

CHAPTER 526

SALE OF LIQUID FUELS; BRAKE FLUID

PART I SALE OF LIQUID FUELS (ss. 526.01-526.3135)

PART II SALE OF BRAKE FLUID (ss. 526.50-526.56)

PART I

SALE OF LIQUID FUELS

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526.01 Fraud and deception in sale of liquid fuel, lubricating oil, and greases; labeling; stop-sale order; penalty.—

(1) No person shall store, sell, offer, or expose for sale any liquid fuels, lubricating oils, greases, or other similar products in any manner whatsoever which may deceive or tend to deceive, or which has the effect of deceiving, the purchaser of such products as to the nature, quality, or quantity of the products so sold, exposed, or offered for sale.

(2)(a) Containers of reclaimed, recleaned, or reconditioned previously used lubricating oil, lubricants, or mixtures of lubricants shall be plainly labeled showing that the content thereof is a previously used product.

(b) In the storage, sale, offering, or exposing for sale of lubricating oil composed in whole or in part of previously used lubricating oil, it is unlawful to:

1. Represent in any manner that used lubricating oil is new or unused;

2. Fail to disclose clearly and conspicuously in all advertising and sales promotional material and on each front or face panel of the container that used lubricating oil has been previously used. The front or face panel means the part of the container on which the brand name is usually featured and which is customarily exposed to the view of prospective purchasers when displayed at point of retail sales; or

3. Use the term "rerefined," or any other word or term of similar import, to describe previously used lubricating oil unless the physical and chemical contaminants acquired through previous use have been removed by a refining process.

(c) Previously used lubricating oil which has been rerefined by a refining process that has removed all the physical and chemical contaminants acquired in previous use and which meets the ASTM-SAE-API standards for fitness for its intended use is not subject to the labeling requirement of this subsection. A manufacturer of such rerefined oil shall register his product with the Department of Environmental Protection and provide an affidavit of proof that the product meets the required standards.

(3) Any product stored, sold, offered, or exposed for sale which is not permanently and conspicuously labeled as provided in this section is declared to be illegal. Any such illegal product shall be placed under written stop-sale order, directed to the owner or custodian, and held by the Department of Agriculture and Consumer Services or its representative at a place to be designated in the stop-sale order until properly labeled by the owner or custodian and released in writing by the department or its representative. If the product is not properly labeled within 30 days after the issuance of the stop-sale order, it shall be disposed of by the department or its representative to any tax-supported institution or agency of the state, if usable, or by destruction, if unusable.

(4) The attachment of stop-sale order to any such product is notice and warning to all persons whomsoever, including, but not limited to, the owner or custodian, to scrupulously refrain from moving, altering, or interfering in any manner with any such product or altering, defacing, or in any way interfering with the stop-sale order, or permitting the same to be done by another, except with the consent of the department or its representative.

(5) The violation of any of the provisions of this section is a misdemeanor, punishable under the provisions of s. 526.11.

History.—s. 1, ch. 16083, 1933; CGL 1936 Supp. 7315(2); s. 1, ch. 26883, 1951; s. 1, ch. 28114, 1953; s. 1, ch. 70-77; s. 1, ch. 70-439; s. 65, ch. 84-338; s. 460, ch. 94-356.

526.02 Proper trade name or mark to appear upon container or distributing device.—No person shall keep, expose or offer for sale, or sell any liquid fuels, lubricating oils, greases or other similar products from any container, tank, pump, or other distributing device, other than those manufactured or distributed by the manufacturer or distributor indicated by the name, trademark, symbol, sign or other distinguishing mark or device appearing upon said container, tank, pump, or other distributing device in which such products are sold, exposed or offered for sale or distributed.

History.—s. 2, ch. 16083, 1933; CGL 1936 Supp. 7315(3).

526.03 Imitating trade names or equipment under which liquid fuel is marketed; prohibition.—It is unlawful for any person to disguise or camouflage his own equipment, by imitating the design, symbol, trade name, or the equipment under which recognized brands of liquid fuels, lubricating oils, and similar products, are generally marketed.

History.—s. 3, ch. 16083, 1933; CGL 1936 Supp. 7315(4).

526.04 Sale of liquid fuel under trademark of another; prohibition.—No person shall expose or offer for sale or sell under any trademark, trade name, or name or other distinguishing mark, any liquid fuels, lubricating oils, greases, or other similar products, other than those manufactured or distributed by the manufacturer or distributor marketing such products under such trade name, trademark, or name or other distinguishing mark.

