

STORAGE NAME: h4005.br.doc
DATE: February 28, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION
ANALYSIS**

BILL #: HB 4005
RELATING TO: Motor Fuel Marketing Practices
SPONSOR(S): Representative(s) Ball

TIED BILL(S):

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

- (1) BUSINESS REGULATION
 - (2) AGRICULTURE & CONSUMER AFFAIRS
 - (3) COMPETITIVE COMMERCE COUNCIL
 - (4)
 - (5)
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I. SUMMARY:

The bill deletes various definitions and other provisions of the "Motor Fuel Marketing Practices Act." The thrust of these repeals is to eliminate the sales below cost prohibitions of the Act. The Department of Agriculture and Consumer Services continues to be the regulatory agency for violations of the remainder of the provisions of the Act.

It is not anticipated that the provisions of the bill will have a fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. PRESENT SITUATION:

The Motor Fuel Marketing Practices Act (Ch. 85-74, L.O.F.) was passed by the 1985 Legislature to repeal and replace the retail divorcement law (Ch. 74-387, L.O.F.). The retail divorcement law required vertically integrated refiners to divest of the majority of their retail operations in Florida. A vertically integrated refiner is one that owns and operates in all phases of the industry from exploration and production to sales at retail outlets.

The Motor Fuel Marketing Practices Act (Act) currently allows vertically integrated refiners to operate in Florida but prohibits the wholesale and retail sale of motor fuels, by refiners, wholesalers and retailers, below statutorily defined costs. The Act defines the term nonrefiner cost to establish the cost factors that are computed to determine the price the nonrefiner cannot sell below. A nonrefiner is anyone other than a refiner. This includes persons commonly referred to as wholesalers, jobbers, dealers, and retailers. The current nonrefiner cost is the adjusted invoice price plus taxes and fees, freight, direct labor cost, and reasonable rental value of the retail outlet.

The Act prohibits discriminatory practices, discriminatory allocations of fuel, unfair practices, such as the refiner fixing prices at retail locations, and certain wholesale rebates. The Act also lists and prohibits specified predatory pricing practices.

Predatory pricing practices include the prohibition against: a refiner selling motor fuel at a retail outlet at a price below the refiner cost of the product where the effect is to injure competition; a nonrefiner selling motor fuel at a retail outlet at a price below the nonrefiner cost of the product where the effect is to injure competition; and a refiner selling motor fuel to their own vertical retail outlet at a price below the price charged when the fuel is sold to other outlets in the same geographic market.

The provisions of the Act do not apply to: clearance and liquidation sales, sales under court order, or sales not exceeding three days when associated with a grand opening of an outlet. Exceptions to the predatory pricing provisions are also specified and include isolated or inadvertent sales below cost or sales below cost where the transaction is designed to meet the selling price of a competitor in the same market.

The Department of Agriculture and Consumer Services (DACCS) is authorized to receive and investigate complaints and prosecute violations of the Act. Recovered civil penalties are deposited

in the General Inspection Trust Fund of the DACS. A private right of action is also authorized in the Act.

C. EFFECT OF PROPOSED CHANGES:

The bill repeals the prohibition against below cost sales of the Motor Fuel Marketing Practices Act. To this end, the bill repeals the definition of "direct labor cost", "nonrefiner", "nonrefiner cost", "reasonable rental value", and "refiner cost." The bill repeals s. 526.304, F.S., "Predatory practices unlawful: exceptions" and it repeals s. 526.309, F.S., "exempt sales." The bill deletes a cross reference to a repealed subsection.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect Of Proposed Changes" section above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

By repealing the below cost law, the bill could create a possible reduction in investigation and potential prosecution costs by the DACS. The revenue is not anticipated to be significant and is estimated by the DACS to approach \$50,000 in FY 2001-02.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is designed to allow the competitive marketplace to establish the ultimate price of motor fuels rather than apply statutory guidelines under the below cost provisions of the Motor Fuel Marketing Practices Act. The current statutory statement of findings and intent of the Act provides, in part, that "predatory practices...are unfair trade practices and restraints which adversely affect motor fuel competition" and it is the intent of the Legislature to "encourage competition...by prohibiting such unfair practices." The impact of the repeal of these statutory provisions on the economics of the motor fuel marketplace is uncertain and controversial. Historical data and current market forces and structures would have to be extrapolated over time to attempt to identify the direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The bill removes the prohibition against predatory practices under the Act. Therefore, the remedies available to the Department of Agriculture and Consumer Services and to private parties would no longer apply except for violations of other provisions that remain under the Act. It appears a predatory practice relating to motor fuel that is designed to "injure competition" could still be prosecuted under the Florida Deceptive and Unfair Trade Practices Act, part II of chapter 501, F.S., as a private action or by a state attorney or the Attorney General.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

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