

Bill No. CS for SB 2074, 1st Eng.

Amendment No. ____

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11 Senators Laurent and Carlton moved the following amendment:

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13 **Senate Amendment (with title amendment)**

14 On page 18, between lines 26 and 27,

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16 insert:

17 Section 9. Subsection (3) of section 487.041, Florida
18 Statutes, is amended to read:

19 487.041 Registration.--

20 (3) The department shall adopt rules governing the
21 procedures for pesticide registration and for the review of
22 data submitted by an applicant for registration of a
23 pesticide. The department shall determine whether a pesticide
24 should be registered, registered with conditions, or tested
25 under field conditions in this state. The department shall
26 determine that all requests for pesticide registrations meet
27 the requirements of current state and federal law. The
28 department, whenever it deems it necessary in the
29 administration of this part, may require the manufacturer or
30 registrant to submit the complete formula, quantities shipped
31 into or manufactured in the state for distribution and sale,

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1 evidence of the efficacy and the safety of any pesticide, and
2 other relevant data. The department may review and evaluate a
3 registered pesticide if new information is made available
4 which indicates that use of the pesticide has caused an
5 unreasonable adverse effect on public health or the
6 environment. Such review shall be conducted upon the request
7 of the Secretary of the Department of Health in the event of
8 an unreasonable adverse effect on public health or the
9 Secretary of the Department of Environmental Protection in the
10 event of an unreasonable adverse effect on the environment.
11 Such review may result in modifications, revocation,
12 cancellation, or suspension of a pesticide registration.The
13 department, for reasons of adulteration, misbranding, or other
14 good cause, may refuse or revoke the registration of any
15 pesticide, after notice to the applicant or registrant giving
16 the reason for the decision. The applicant may then request a
17 hearing, pursuant to chapter 120, on the intention of the
18 department to refuse or revoke registration, and, upon his or
19 her failure to do so, the refusal or revocation shall become
20 final without further procedure. In no event shall
21 registration of a pesticide be construed as a defense for the
22 commission of any offense prohibited under this part.

23 Section 10. Subsection (6) is added to section
24 487.081, Florida Statutes, to read:

25 487.081 Exemptions.--

26 (6) The Department of Environmental Protection is not
27 authorized to institute proceedings against any property owner
28 or leaseholder of property under the provisions of s.
29 376.307(5) to recover any costs or damages associated with
30 pesticide contamination of soil or water, or the evaluation,
31 assessment, or remediation of pesticide contamination of soil

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1 or water, including sampling, analysis, and restoration of
2 soil or potable water supplies, subject to the following
3 conditions:

4 (a) The pesticide contamination of soil or water is
5 determined to be the result of the use of pesticides by the
6 property owner or leaseholder, in accordance with state and
7 federal law, applicable registered labels, and rules on
8 property classified as agricultural land pursuant to s.
9 193.461;

10 (b) The property owner or leaseholder maintains
11 records of such pesticide applications and such records are
12 provided to the department upon request;

13 (c) In the event of pesticide contamination of soil or
14 water, the department, upon request, shall make such records
15 available to the Department of Environmental Protection;

16 (d) This subsection does not limit regulatory
17 authority under a federally delegated or approved program; and

18 (e) This subsection is remedial in nature and shall
19 apply retroactively.

20
21 The department, in consultation with the Secretary of the
22 Department of Environmental Protection, may adopt rules
23 prescribing the format, content, and retention time for
24 records to be maintained under this subsection.

25 Section 11. Subsections (2) and (3) of section
26 526.311, Florida Statutes, are amended to read:

27 526.311 Enforcement; civil penalties; injunctive
28 relief.--

29 (2) The Department of Agriculture and Consumer
30 Services shall investigate any complaints regarding violations
31 of this act and may request in writing the production of

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1 documents and records as part of its investigation of a
2 complaint. ~~Trade secrets, as defined in s. 812.081, and~~
3 ~~proprietary confidential business information contained in the~~
4 ~~documents or records received by the department pursuant to a~~
5 ~~written request or a Department of Legal Affairs subpoena are~~
6 ~~confidential and exempt from the provisions of s. 119.07(1)~~
7 ~~and s. 24(a), Art. I of the State Constitution.~~ If the person
8 upon whom such request was made fails to produce the documents
9 or records within 30 days after the date of the request, the
10 department, through the department's office of general
11 counsel, may of Agriculture and Consumer Services may request
12 that the Department of Legal Affairs issue and serve a
13 subpoena subpoenas to compel the production of such documents
14 and records. If any person shall refuse to comply with a
15 subpoena issued under this section, the department ~~of Legal~~
16 ~~Affairs~~ may petition a court of competent jurisdiction to
17 enforce the subpoena and assess such sanctions as the court
18 may direct. Refiners shall afford the department ~~of~~
19 ~~Agriculture and Consumer Services~~ reasonable access to the
20 refiners' posted terminal price. ~~After completion of an~~
21 ~~investigation, the Department of Agriculture and Consumer~~
22 ~~Services shall give the results of its investigation to the~~
23 ~~Department of Legal Affairs. The Department of Legal Affairs~~
24 ~~may then subpoena additional relevant records or testimony if~~
25 ~~it determines that the Department of Agriculture and Consumer~~
26 ~~Services' investigation shows a violation has likely occurred.~~
27 Any records, documents, papers, maps, books, tapes,
28 photographs, files, sound recordings, or other business
29 material, regardless of form or characteristics, obtained by
30 the a department of Legal Affairs subpoena are confidential
31 and exempt from the provisions of s. 119.07(1) and s. 24(a),

