

1 A bill to be entitled
 2 An act relating to the Motor Fuel Marketing Practices Act;
 3 amending s. 526.303, F.S.; deleting definitions to
 4 conform; repealing s. 526.304, F.S., relating to unlawful
 5 predatory practices and exceptions thereto; repealing s.
 6 526.309, F.S., relating to exempt retail sales by a
 7 refiner; amending s. 526.305, F.S.; deleting a cross-
 8 reference to conform; providing an effective date.

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

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12 Section 1. Section 526.303, Florida Statutes, is amended
 13 to read:

14 526.303 Definitions.--As used in this act:

15 (1) "Affiliate" means any person whose stock is more than
 16 50 percent owned by, or who, regardless of stock ownership, is
 17 controlled by, or who, regardless of stock ownership, is under
 18 common control with, any refiner.

19 (2) "Competition" means the vying for motor fuel sales
 20 between any two sellers in the same relevant geographic market.

21 (3) "Dealer" means any person, other than a refiner or
 22 wholesaler, who is engaged in the business of selling motor fuel
 23 at a retail outlet.

24 ~~(4) "Direct labor cost" means the personnel costs incurred~~
 25 ~~at a retail outlet attributable to providing motor fuel sales at~~
 26 ~~a retail outlet and includes, without limitation, the personnel~~
 27 ~~costs relating to the purchase, storage, inventory, and sale of~~
 28 ~~motor fuel, the maintenance of equipment, and environmental~~

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29 ~~reporting and compliance, but does not include the costs of~~
30 ~~environmental cleanup or remediation. In no case shall the~~
31 ~~direct labor cost be less than the cost of one employee's salary~~
32 ~~and benefits, based upon that employee's working those hours in~~
33 ~~which the retail outlet is providing motor fuel available to the~~
34 ~~public.~~

35 (4)~~(5)~~ "Motor fuel" means any petroleum product, including
36 any special fuel, which is used for the propulsion of motor
37 vehicles.

38 ~~(6)~~ "Nonrefiner" means any person, other than a refiner,
39 engaged in the sale of motor fuel.

40 ~~(7)~~ "Nonrefiner cost" means: the nonrefiner's invoice cost
41 of the motor fuel, by grade, less credit card allowances, trade
42 discounts, and rebates actually received, to which shall be
43 added federal, state, and local taxes and inspection fees
44 applicable to motor fuel; freight charges to the retail outlet;
45 and direct labor costs and the reasonable rental value of the
46 retail outlet attributable to the sale of motor fuel by the
47 nonrefiner. If motor fuel is sold with another item at a
48 combined price, nonrefiner motor fuel cost shall also include
49 the cost of the other item and the direct labor costs and the
50 reasonable rental value of the retail outlet attributable to the
51 retail sale of the item by the nonrefiner.

52 (5)~~(8)~~ "Posted terminal price" means a refiner's posted
53 price at a terminal, by grade of motor fuel, to the wholesale
54 class of trade within a general trade area. If a refiner does
55 not have a posted terminal price in a general trade area, such
56 refiner's posted terminal price shall be deemed to be no lower

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57 than the lowest posted terminal price of motor fuel of like
58 grade and quality of any other refiner selling to the wholesale
59 class of trade in the general trade area.

60 ~~(9) "Reasonable rental value" means the bona fide amount~~
61 ~~of rent which would reasonably be paid in an arm's length~~
62 ~~transaction for the use of the specific individual retail~~
63 ~~outlet, including land and improvements, utilized for the sale~~
64 ~~of motor fuel. The value of the land and improvements shall~~
65 ~~include the costs of equipment, signage, utilities, property~~
66 ~~taxes, and insurance, if paid by the owner, and environmental~~
67 ~~compliance, such as testing, detection, and containment systems,~~
68 ~~but does not include the costs of environmental cleanup and~~
69 ~~remediation. In determining the reasonable rental value of the~~
70 ~~specific retail outlet, the rental amount of comparable retail~~
71 ~~outlets in the relevant geographic market shall be considered.~~
72 ~~When motor fuel is sold at the retail level along with other~~
73 ~~products, the reasonable rental value attributable to the sale~~
74 ~~of motor fuel at the retail outlet shall be allocated by the~~
75 ~~percentage of gross sales attributable to motor fuel sales.~~

76 (6) ~~(10)~~ "Refiner" means any person who stores or exchanges
77 motor fuel at a terminal facility in this state and who sells or
78 transfers motor fuel through the loading rack at such terminal
79 facility, and includes an affiliate of such refiner with respect
80 to such affiliate's sale of motor fuel.

81 ~~(11) "Refiner cost" means a refiner's posted terminal~~
82 ~~price plus state, federal, and local taxes and inspection fees~~
83 ~~applicable to motor fuel, and freight charges to its retail~~
84 ~~outlet, and direct labor costs and reasonable rental value of~~

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85 ~~the retail outlet attributable to the retail sale of motor fuel~~
86 ~~by the refiner. If motor fuel is sold with another item, at a~~
87 ~~combined price, refiner cost shall also include the cost of the~~
88 ~~other item and direct labor costs and reasonable rental value of~~
89 ~~the retail outlet attributable to the retail sale of the item by~~
90 ~~the refiner.~~

91 (7)~~(12)~~ "Relevant geographic market" means the geographic
92 area of effective competition.

93 (8)~~(13)~~ "Rent" means the payment of an amount by an
94 individual or agency in return for the right to occupy or use
95 the property of another.

96 (9)~~(14)~~ "Retail outlet" means a facility, including land
97 and improvements, where motor fuel is offered for sale, at
98 retail, to the motoring public.

99 (10)~~(15)~~ "Sale" or "sell" means any transfer, gift, sale,
100 offer for sale, or advertisement for sale in any manner or by
101 any means whatsoever, including any transfer of motor fuel from
102 a person to itself or an affiliate at another level of
103 distribution, but does not include product exchanges at the
104 wholesale level of distribution.

105 (11)~~(16)~~ "Terminal facility" means any inland, waterfront,
106 or offshore appurtenance on land used for the purpose of
107 storing, handling, or transferring motor fuel, but does not
108 include bulk storage facilities owned or operated by a
109 wholesaler.

110 (12)~~(17)~~ "Wholesaler" means any person, other than a
111 refiner or dealer, who purchases motor fuel at a terminal
112 facility and supplies motor fuel to retail outlets.

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113 Section 2. Subsection (3) of section 526.305, Florida
114 Statutes, is amended to read:

115 526.305 Discriminatory practices unlawful; exceptions.--

116 (3) ~~Subject to the limitations of s. 526.304(3),~~ A sale
117 made in good faith to meet an equally low price of a competitor
118 selling motor fuel of like grade which can be used in the same
119 motor vehicle is not a violation of this section.

120 Section 3. Sections 526.304 and 526.309, Florida Statutes,
121 are repealed.

122 Section 4. This act shall take effect July 1, 2006.