

Bill No. CS for CS for SB 1904

Amendment No. \_\_\_\_

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

**Senate Amendment (with title amendment)**

On page 19, between lines 24 and 25,

insert:

Section 21. 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 22. 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.

4  
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 23. 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 24. 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           Section 25. There is appropriated the sum of \$100,000  
2 from recurring general revenue and two positions are  
3 authorized to the Department of Agriculture and Consumer  
4 Services to implement sections 21-24 of this act.

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6 (Redesignate subsequent sections.)

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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 3, line 10, 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, 526.313, F.S., to conform; amending s.  
22           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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