



**SENATE AMENDMENT 7,
TO 1995 ASSEMBLY BILL 150**

June 27, 1995 – Offered by Senators CHVALA, ANDREA, BRESKE, BURKE, CLAUSING, DECKER, GEORGE, JAUCH, MOEN, MOORE, PLEWA, C. POTTER, RISSER, SHIBILSKI and WINEKE.

- 1 At the locations indicated, amend the engrossed bill as follows:
- 2 **1.** Page 47, line 20: delete the material beginning with that line and ending
with page 48, line 3.
- 3 **2.** Page 175, line 16: decrease the dollar amount for fiscal year 1996–97 by
\$2,204,100 for the purpose of decreasing the authorized FTE positions for the
department of agriculture, trade and consumer protection by 43.8 GPR positions on
July 1, 1996, for the performance of consumer protection investigation and
enforcement functions, and adjust the net appropriation totals accordingly.
- 4 **3.** Page 176, line 8: decrease the dollar amount for fiscal year 1996–97 by
\$94,200 to decrease funding for unfair sales act enforcement functions being
transferred to the department of justice.
- 5 **4.** Page 295, line 12: increase the dollar amount for fiscal year 1996–97 by
\$1,687,078 for the purpose of increasing the authorized FTE positions for the
department of justice by 32.6 GPR positions on July 1, 1996, for the performance of
consumer protection investigation and enforcement functions.

1 100.18 (11) (c) 1. Whenever the department of justice has reason to believe that
2 a person is in possession, custody or control of any information or documentary
3 material relevant to the enforcement of this section it may require that person to
4 submit a statement or report, under oath or otherwise, as to the facts and
5 circumstances concerning any activity in the course of trade or commerce; examine
6 under oath that person with respect to any activity in the course of trade or
7 commerce; and execute in writing and cause to be served upon such person a civil
8 investigative demand requiring the person to produce any relevant documentary
9 material for inspection and copying.

10 **SECTION 3601k.** 100.18 (11) (c) 2. of the statutes is amended to read:

11 100.18 (11) (c) 2. The department of justice, in exercising powers under this
12 subsection, may issue subpoenas, administer oaths and conduct hearings to aid in
13 any investigation.

14 **SECTION 3601L.** 100.18 (11) (c) 3. of the statutes is amended to read:

15 100.18 (11) (c) 3. Service of any notice by the department of justice requiring
16 a person to file a statement or report, or service of a subpoena upon a person, or
17 service of a civil investigative demand shall be made in compliance with the rules of
18 civil procedure of this state.

19 **SECTION 3601mm.** 100.18 (11) (c) 4. of the statutes is amended to read:

20 100.18 (11) (c) 4. If a person fails to file any statement or report, or fails to
21 comply with any civil investigative demand, or fails to obey any subpoena issued by
22 the department of justice, such person may be coerced as provided in s. 885.12, except
23 that no person shall be required to furnish any testimony or evidence under this
24 subsection which might tend to incriminate the person.

25 **SECTION 3601n.** 100.18 (11) (d) of the statutes is amended to read:

1 100.18 (11) (d) ~~The department or the~~ department of justice or any district
2 attorney, upon informing the department of justice, may commence an action in
3 circuit court in the name of the state to restrain by temporary or permanent
4 injunction any violation of this section. The court may in its discretion, prior to entry
5 of final judgment, make such orders or judgments as may be necessary to restore to
6 any person any pecuniary loss suffered because of the acts or practices involved in
7 the action, provided proof thereof is submitted to the satisfaction of the court. The
8 department of justice may subpoena persons, and require the production of books
9 and other documents, ~~and may request the department to exercise its authority~~
10 ~~under par. (e) to aid in the investigation of alleged violations of this section.~~

11 **SECTION 3601nm.** 100.18 (11) (e) of the statutes is amended to read:

12 100.18 (11) (e) In lieu of instituting or continuing an action pursuant to this
13 section, ~~the department or the~~ department of justice may accept a written assurance
14 of discontinuance of any act or practice alleged to be a violation of this section from
15 the person who has engaged in such act or practice. The acceptance of such assurance
16 by ~~either the department or the~~ department of justice shall be deemed acceptance by
17 the other state officials enumerated in par. (d) if the terms of the assurance so
18 provide. An assurance entered into pursuant to this section shall not be considered
19 evidence of a violation of this section, provided that violation of such an assurance
20 shall be treated as a violation of this section, and shall be subjected to all the
21 penalties and remedies provided therefor.”.

22 **10.** [Page 1243, line 3](#): delete lines 3 to 19.