History.—s. 4, ch. 16083, 1933; CGL 1936 Supp. 7315(5).

526.05 Mixing, blending, or compounding liquid fuels of different manufacturers prohibited.—No person shall mix, blend or compound the liquid fuels, lubricating oils, greases or similar products of a manufacturer or distributor with the products of any other manufacturer or distributor, or adulterate the same, and expose, offer for sale, or sell such mixed, blended or compounded products under the trade name, trademark or name or other distinguishing mark of either of said manufacturers or distributors, or as the unadulterated products of such manufacturer or distributor; provided, however, that nothing herein shall prevent the lawful owner thereof from applying its own trademark, trade name, or symbol to any product or material.

History.—s. 5, ch. 16083, 1933; CGL 1936 Supp. 7315(6).

526.06 Mixing, blending, compounding, or adulteration of liquid fuels of same manufacturer prohibited;

sale of gasohol.—It is unlawful for any person to mix, blend, compound, or adulterate the liquid fuel, lubricating oil, grease, or similar product of a manufacturer or distributor with a liquid fuel, lubricating oil, grease, or similar product of the same manufacturer or distributor of a character or nature different from the character or nature of the liquid fuel, lubricating oil, grease, or similar product so mixed, blended, compounded, or adulterated, and expose for sale, offer for sale, or sell the same as the unadulterated product of such manufacturer or distributor or as the unadulterated product of any other manufacturer or distributor. However, nothing in this chapter shall be construed to prevent the lawful owner of such products from applying his or its own trademark, trade name, or symbol to any product or material. Alcohol-blended fuels which contain 90 percent unleaded gasoline and 10 percent ethyl alcohol of a minimum of 198 proof and a maximum 50 parts per million of acetic acid, commonly known as "gasohol," may be sold at retail service stations for use in motor vehicles, as long as the gasoline component complies with current state specifications, until the American Society for Testing and Materials approves specifications for gasohol.

History.—s. 6, ch. 16083, 1933; CGL 1936 Supp. 7315(7); s. 13, ch. 80-77.

526.07 Assisting another in illegal storage or other violation of chapter prohibited.—No person shall aid or assist any other person in violating any of the provisions of this chapter, by depositing or delivering into any tank, pump, receptacle, or other container, any liquid fuels, lubricating oils, greases or other like products, other than those intended to be stored therein, as indicated by the name of the manufacturer or distributor, or the trademark, trade name, name or other distinguishing mark of the product displayed on the container itself or on the pump or other distributing device used in connection therewith, or shall by any other means aid or assist another in the violation of any of the provisions of this chapter.

History.—s. 7, ch. 16083, 1933; CGL 1936 Supp. 7315(8).

526.08 Participation of director, officer, agent, employee, or member in violations.—If any firm, copartnership, association or corporation violates any of the provisions of this chapter, every director, officer, agent, employee or member participating in, aiding or authorizing the act or acts constituting a violation of this chapter shall be guilty of violating this chapter, and shall be subject to the punishment herein provided.

History.—s. 8, ch. 16083, 1933; CGL 1936 Supp. 7315(9).

526.09 Department to enforce law; rules and regulations.—The Department of Agriculture and Consumer Services shall enforce the provisions of this chapter. The department is authorized to adopt, promulgate, and enforce such rules and regulations not inconsistent with the provisions of this chapter as in its judgment may be necessary to the proper enforcement of this chapter.

History.—s. 11, ch. 16083, 1933; CGL 1936 Supp. 7315(12); s. 2, ch. 28114, 1953; ss. 14, 35, ch. 69-106.

526.10 Department of Legal Affairs and state attorneys to assist in enforcing law.—The Department of Legal Affairs and each state attorney shall assist in the enforcement of the provisions of this chapter upon

request of the Department of Agriculture and Consumer Services. The actual, reasonable, and necessary expenses of the Department of Legal Affairs and state attorney shall be paid in connection with the performance of additional duties imposed upon them by this chapter out of the General Inspection Trust Fund.

History.—s. 12, ch. 16083, 1933; CGL 1936 Supp. 7315(13); s. 2, ch. 61-119; ss. 11, 14, 35, ch. 69-106; s. 26, ch. 73-334.

