

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Ogles, Sembler, Bitner, Brown, Chestnut and Goodlette, offered the following:

Amendment (with title amendment)

On page 10, line 17 of the bill

insert:

Section 9. Subsections (2) and (3) of section 526.311, Florida Statutes, are amended to read:

526.311 Enforcement; civil penalties; 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

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

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1 and s. 24(a), Art. I of the State Constitution. Such
2 materials may be used in any administrative or judicial
3 proceeding so long as the confidential or proprietary nature
4 of the material is maintained.

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

14 Section 10. Subsection (2) of section 526.312, Florida
15 Statutes, is amended to read:

16 526.312 Enforcement; private actions; injunctive
17 relief.--

18 (2) On the application for a temporary restraining
19 order or a preliminary injunction, the court, in its
20 discretion having due regard for the public interest, may
21 require or dispense with the requirement of a bond, with or
22 without surety, as conditions and circumstances may require.
23 If a bond is required, the amount shall not be greater than
24 \$50,000. Upon proper application by the plaintiff, the court
25 shall grant preliminary injunctive relief if the plaintiff
26 shows:

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

29 (b) There exist sufficiently serious questions going
30 to the merits to make such questions a fair ground for
31 litigation; and the court determines, on balance, the

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1 hardships imposed on the defendant and the public interest by
2 the issuance of such preliminary injunctive relief will be
3 less than the hardship which would be imposed on the plaintiff
4 if such preliminary injunctive relief were not granted.

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

9 Section 11. Section 526.313, Florida Statutes, is
10 amended to read:

11 526.313 Limitations period for actions.--Any action
12 brought by the department of ~~Legal Affairs~~ shall be brought
13 within 2 years after the alleged violation occurred or should
14 reasonably have been discovered. Any action brought by any
15 other person shall be brought within 1 year after the alleged
16 violation occurred or should reasonably have been discovered,
17 except that a private action brought under s. 526.305 for
18 unlawful price discrimination shall be brought within 2 years
19 from the date the alleged violation occurred or should
20 reasonably have been discovered.

21 Section 12. Section 526.3135, Florida Statutes, is
22 amended to read:

23 526.3135 Reports by the Division of Standards
24 ~~Department of Agriculture and Consumer Services~~--The Division
25 of Standards ~~Department of Agriculture and Consumer Services~~
26 is directed to compile a report pursuant to s. 570.544 of all
27 complaints received by the Department of Agriculture and
28 Consumer Services pursuant to this act. Such report shall
29 contain at least the information required by s.
30 570.544(6)(b)2.-4. and shall be presented to the Speaker of
31 the House of Representatives and the President of the Senate

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1 no later than January 1 of each year.

2 Section 13. There is hereby appropriated \$100,000 from
3 the General Revenue Fund and two full-time equivalent
4 positions to the Department of Agriculture and Consumer
5 Services to implement the provisions of Chapter 526, Part I,
6 F.S.

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8
9 ===== T I T L E A M E N D M E N T =====

10 And the title is amended as follows:

11 On page 1, line 31 after the semicolon

12
13 insert:

14 amending s. 526.311, F.S.; revising enforcement
15 provisions; transferring from the Department of
16 Legal Affairs to the Department of Agriculture
17 and Consumer Services responsibilities as the
18 lead agency to enforce the Motor Fuel Marketing
19 Practices Act; revising disposition of funds
20 collected in civil actions; amending ss.
21 526.312 and 526.313, F.S., to conform; amending
22 s. 526.3135, F.S.; specifying certain required
23 reporting by the Division of Standards of the
24 Department of Agriculture and Consumer
25 Services; providing an appropriation;

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