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1 Art. I of the State Constitution while the investigation is
2 pending. At the conclusion of an investigation, any matter
3 determined by the department ~~of Legal Affairs~~ or by a judicial
4 or administrative body, federal or state, to be a trade secret
5 or proprietary confidential business information held by the
6 department pursuant to such investigation shall be considered
7 confidential and exempt from the provisions of s. 119.07(1)
8 and s. 24(a), Art. I of the State Constitution. Such
9 materials may be used in any administrative or judicial
10 proceeding so long as the confidential or proprietary nature
11 of the material is maintained.

12 (3) The civil penalty imposed under this section may
13 be assessed and recovered in a civil action brought by the
14 department ~~of Legal Affairs~~ in any court of competent
15 jurisdiction. If the department ~~of Legal Affairs~~ prevails in a
16 civil action, the court may award it reasonable attorneys'
17 fees as it deems appropriate. All funds recovered by the
18 department ~~of Legal Affairs~~ shall be deposited into ~~shared~~
19 ~~equally between the Department of Legal Affairs Trust Fund and~~
20 the General Inspection Trust Fund.

21 Section 12. Subsection (2) of section 526.312, Florida
22 Statutes, is amended to read:

23 526.312 Enforcement; private actions; injunctive
24 relief.--

25 (2) On the application for a temporary restraining
26 order or a preliminary injunction, the court, in its
27 discretion having due regard for the public interest, may
28 require or dispense with the requirement of a bond, with or
29 without surety, as conditions and circumstances may require.
30 If a bond is required, the amount shall not be greater than
31 \$50,000. Upon proper application by the plaintiff, the court

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1 shall grant preliminary injunctive relief if the plaintiff
2 shows:

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

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

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

16 Section 13. Section 526.313, Florida Statutes, is
17 amended to read:

18 526.313 Limitations period for actions.--Any action
19 brought by the department ~~of Legal Affairs~~ shall be brought
20 within 2 years after the alleged violation occurred or should
21 reasonably have been discovered. Any action brought by any
22 other person shall be brought within 1 year after the alleged
23 violation occurred or should reasonably have been discovered,
24 except that a private action brought under s. 526.305 for
25 unlawful price discrimination shall be brought within 2 years
26 from the date the alleged violation occurred or should
27 reasonably have been discovered.

28 Section 14. Section 526.3135, Florida Statutes, is
29 amended to read:

30 526.3135 Reports by the Division of Standards
31 ~~Department of Agriculture and Consumer Services~~.--The Division

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1 ~~of Standards Department of Agriculture and Consumer Services~~
 2 is directed to compile a report pursuant to s. 570.544 of all
 3 complaints received by the Department of Agriculture and
 4 Consumer Services pursuant to this act. Such report shall
 5 contain at least the information required by s.
 6 570.544(6)(b)2.-4. and shall be presented to the Speaker of
 7 the House of Representatives and the President of the Senate
 8 no later than January 1 of each year.

9 Section 15. There is appropriated the sum of \$100,000
 10 from recurring general revenue and two positions are
 11 authorized to the Department of Agriculture and Consumer
 12 Services to implement sections 11-14 of this act.

13
 14 (Redesignate subsequent sections.)

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 16
 17 ===== T I T L E A M E N D M E N T =====

18 And the title is amended as follows:

19 On page 2, line 24, after the semicolon,

20
 21 insert:

22 amending s. 487.041, F.S.; authorizing the
 23 department to review and evaluate registered
 24 pesticides if new information is made available
 25 indicating adverse effects on public health or
 26 environment; amending s. 487.081, F.S.; waiving
 27 liability for pesticide contamination when
 28 pesticides are used in accordance with state
 29 and federal law; providing for inspection of
 30 records; providing rulemaking authority;
 31 providing retroactive application; amending s.

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1 526.311, F.S.; revising enforcement provisions;
2 transferring from the Department of Legal
3 Affairs to the Department of Agriculture and
4 Consumer Services responsibilities as the lead
5 agency to enforce the Motor Fuel Marketing
6 Practices Act; revising disposition of funds
7 collected in civil actions; amending ss.
8 526.312, 526.313, F.S., to conform; amending s.
9 526.3135, F.S.; specifying certain required
10 reporting by the Division of Standards of the
11 Department of Agriculture and Consumer
12 Services; providing an appropriation;
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