526.11 Penalty for violations.—Any person who shall violate any of the provisions of this chapter shall, for a first offense, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and, for a second or subsequent offense, he shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 9, ch. 16083, 1933; CGL 1936 Supp. 7315(10); s. 507, ch. 71-136.

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.—ss. 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 a cash sale and a credit sale of the same grade of gasoline or 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; s. 1, ch. 82-26.

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 dispensing 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 this 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)(a) 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 parking permit as provided in s. 316.1958 or s. 320.0848 or a license plate issued pursuant to s. 320.084, s. 320.0842, s. 320.0843, or s. 320.0845 when the person to whom such permit has been issued is the operator of the vehicle and such service is requested. Such stations shall prominently display a decal no larger than 8 square inches on the front of all self-service pumps clearly stating the requirements of this subsection and the penalties applicable to violations of this subsection. The Department of Agriculture and Consumer Services shall enforce this requirement.

(b) Violation of paragraph (a) is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) All self-service equipment used to dispense gasoline shall be approved by a nationally recognized testing agency for its intended use.

(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, except for subsection (5) which shall be administered and enforced by the Department of Agriculture and Consumer Services.

History.—ss. 1, 2, 3, 4, 5, 6, ch. 74-162; s. 1, ch. 80-205; s. 1, ch. 85-323; s. 1, ch. 86-117; s. 2, ch. 89-233; s. 24, ch. 90-330; s. 69, ch. 91-220.

526.301 Short title.—This act may be cited as the "Motor Fuel Marketing Practices Act."

History.—s. 1, ch. 85-74.

526.302 Legislative findings and intent.—The Legislature finds that fair and healthy competition in the marketing of motor fuel provides maximum benefits to consumers in this state, 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 citizens of this state by prohibiting such unfair practices.

History.—s. 2, ch. 85-74.

526.303 Definitions.—As used in this act:

(1) "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.

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

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

(4) "Direct labor cost" means the personnel costs incurred at a retail outlet attributable to providing motor fuel sales at a retail outlet and includes, without limitation, the personnel costs relating to the purchase, storage, inventory, and sale of motor fuel, the maintenance of equipment, and environmental reporting and compliance, but does not include the costs of environmental cleanup or remediation. In no case shall the direct labor cost be less than the cost of one employee's salary and benefits, based upon that employee's working those hours in which the retail outlet is providing motor fuel available to the public.

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

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

(7) "Nonrefiner cost" means: the nonrefiner's invoice cost of the motor fuel, by grade, less credit card allowances, trade discounts, and rebates actually received, to which shall be added federal, state, and local taxes and inspection fees applicable to motor fuel; freight charges to the retail outlet; and direct labor costs and

the reasonable rental value of the retail outlet attributable to the sale of motor fuel by the nonrefiner. If motor fuel is sold with another item at a combined price, nonrefiner motor fuel cost shall also include the cost of the other item and the direct labor costs and the reasonable rental value of the retail outlet attributable to the retail sale of the item by the nonrefiner.

(8) "Posted terminal price" means a refiner's posted price at a terminal, 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, such refiner's 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.

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

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

(11) "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.

(12) "Relevant geographic market" means the geographic area of effective competition.

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

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

(15) "Sale" or "sell" 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.

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

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

History.—s. 3, ch. 85-74; s. 1, ch. 87-158; s. 1, ch. 90-354; s. 1, ch. 91-247.

526.304 Predatory practices unlawful; exceptions.

(1)(a) 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.

(b) It is unlawful for any nonrefiner engaged in commerce in this state to sell any grade or quality of motor fuel at a retail outlet below nonrefiner cost, where the effect is to injure competition.

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

(b) A refiner's sale below refiner cost or a nonrefiner's sale below nonrefiner cost made in good faith to meet an equally low retail price of a competitor selling motor fuel of like grade in the same relevant geographic market 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.

(3) Notwithstanding any other provision of law to the contrary, it is unlawful for a refiner, including any affiliate or agent thereof, to sell any grade of motor fuel at a retail outlet at a price that is below the price charged by that refiner to any wholesaler or dealer under written contract for the like grade and quality of motor fuel, to the extent that the wholesaler or dealer resells in the relevant geographic market where the refiner's retail price is in effect.

History.—s. 4, ch. 85-74; s. 2, ch. 87-158; s. 2, ch. 91-247.

