his interpretation of the empirical evidence makes a persuasive case against retail gasoline divorcement.

Table 1
Sales as Reported to the Department of Agriculture^a

	1981	1982	1983	1984
Amerada Hess	8883	10568	10376	8922
American Petrofina	12349	10300	11975	7895
Amoco	37531	37693	41952	43067
Charter Marketing	2721	3395	3743	242
Chevron	52883	38750	35589	36758
Citgo/Southland	12617	11058	13465	52139
Exxon	21425	21606	20703	21290
Gulf	29665	27300	28820	25765
Koch	*	1196	1646	2390
La Gloria	1210	2420	2484	2173
Marathon	26885	22157	20881	15838
Mobil	15522	16661	16649	20381
Murphy	8863	12077	10767	8731
Phillips	22244	26159	18145	22206
Shell	31007	31135	36047	37951
Tenneco	16581	13258	12902	12846
Texaco	18347	21287	25578	21439
Triangle Refineries	4075	8792	9689	9065
Union	17469	15850	13822	10397
Total	340304	331662	335233	359495
State Total	381374	374697	378431	417866
Refiners' Share	89.2	88.5	88.6	86.0

a. Gallons are measured in thousands for September of each year indicated.

Table 2
Relative Changes in Retail Prices
For Gasoline

<u>Year and Quarter</u>	<u>Boston v. U.S.A.</u>	<u>Philadelphia v. U.S.A.</u>
1979, 3rd	0.44	1.42
4th	0.74	.08
1980, 1st	0.58	.81
2nd	2.04	1.60
3rd	1.87	1.47
4th	1.08	1.77
1981, 1st	-1.44	-1.56
2nd	*	*
3rd	*	*
4th	2.02	5.29
1982, 1st	3.68	5.47
2nd	-0.44	.27
3rd	-1.42	-3.86
<u>4th</u>	<u>-0.79</u>	<u>-3.04</u>
Average Increase	0.70	0.81

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EXISTING DEALER PROTECTION LAWS - FLORIDA

<u>STATUTE</u>	<u>KEY PROVISIONS</u>	<u>REMEDY</u>
Sherman Act (Federal, 1890)	<ul style="list-style-type: none">- Prohibits horizontal price fixing between competing suppliers.- Prohibits a supplier from setting a dealer's or distributor's re-sale prices.- Prohibits a supplier from using illegal methods to gain a monopoly in a geographic market.	<ul style="list-style-type: none">- Injunction, treble damages.- Jail terms of up to three years.- Fines up to \$100,000 for individuals, up to \$1,000,000 for corporations.- Enforceable by Justice Dept., FTC, private party.
Clayton Act (Federal, 1914)	<ul style="list-style-type: none">- Prohibits exclusive dealing arrangements.- Effectively permits dealer or distributor to purchase product from any source.	<ul style="list-style-type: none">- Injunction, treble damages.- Enforceable by Justice Dept., FTC, private party.
Robinson-Patman Act (Federal, Amendment to Clayton Act, 1936)	<div><ul style="list-style-type: none">- Prohibits supplier from unfairly giving one dealer or distributor a <u>price advantage over that dealer's or distributor's competitor.</u></div>	<ul style="list-style-type: none">- Injunction, treble damages.- Enforceable by Justice Dept., FTC, private party.

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Federal Trade Commission Act
(Federal, 1914)

- Created FTC to enforce anti-trust laws.
- Protects against "unfair methods of competition" and "unfair or deceptive trade practices".

- Cease and desist orders.
- Fines of up to \$10,000.
- FTC can enforce Sherman, Clayton and Robinson-Patman Acts

Petroleum Marketing Practices Act
(Federal, 1978)

- Sets out reasons for which a supplier can terminate or nonrenew its agreements with a dealer or jobber.
- Prohibits termination or nonrenewal of a dealer in order to convert the location to a company operation.

- Injunction prohibiting termination of the agreements.
- Actual and exemplary damages.
- Possibility of attorneys fees.

Florida Antitrust Act of 1980 (§ 542.15, et seq., 1980)

- Prohibits price fixing between competitors..
- Prohibits a supplier from setting a dealer or distributor's resale price.
- Prohibits a supplier from using illegal methods to gain a monopoly in a geographic market.

- Injuntion, treble damages.
- Jail terms of up to three years.
- Enforcement by Florida Attorney General, private party.

**NATIONAL ALLIANCE
OF SENIOR CITIZENS, INC.**



■ **National Headquarters:**

2525 Wilson Boulevard / Arlington, Virginia 22201 / (703) 528-4380

■ **Mrs. Virginia Aubrey**
President

■ **C.C. Clinkscales, III**
National Director

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FOR THE HEARING RECORD
Thursday, April 11, 1985

Statement Prepared for the Record of the Florida Senate Commerce Committee

Mr. Chairman, Distinguished Members of the Committee:

I am Curt Clinkscales, National Director of the National Alliance of Senior Citizens, Inc., a nationwide lobby for the older American. In the state of Florida, we have a membership file of more than 100,000 persons - and we are growing.

NASC is a consumer organization. Senior citizens are consumers, and due to the fixed nature of their incomes, they are smart shoppers.

When they purchase gasoline, they have two basic options like everyone else.

We had thought that most senior citizens used the full service option, while younger persons used the self service option.

