

By Senator Bronson

18-833-00

1 A bill to be entitled
 2 An act relating to the Motor Fuel Marketing
 3 Practices Act; amending s. 526.311, F.S.;
 4 revising enforcement provisions; transferring
 5 the authority to bring a civil action from the
 6 Department of Legal Affairs to the Department
 7 of Agriculture and Consumer Services; revising
 8 the disposition of funds collected in a civil
 9 action; amending ss. 526.312, 526.313, F.S.;
 10 transferring duties to the Department of
 11 Agriculture and Consumer Services; amending s.
 12 526.3135, F.S.; providing for the Division of
 13 Standards to compile certain reports; providing
 14 an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

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 18 Section 1. Subsections (2) and (3) of section 526.311,
 19 Florida Statutes, are amended to read:

20 526.311 Enforcement; civil penalties; injunctive
 21 relief.--

22 (2) The Department of Agriculture and Consumer
 23 Services shall investigate any complaints regarding violations
 24 of this act and may request in writing the production of
 25 documents and records as part of its investigation of a
 26 complaint. ~~Trade secrets, as defined in s. 812.081, and~~
 27 ~~proprietary confidential business information contained in the~~
 28 ~~documents or records received by the department pursuant to a~~
 29 ~~written request or a Department of Legal Affairs subpoena are~~
 30 ~~confidential and exempt from the provisions of s. 119.07(1)~~
 31 ~~and s. 24(a), Art. I of the State Constitution.~~If the person

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 its office of general counsel may of
4 ~~Agriculture and Consumer Services may request that the~~
5 ~~Department of Legal Affairs issue and serve a subpoena~~
6 subpoenas to compel the production of such documents and
7 records. If any person refuses ~~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 directs ~~may direct~~. Refiners must ~~shall~~ afford the department
12 ~~of 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)

1 and s. 24(a), Art. I of the State Constitution. Such
2 materials may be used in any administrative or judicial
3 proceeding, but so long as the confidential or proprietary
4 nature of the material must be ~~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 in shared
12 ~~equally between the Department of Legal Affairs Trust Fund and~~
13 the General Inspection Trust Fund.

14 Section 2. 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 must ~~shall~~ not be greater
24 than \$50,000. Upon proper application by the plaintiff, the
25 court shall grant preliminary injunctive relief if the
26 plaintiff 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, that the

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 that ~~which~~ would be imposed on the
4 plaintiff if such preliminary injunctive relief were not
5 granted.

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

11 Section 3. Section 526.313, Florida Statutes, is
12 amended to read:

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

24 Section 4. Section 526.3135, Florida Statutes, is
25 amended to read:

26 526.3135 Reports by the Division of Standards
27 ~~Department of Agriculture and Consumer Services.~~--The Division
28 of Standards shall ~~Department of Agriculture and Consumer~~
29 ~~Services is directed to~~ compile a report pursuant to s.
30 570.544 of all complaints received by the Department of
31 Agriculture and Consumer Services under ~~pursuant to~~ this act.

1 The ~~Such~~ report must ~~shall~~ contain at least the information
2 required by s. 570.544(6)(b)2.-4. and must ~~shall~~ be presented
3 to the Speaker of the House of Representatives and the
4 President of the Senate no later than January 1 of each year.

5 Section 5. This act shall take effect upon becoming a
6 law.

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9 SENATE SUMMARY

10 Revises provisions of the Motor Fuel Marketing Practices
11 Act. Transfers the authority to bring a civil action from
12 the Department of Legal Affairs to the Department of
13 Agriculture and Consumer Services. Provides that all
14 funds collected in a civil action are to be deposited in
15 the General Inspection Trust Fund. Transfers other duties
16 to the Department of Agriculture and Consumer Services.
17 Provides for the Division of Standards to compile annual
18 reports of complaints received by the department under
19 the Motor Fuel Marketing Practices Act.
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