526.305 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 relevant geographic market 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, and within the same relevant geographic market as the purchaser;

where the effect is to injure competition.

(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) Subject to the limitations of s. 526.304(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.

(4) It is unlawful for a refiner to sell any grade of motor fuel to a wholesaler under written contract at a price, after adding federal, state, and local taxes and inspection fees, which is higher than the net price, after deducting all allowances, rebates, and discounts, at which the refiner contemporaneously sells motor fuel of like grade and quality to a dealer in competition with any retail outlet supplied by such wholesaler, where the effect is to injure competition; except to the extent that the difference in price is attributable to a rebate, rent subsidy, or other concession which is offered to the wholesaler on proportionately equal or comparable terms.

(5) An isolated, inadvertent incident involving the activity prohibited pursuant to subsection (1) or subsection (4) shall not be a violation of this act.

History.—s. 5, ch. 85-74; s. 70, ch. 87-225; s. 3, ch. 91-247.

526.306 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.

History.—s. 6, ch. 85-74.

526.307 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.

History.—s. 7, ch. 85-74.

526.308 Certain rebates unlawful.—It is unlawful for any seller to offer or give a rebate, rent subsidy, or concession of any kind in connection, either directly or indirectly, with the sale of motor fuel for resale to a person when the seller does not provide, on proportionately equal terms, the same rebate, rent subsidy, or concession, or the equivalent of the rebate, rent subsidy, or concession, to all persons purchasing for resale in the relevant geographic market, where the effect is to injure competition. If a wholesaler receives a rebate, rent subsidy, or concession, the wholesaler must offer the rebate, rent subsidy, or concession, or the equivalent of the rebate, rent subsidy, or concession, to any retail outlet supplied by such wholesaler on proportionately equal terms. However, a rebate, rent subsidy, or concession made in good faith to meet the same or a comparable rebate, rent subsidy, or concession of a competitor shall not be a violation of this act, provided that a refiner who sells motor fuel to any wholesaler or dealer under written contract for resale in the relevant geographic market shall offer the rebate, rent subsidy, or concession, or the equivalent of such rebate, rent subsidy, or concession, to all other similarly situated wholesalers and dealers on proportionately equal terms.

History.—s. 8, ch. 85-74; s. 4, ch. 91-247.

526.309 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.

History.—s. 9, ch. 85-74.

526.311 Enforcement; civil penalties; injunctive relief.—

(1) Any person who knowingly violates this act shall be subject to a civil penalty not to exceed \$10,000 per violation. Each day that a violation of this act occurs shall be considered a separate violation, but no civil penalty shall exceed \$250,000. Any such person shall also be liable for attorney's fees and shall be subject to an action for injunctive relief.

(2) The Department of Agriculture and Consumer Services shall investigate any complaints regarding violations of this act and may request in writing the production of documents and records as part of its investigation of a complaint. Trade secrets, as defined in s. 812.081, and proprietary confidential business information contained in the documents or records received by the department pursuant to a written request or a Department of Legal Affairs subpoena are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. If the person upon whom such request was made fails to produce the documents or records within 30 days after the date of the request, the Department of Agriculture and Consumer Services may request that the Department of Legal

Affairs issue and serve subpoenas to compel the production of such documents and records. If any person shall refuse to comply with a subpoena issued under this section, the Department of Legal Affairs may petition a court of competent jurisdiction to enforce the subpoena and assess such sanctions as the court may direct. Refiners shall afford the Department of Agriculture and Consumer Services reasonable access to the refiners' posted terminal price. 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 additional relevant records or testimony if it determines that the Department of Agriculture and Consumer Services' investigation shows a violation has likely occurred. Any records, documents, papers, maps, books, tapes, photographs, files, sound recordings, or other business material, regardless of form or characteristics, obtained by a Department of Legal Affairs subpoena are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution while the investigation is pending. At the conclusion of an investigation, any matter determined by the Department of Legal Affairs or by a judicial or administrative body, federal or state, to be a trade secret or proprietary confidential business information held by the department pursuant to such investigation shall be considered confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such materials may be used in any administrative or judicial proceeding so long as the confidential or proprietary nature of the material is maintained. These exemptions are subject to the Open Government Sunset Review Act in accordance with 's. 119.14.

(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 shared equally between the Department of Legal Affairs Trust Fund and the General Inspection Trust Fund.