23 **11.** [Page 1243, line 20](#): before that line insert:

24 **“SECTION 3601u.** 100.20 (2) of the statutes is amended to read:

1 100.20 (2) The department of justice, after public hearing, may issue general
2 orders forbidding methods of competition in business or trade practices in business
3 which are determined by the department of justice to be unfair. The department of
4 justice, after public hearing, may issue general orders prescribing methods of
5 competition in business or trade practices in business which are determined by the
6 department of justice to be fair.

7 **SECTION 3601v.** 100.20 (3) of the statutes is amended to read:

8 100.20 (3) The department of justice, after public hearing, may issue a special
9 order against any person, enjoining such person from employing any method of
10 competition in business or trade practice in business which is determined by the
11 department of justice to be unfair or from providing service in violation of sub. (1t).
12 The department of justice, after public hearing, may issue a special order against any
13 person, requiring such person to employ the method of competition in business or
14 trade practice in business which is determined by the department of justice to be fair.

15 **SECTION 3601w.** 100.20 (4) of the statutes is repealed.

16 **SECTION 3601x.** 100.20 (6) of the statutes is amended to read:

17 100.20 (6) The department of justice may commence an action in circuit court
18 in the name of the state to restrain by temporary or permanent injunction the
19 violation of any order issued under this section. The court may in its discretion, prior
20 to entry of final judgment make such orders or judgments as may be necessary to
21 restore to any person any pecuniary loss suffered because of the acts or practices
22 involved in the action, provided proof thereof is submitted to the satisfaction of the
23 court. The department of justice may use its authority in ss. 93.14 and 93.15 to
24 investigate violations of any order issued under this section.”.

1 **12.** Page 1244, line 20: delete the material beginning with that line and
ending with page 1247, line 4.

2 **13.** Page 1248, line 5: delete lines 5 to 13.

3 **14.** Page 1249, line 3: delete lines 3 to 21.

4 **15.** Page 1249, line 22: before that line insert:

5 “**SECTION 3608s.** 100.30 (4) of the statutes is amended to read:

6 100.30 (4) PENALTIES. For any violation of sub. (3), the department of justice
7 or a district attorney may commence an action on behalf of the state to recover a
8 forfeiture of not less than \$50 nor more than \$500 for the first violation and not less
9 than \$200 nor more than \$2,500 for each subsequent violation.

10 **SECTION 3608t.** 100.30 (5) (a) of the statutes is amended to read:

11 100.30 (5) (a) The department of justice may issue a special order ~~as provided~~
12 ~~in s. 93.18~~ against a retailer or wholesaler requiring the retailer or wholesaler to
13 cease and desist from violating this section in the sale of cigarettes or other tobacco
14 products, fermented malt beverages, intoxicating liquor or wine or motor vehicle
15 fuel. The department of justice or a district attorney may commence an action on
16 behalf of the state against a retailer or wholesaler who violates a special order issued
17 under this paragraph to recover a forfeiture of not less than \$200 nor more than
18 \$5,000 for each violation.

19 **SECTION 3608u.** 100.30 (5) (b) of the statutes is amended to read:

20 100.30 (5) (b) The department of justice or a district attorney may bring an
21 action to enjoin a violation of this section without being compelled to allege or prove
22 that an adequate remedy at law does not exist. An action under this paragraph may
23 be commenced and prosecuted by the department of justice or a district attorney, in

1 the name of the state, in a circuit court in the county where the offense occurred or
2 in Dane county, notwithstanding s. 801.50.”.

3 **16.** Page 1249, line 22: delete lines 22 to 25.

4 **17.** Page 1469, line 19: delete the material beginning with that line and
ending with page 1470, line 12.

5 **18.** Page 1470, line 20: delete the material beginning with that line and
ending with page 1474, line 23, and substitute:

6 “**SECTION 4148x.** 136.04 (2) of the statutes is amended to read:

7 136.04 (2) The department of agriculture, ~~trade and consumer protection~~
8 justice after public hearing may issue general or special orders to carry out the
9 purposes of this chapter and to determine and prohibit unfair trade practices in
10 business or unfair methods of competition in business pursuant to s. 100.20 (2) ~~to (4)~~
11 and (3).”.

12 **19.** Page 1550, line 10: delete lines 10 to 16.

13 **20.** Page 2151, line 5: delete lines 5 to 19.

14 **21.** Page 2356, line 3: delete lines 3 to 9.

15 **22.** Page 2357, line 22: delete the material beginning with that line and
ending with page 2359, line 2.

16 **23.** Page 2387, line 7: delete lines 7 to 19.