A survey we have conducted among our members indicates the exact opposite is true.

Seniors who have the strength and agility to pump their own fuel do so. They don't want to do it, but they do want to save money. The cost differential between self and full service is often stark, and unless the senior has the money to afford the luxury of having fuel pumped into the car, that person does it himself or herself.

Others are physically unable to pump their own fuel. They must turn to the full service pumps to purchase their gasoline.

Savings are uppermost in the minds of the senior consumer, but they have another problem which makes saving more difficult for them.

The cars they drive are not always the latest fuel efficient models.

Here in Florida - like other retirement states where many older persons migrate for the golden years - many seniors have seen their fixed incomes virtually disintegrate with the huge increase in prices for goods and services while their incomes remained at the same level.

Inflation has hit the elderly hard, and many cannot afford the extreme expense of purchasing a late model automobile. This means many of the old gas guzzlers of the 1970s are driven by those least able to afford high prices in gasoline.

They are the same cars which often still use leaded fuel, and will be threatened with engine damage when the new EPA rules take effect which virtually ban lead in fuel.

Older citizens must fuel their autos just like everyone else, so as the price rises, they are hurt most because many of their cars use more fuel than others and they simply cannot afford to trade.

As consumers of gasoline in Florida, seniors will soon see the price of fuel rise ~ unless the present law is changed to allow the free competition of the marketplace to keep prices low.

Every Senator here today is aware that competition promotes the lowering of prices. It is nowhere more true than in gasoline and transportation.

For each of you who must commute to Tallahassee, there is no question that flying is hazardous to your wallet. There is no competition between most cities in the nation and the state and Tallahassee. This allows the airlines who do serve this City to charge all they can command.

That's fair if there is a free availability of airlines to serve the City, but like in all other commercial pursuits, competition will surely drive costs and prices down.

Consider flying to other places in Florida which are served by cost conscious airlines like People Express, New York Air and Piedmont. The price of traveling to and from those cities is dramatically less than to Tallahassee.

The same is true of the gasoline retail market. With competition there is price opportunity for the consumer to save.

Without competition, there will be higher prices to the consuming public. There is just no question about that.

By driving out the large oil firms and refiners, the consuming public will suffer and the only winner will be the fellow who has no ties to large energy firms but sells their fuel in his pumps. His will be a market of extreme lucrative sales.

For the elderly consumer - especially the poor and handicapped elderly ~ the blow of the present law could mean they must abandon their only means of transportation.

For some who live in cities providing adequate mass transit or who have relatives or loved ones nearby to carry them on their needed errands, the transition out of their own cars could just increase difficulties in getting around.

But for those who live in areas not well served by mass transit or who have no one to help them go to the grocery store, the doctor and to other necessary points of life, increased prices in fuel could spell a loss of independence in their lives.

NASC believes the consumer is best served by allowing the market to decide who sells and who does not sell. If a retailer fails to

attract customers - or for whatever reason fails to retain them - then that retailer should not be artificially kept in business.

Requiring large companies to operate only 3% of stations would richly reward the market inefficiencies of less competitive retailers.

It would simply drive them out of the Florida market, not because there is not enough business to go around, but because one interest was able to insert its own selfish interests ahead of those of the consuming public.

That is a serious charge, but one which clearly is supported by the history of the present law.

It is nothing new in America - we see it daily before legislative arenas nationwide and in the U. S. Congress - to have various interest groups seeking to advance their own narrow focus.

NASC is a lobby.

We have a selfish interest of our own - and we feel that as consumers, we prefer to keep the laws of supply and demand operating without artificial impediments.

In this way, any retailer who wishes to compete with another can do so. The more who compete, the more opportunity for success, and the better the deal for the consumer.

This present law would surely reduce the number of service stations operating in Florida. Is there anyone here today who really believes this would do anything but drive up prices? I don't think so.

A few years ago, there was a general consensus in the nation that the "big oil companies" had to be controlled. Fortunately a closer look was taken and this was not done with impunity. Such an unwise decision would have severely impaired the opportunity for the nation to recover from the long gas lines which were choking the consumer and many businessmen here in Florida who depend on the tourist trade to survive and pay their taxes.

Now that animosity toward the oil companies has been lessened, except by those who must compete with the oil firms in the marketplace. They are still seeking to use that old feeling to parlay it into economic gains for themselves at the expense of the consumer.

It is important that Florida recognize the critical role of the free market system - especially in an enterprise of such diversity and widespread opportunity as the retail gasoline sales business - and do nothing to interfere with it.

All consumers will benefit if SB 237 is enacted to allow the people of this state to purchase fuel at rates which are fair, not controlled by those whose goal is personal profit.

Statement on SB 237 by NASC, Page 4:

Therefore, we strongly urge the Members of this Senate Committee to support SB 237.

It is vital to recall that prices are not something which are reached by predetermination, but by a time honored force which has never failed to provide a fair distribution of products, good old supply and demand.

There is considerable demand in the senior community for gasoline, and we hope it will continue to be there.

We want to assure there is an adequate and plentiful supply to match that demand so that prices may remain as low or lower than they are today.

Passage of this important legislation will help speed that worthy goal to continued reality.

We endorse SB 237, and ask your vote.

Thank you for allowing our organization to present its views before you today.