History.—s. 10, ch. 85-74; s. 3, ch. 87-158; s. 39, ch. 91-220; s. 5, ch. 91-247; s. 1, ch. 95-124.

Note.—

A. Repealed by s. 1, ch. 95-217.

B. Section 4, ch. 95-217, provides that "[n]otwithstanding any provision of law to the contrary, exemptions from chapter 119, Florida Statutes, or chapter 286, Florida Statutes, which are prescribed by law and are specifically made subject to the Open Government Sunset Review Act in accordance with section 119.14, Florida Statutes, are not subject to review under that act, and are not abrogated by the operation of that act, after October 1, 1995."

526.312 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 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. Upon proper application by the plaintiff, the court shall grant preliminary injunctive relief if the plaintiff shows:

(a) That he is a proper person to seek the relief requested.

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

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

(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.

History.—s. 11, ch. 85-74; s. 6, ch. 91-247.

526.313 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 reasonably have been discovered, except that a private action brought under s. 526.305 for unlawful price discrimination shall be brought within 2 years from the date the alleged violation occurred or should reasonably have been discovered.

History.—s. 12, ch. 85-74.

526.3135 Reports by Division of Consumer Services.—The Division of Consumer Services is directed to compile a report pursuant to s. 570.544 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. 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.

History.—s. 15, ch. 85-74; s. 4, ch. 87-158.

PART II

SALE OF BRAKE FLUID

- 526.50 Definition of terms.
- 526.51 Registration; renewal and fees; departmental expenses; cancellation or refusal to issue or renew.
- 526.52 Specifications; adulteration and misbranding.
- 526.53 Enforcement; inspection and analysis, stop-sale and disposition, regulations.
- 526.54 Certified copy of analysis as evidence.
- 526.55 Violation and penalties.
- 526.56 Injunction against violations.

526.50 Definition of terms.—As used in this part:

(1) "Brake fluid" means the fluid intended for use as the liquid medium through which force is transmitted in the hydraulic brake system of a vehicle operated upon the highways.

(2) "Department" means the Department of Agriculture and Consumer Services.

(3) "Sell" includes give, distribute, barter, exchange, trade, keep for sale, offer for sale or expose for sale, in any of their variant forms.

(4) "Labeling" includes all written, printed or graphic representations, in any form whatsoever, imprinted upon or affixed to any container of brake fluid.

(5) "Container" means any receptacle in which brake fluid is immediately contained when sold, but does not mean a carton or wrapping in which a number of such receptacles are shipped or stored or a tank car or truck.

(6) "Permit year" means a period of 12 months commencing July 1 and ending on the next succeeding June 30.

(7) "Registrant" means any manufacturer, packer, distributor, seller, or other person who has registered a brake fluid with the department.

History.—s. 1, ch. 61-390; ss. 14, 35, ch. 69-106; s. 79, ch. 92-291.

526.51 Registration; renewal and fees; departmental expenses; cancellation or refusal to issue or renew.

(1)(a) Application for registration of each brand of brake fluid shall be made on forms to be supplied by the department. The applicant shall give his name and address, the brand name of the brake fluid, state that he owns said brand name and has complete control over the product sold thereunder in Florida and name and address of resident agent in Florida. Application shall be accompanied by a certified report of an independent testing laboratory, setting forth the analysis of said brake fluid which shall show its quality to be not less than the specifications established by the department for brake fluids. A sample of not less than one-half gallon of brake fluid shall be submitted, in a container or containers, labeled exactly as containers of brake fluid will be labeled when sold, and such sample and container shall be analyzed and inspected by the Division of Standards in order that compliance with the department's specifications and labeling requirements may be verified. Upon approval of such application, the department shall register the brand name of such brake fluid and issue to the applicant a permit authorizing the registrant to sell such brake fluid in this state during the permit year specified in the permit.

(b) Each applicant shall pay a fee of \$100 with each application. A permit may be renewed by application to the department, accompanied by a renewal fee of \$50 on or before the last day of the permit year immediately preceding the permit year for which application is made for renewal of registration. To any fee not paid when due, there shall accrue a penalty of \$25 which shall be added to the renewal fee. Renewals will be accepted only on brake fluids which have no change in formula, composition or brand name. Any change in formula, composition or brand name of any brake fluid shall constitute a new product which shall be registered in accordance with the provisions of this part.

(2) All fees collected under the provisions of this section shall be credited to the General Inspection Trust Fund of the department and all expenses incurred in the enforcement of this part shall be paid from said fund.

