

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

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

Representative(s) Ogles and Brown offered the following:

Amendment (with title amendment)

On page 2, line 27 of the bill

insert:

Section 1. 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 upon whom such request was made fails to produce the documents

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

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1 materials may be used in any administrative or judicial
2 proceeding so long as the confidential or proprietary nature
3 of the material is maintained.

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

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

15 526.312 Enforcement; private actions; injunctive
16 relief.--

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

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

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

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1 the issuance of such preliminary injunctive relief will be
2 less than the hardship which would be imposed on the plaintiff
3 if such preliminary injunctive relief were not granted.

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

8 Section 3. Section 526.313, Florida Statutes, is
9 amended to read:

10 526.313 Limitations period for actions.--Any action
11 brought by the department ~~of Legal Affairs~~ shall be brought
12 within 2 years after the alleged violation occurred or should
13 reasonably have been discovered. Any action brought by any
14 other person shall be brought within 1 year after the alleged
15 violation occurred or should reasonably have been discovered,
16 except that a private action brought under s. 526.305 for
17 unlawful price discrimination shall be brought within 2 years
18 from the date the alleged violation occurred or should
19 reasonably have been discovered.

20 Section 4. Section 526.3135, Florida Statutes, is
21 amended to read:

22 526.3135 Reports by the Division of Standards
23 ~~Department of Agriculture and Consumer Services~~--The Division
24 of Standards ~~Department of Agriculture and Consumer Services~~
25 is directed to compile a report pursuant to s. 570.544 of all
26 complaints received by the Department of Agriculture and
27 Consumer Services pursuant to this act. Such report shall
28 contain at least the information required by s.
29 570.544(6)(b)2.-4. and shall be presented to the Speaker of
30 the House of Representatives and the President of the Senate
31 no later than January 1 of each year.

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 1, line 3 after the word "gas"

4

5 insert:

6 and motor fuel; amending s. 526.311, F.S.;

7 revising enforcement provisions; transferring

8 from the Department of Legal Affairs to the

9 Department of Agriculture and Consumer Services

10 responsibilities as the lead agency to enforce

11 the Motor Fuel Marketing Practices Act;

12 revising disposition of funds collected in

13 civil actions; amending ss. 526.312 and

14 526.313, F.S., to conform; amending s.

15 526.3135, F.S.; specifying certain required

16 reporting by the Division of Standards of the

17 Department of Agriculture and Consumer Services

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