

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

9 (14) "Retail outlet" means a facility, including land
10 and improvements, where motor fuel is offered for sale, at
11 retail, to the ~~motoring~~ public and includes, but is not
12 limited to, any facility which sells only to members.

13 Section 2. Subsections (1) and (2) of section 526.304,
14 Florida Statutes, are amended to read:

15 526.304 Predatory practices unlawful; exceptions.--

16 (1)(a) It is unlawful for any refiner engaged in
17 commerce in this state to sell any grade or quality of motor
18 fuel at a retail outlet at a price which, after deducting any
19 discounts received at the time of purchase, is below refiner
20 cost, where the effect is to injure competition.

21 (b) It is unlawful for any nonrefiner engaged in
22 commerce in this state to sell any grade or quality of motor
23 fuel at a retail outlet at a price which, after deducting any
24 discounts received at the time of purchase, is below
25 nonrefiner cost, where the effect is to injure competition.

26 (2)(a) An isolated, inadvertent incident involving
27 activity prohibited pursuant to subsection (1) or subsection
28 (3) shall not be a violation of this act.

29 (b) A refiner's sale below refiner cost or a
30 nonrefiner's sale below nonrefiner cost made in good faith to
31 meet an equally low retail price, net of any discounts

1 received at the time of sale, of a competitor selling motor
2 fuel of like grade in the same relevant geographic market
3 which can be used in the same motor vehicle, or of the same or
4 similar items in combination with motor fuel of like grade
5 which can be used in the same motor vehicle, is not a
6 violation of this act.

7 Section 3. It is the intent of the Legislature that
8 sections 1 and 2 clarify and conform existing law.

9 Section 4. Subsections (2) and (3) of section 526.311,
10 Florida Statutes, are amended to read:

11 526.311 Enforcement; civil penalties; injunctive
12 relief.--

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

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

27 (3) The civil penalty imposed under this section may
28 be assessed and recovered in a civil action brought by the
29 department of ~~Legal Affairs~~ in any court of competent
30 jurisdiction. If the department of ~~Legal Affairs~~ prevails in a
31 civil action, the court may award it reasonable attorneys'

1 fees as it deems appropriate. All funds recovered by the
2 department of ~~Legal Affairs~~ shall be deposited into shared
3 ~~equally between the Department of Legal Affairs Trust Fund and~~
4 the General Inspection Trust Fund.

5 Section 5. Subsection (2) of section 526.312, Florida
6 Statutes, is amended to read:

7 526.312 Enforcement; private actions; injunctive
8 relief.--

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

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

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

27
28 The standards specified in paragraphs (a) and (b) shall also
29 apply to actions for injunctive relief brought by the
30 department of ~~Legal Affairs~~ under s. 526.311.

31

1 Section 6. Section 526.313, Florida Statutes, is
2 amended to read:
3 526.313 Limitations period for actions.--Any action
4 brought by the department ~~of Legal Affairs~~ shall be brought
5 within 2 years after the alleged violation occurred or should
6 reasonably have been discovered. Any action brought by any
7 other person shall be brought within 1 year after the alleged
8 violation occurred or should reasonably have been discovered,
9 except that a private action brought under s. 526.305 for
10 unlawful price discrimination shall be brought within 2 years
11 from the date the alleged violation occurred or should
12 reasonably have been discovered.

13 Section 7. Section 526.3135, Florida Statutes, is
14 amended to read:
15 526.3135 Reports by the Division of Standards
16 ~~Department of Agriculture and Consumer Services~~.--The Division
17 of Standards ~~Department of Agriculture and Consumer Services~~
18 is directed to compile a report pursuant to s. 570.544 of all
19 complaints received by the Department of Agriculture and
20 Consumer Services pursuant to this act. Such report shall
21 contain at least the information required by s.
22 570.544(6)(b)2.-4. and shall be presented to the Speaker of
23 the House of Representatives and the President of the Senate
24 no later than January 1 of each year.

25 Section 8. This act shall take effect upon becoming a
26 law.

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HOUSE SUMMARY

Revises provisions relating to the Motor Fuel Marketing Practices Act to clarify definitions and prohibited predatory practices to conform to existing law. Revises enforcement and civil action provisions to transfer from the Department of Legal Affairs to the Department of Agriculture and Consumer Services responsibilities as the lead agency to enforce the Motor Fuel Marketing Practices Act. See bill for details.