(3) The department may cancel, refuse to issue or refuse to renew any registration and permit after due notice and opportunity to be heard if it finds that the brake fluid is adulterated or misbranded or that the registrant has failed to comply with the provisions of this part or the rules and regulations promulgated thereunder.

History.—s. 1, ch. 61-390; s. 2, ch. 61-119.

526.52 Specifications; adulteration and misbranding.—

(1) The department shall establish specifications for brake fluid which shall promote the public safety in the operation of automotive vehicles and may amend such specifications by regulation, but in no event shall the specifications for brake fluid fall below the minimum specifications established by the Society of Automotive Engineers for brake fluid, heavy-duty-type.

(2) A brake fluid is deemed to be adulterated if its contents have been changed after registration, without reregistration, or its quality or characteristics fall below the specification for brake fluid established by the department.

(3) Brake fluid is deemed to be misbranded:

(a) If its container does not bear on its side or top a label on which is printed the name and place of business of the registrant of the product, the words "brake fluid," and a statement that the product therein equals or exceeds the minimum specification of the Society of Automotive Engineers for brake fluid, heavy-duty-type. By regulation the department may require that the duty-type classification appear on the label.

(b) If the container does not bear on its side or top an accurate statement of the quantity of the contents in terms of liquid measure.

(c) If the labeling on the container is false or misleading in any particular.

(4) The words and letters required by this section shall appear on the label in legible type, in English.

History.—s. 1, ch. 61-390.

526.53 Enforcement; inspection and analysis, stop-sale and disposition, regulations.—

(1) The department shall enforce the provisions of this part through the Division of Standards, and may sample, inspect, analyze, and test any brake fluid manufactured, packed, or sold within this state. The department shall have free access during business hours to all premises, buildings, vehicles, cars, or vessels used in the manufacture, packing, storage, sale, or transportation of brake fluid, and may open any box, carton, parcel, or container of brake fluid and take samples for inspection and analysis or for evidence.

(2)(a) When any brake fluid is sold in violation of any of the provisions of this part, all such brake fluid of the same brand name on the same premises on which the violation occurred shall be placed under a stop-sale order by the department. The department shall withdraw its stop-sale order upon the removal of the violation or upon voluntary destruction of the product, or

other disposal approved by the department, under the supervision of the department.

(b) In addition to being subject to the stop-sale procedures above, unregistered brake fluid shall be held by the department or its representative, at a place to be designated in the stop-sale order, until properly registered and released in writing by the department or its representative. If application has not been made for registration of such product within 30 days after issue of the stop-sale order, such product shall be disposed of by the department to any tax-supported institution or agency of the state if the brake fluid meets legal specifications or by other disposal authorized by rule of the department if it fails to meet legal specifications.

(3) Any brake fluid which becomes the subject of a court proceeding shall be disposed of by order of the court.

(4) The department may adopt and enforce such rules as are necessary to carry out the provisions of this part.

(5) No labeling relating to any brake fluid shall contain any statement that the brake fluid has been approved by the department. However, a statement that the brake fluid has been registered by the department may be included in such labeling.

History.—s. 1, ch. 61-390; s. 1, ch. 71-118; s. 80, ch. 92-291.

526.54 Certified copy of analysis as evidence.—A certified copy of the analysis made by the department shall be admitted as prima facie evidence in any court proceeding involving the inspection, analysis, standards or specifications of brake fluid as defined and covered by this part.

History.—s. 1, ch. 61-390.

526.55 Violation and penalties.—It is unlawful:

(1) To sell any brake fluid that is adulterated or misbranded, not registered or on which a permit has not been issued.

(2) For anyone to remove any stop-sale order placed on a product by the department, or any product upon which a stop-sale order has been placed.

(3) Any person who violates any of the provisions of this part or any rule or regulation promulgated thereunder shall, for the first offense, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and, for a second or subsequent offense, he shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 61-390; s. 509, ch. 71-136.

526.56 Injunction against violations.—In addition to the remedies provided in this law, and notwithstanding the existence of any adequate remedy at law, the department is hereby 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 law or for failing or refusing to comply with the requirements of this law or any rule or regulation duly

promulgated as in this law authorized, such injunction to be issued without bond.

History.—s. 1, ch. 61-390; ss. 14, 35, ch. 69-106.