

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 236

SPONSOR: Senator Brown-Waite

SUBJECT: Motor Fuel Marketing Practices

DATE: April 6, 2001                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Poole	AG	Unfavorable
2.	_____	_____	CM	_____
3.	_____	_____	JU	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill repeals the predatory practices section of the Motor Fuel Marketing Practices Act that makes it unlawful for retailers to sell motor fuel below cost, as calculated in accordance with the statute. Accordingly, it also repeals exemptions to the act along with the following definitions that are used in calculating cost: "Direct labor cost," "Nonrefiner," "Nonrefiner cost," "Reasonable rental value," and "Refiner cost." Finally, this bill eliminates an exception clause with the result being that any good faith sale below cost would not be an unlawful discriminatory practice if made to meet the price of a competitor.

This bill amends subsection (3) of section 526.305, Florida Statutes.

This bill repeals the following sections of the Florida Statutes: subsections (4), (6), (7), (9), and (11) of section 526.303 and all of sections 526.304 and 526.309.

## II. Present Situation:

The Motor Fuel Marketing Practices Act became law in 1985. The intent of the act, as stated in the statute, is to encourage competition, and promote the general welfare of Florida citizens by prohibiting predatory, discriminatory, or unfair trade practices and restraints which adversely affect motor fuel competition in Florida. To accomplish this, the initial act prohibited refiners from selling motor fuel at a retail outlet below refiner cost where the effect is to injure competition. Refiner cost is defined as a refiner's posted terminal price plus certain taxes, inspection fees, freight charges, direct labor costs, and a reasonable rental value of the retail outlet attributable to the retail sale of the motor fuel.

The act was amended in 1987 to bring nonrefiners under the provisions of the act. The terms “nonrefiner” and “nonrefiner cost” were added. A Nonrefiner cost is defined as the nonrefiner’s invoice cost, by grade, plus certain taxes, inspection fees, freight charges, direct labor charges, and a reasonable rental value of the retail outlet attributable to the retail sale of the motor fuel less credit card allowances, trade discounts, and rebates actually received.

Amendments in 1990 and 1991 added and revised definitions of some of the terms used in calculating cost. The 1991 amendment made it an unlawful predatory practice for a refiner to sell motor fuel at a retail outlet below the price that the refiner charges a wholesaler or dealer in the same market area. This amendment further made it an unlawful discriminatory practice for a refiner to sell motor fuel to a wholesaler above the net price that the refiner charges a dealer in competition with any retail outlet supplied by the wholesaler where the effect is to injure competition.

The 2000 Legislature (Chapter 2000-308, L.O.F.) amended sections 526.311-526.313, F.S., to transfer the enforcement responsibilities from the Department of Legal Affairs to the Department of Agriculture and Consumer Services (DACS). It also amended section 526.3135, F.S., to specify that the Division of Standards is to compile an annual report of all complaints received by the DACS regarding the Motor Fuel Marketing Practices Act, for presentation to the Speaker of the House of Representatives and the President of the Senate.

### **III. Effect of Proposed Changes:**

**Section 1.** Repeals section 526.304, F.S., which prohibits the sale of motor fuel below cost, as calculated under the act, where the effect is to injure competition.

Repeals the following definitions contained in section 526.303, F.S., which are used in calculating cost under the act: “Direct labor cost,” “Nonrefiner,” “Nonrefiner cost,” “Reasonable rental value,” and “Refiner cost.”

Repeals section 526.309, F.S., which exempts the following four types of discounted sales from the provisions of the Motor Fuel Marketing Practices Act: (1) clearance sale; (2) liquidation sale; (3) court ordered sale; and (4) grand opening sale.

**Section 2.** Amends subsection (3) of section 526.305, F.S., to delete language to conform to the proposed repeal of section 526.304, F.S.

**Section 3.** Provides that this act shall take effect upon becoming law.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Removal of the predatory pricing provisions of the Motor Fuel Marketing Practices Act means that there would be no floor provided in the statute on the price that retailers could charge for motor fuel. It is not possible to predict with confidence what effect this might have on motor fuel competition in Florida.

C. Government Sector Impact:

Removal of the predatory pricing provisions of the Motor Fuel Marketing Practices Act would relieve the Department from the responsibility of having to investigate or prosecute complaints under this section of the act.

Expenditures	Fund	FY 2001-2002
<b>Department of Agriculture and Consumer Services</b>		
<b>Non-recurring costs:</b>	GR	0
<b>Recurring costs:</b>		
1 FTE	GR	(50,000)
<b>TOTAL OPERATING COSTS:</b>	GR	\$(50,000)

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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