17 **24.** Page 2489, line 11: delete lines 11 t 23 and substitute:

18 “(6x) TRANSFER OF CONSUMER PROTECTION FUNCTION.

19 (a) *Assets and liabilities.* On the effective date of this paragraph, all assets and
20 liabilities of the department of agriculture, trade and consumer protection primarily

1 related to its consumer protection investigation and enforcement functions under
2 sections 100.18, 100.20 and 100.30 of the statutes shall become the assets and
3 liabilities of the department of justice. The departments of justice and agriculture,
4 trade and consumer protection shall jointly determine these assets and liabilities
5 and shall jointly develop and implement a plan for the orderly transfer thereof. In
6 the event of any disagreement between the departments, the secretary of
7 administration shall decide the question.

8 (b) *Employee transfers.* All incumbents holding positions in the department of
9 agriculture, trade and consumer protection that are primarily related to its
10 consumer protection investigation and enforcement functions under sections 100.18,
11 100.20 and 100.30 of the statutes, as determined by the secretary of administration,
12 are transferred on the effective date of this paragraph to the department of justice.

13 (c) *Employee status.* Employees transferred under paragraph (b) have all the
14 rights and the same status under subchapter V of chapter 111 and chapter 230 of the
15 statutes in the department of justice that they enjoyed in the department of
16 agriculture, trade and consumer protection immediately before the transfer.
17 Notwithstanding section 230.28 (4) of the statutes, no employee so transferred who
18 has attained permanent status in class is required to serve a probationary period.

19 (d) *Supplies and equipment.* On the effective date of this paragraph, all
20 tangible personal property, including records, of the department of agriculture, trade
21 and consumer protection primarily related to its consumer protection investigation
22 and enforcement functions under sections 100.18, 100.20 and 100.30 of the statutes
23 are transferred to the department of justice. The departments of justice and
24 agriculture, trade and consumer protection shall jointly identify the tangible
25 personal property, including records, and shall jointly develop and implement a plan

1 for the orderly transfer thereof. In the event of any disagreement between the
2 departments, the secretary of administration shall decide the question.

3 (e) *Pending matters.* Any matter pending with the department of agriculture,
4 trade and consumer protection on the effective date of this paragraph that is
5 primarily related to its consumer protection investigation and enforcement
6 functions under sections 100.18, 100.20 and 100.30 of the statutes is transferred to
7 the department of justice. All materials submitted or actions taken by the
8 department of agriculture, trade and consumer protection with respect to the
9 pending matter are considered as having been submitted to or taken by the
10 department of justice.

11 (f) *Contracts.* All contracts entered into by the department of agriculture,
12 trade and consumer protection in effect on the effective date of this paragraph that
13 are primarily related to its consumer protection investigation and enforcement
14 functions under sections 100.18, 100.20 and 100.30 of the statutes remain in effect
15 and are transferred to the department of justice. The departments of justice and
16 agriculture, trade and consumer protection shall jointly identify these contracts and
17 shall jointly develop and implement a plan for the orderly transfer thereof. In the
18 event of any disagreement between the departments, the secretary of administration
19 shall decide the question. The department of justice shall carry out any such
20 contractual obligations until modified or rescinded by the department of justice to
21 the extent allowed under the contract.

22 (g) *Rules and orders.* All rules promulgated by the department of agriculture,
23 trade and consumer protection that are in effect on the effective date of this
24 paragraph and that are primarily related to its consumer protection investigation
25 and enforcement functions under sections 100.18, 100.20 and 100.30 of the statutes

1 remain in effect until their specified expiration date or until amended or repealed by
2 the department of justice. All orders issued by the department of agriculture, trade
3 and consumer protection that are in effect on the effective date of this paragraph and
4 that are primarily related to its consumer protection investigation and enforcement
5 functions under sections 100.18, 100.20 and 100.30 of the statutes remain in effect
6 until their specified expiration date or until modified or rescinded by the department
7 of justice.”.

8 **25.** Page 2596, line 25: delete the material beginning with that line and
ending with page 2599, line 10.

9 **26.** Page 2695, line 13: after that line insert:

10 “(6x) TRANSFER OF CERTAIN CONSUMER PROTECTION FUNCTIONS. The treatment of
11 sections 100.18 (11) (a), (b) 1., (c) 1., 2., 3. and 4., (d) and (e), 100.20 (2), (3), (4) and
12 (6), 100.30 (4) and (5) (a) and (b) and 136.04 (2) of the statutes, the renumbering of
13 section 20.115 (1) (r) of the statutes and SECTION 9104 (6x) of this act take effect on
14 July 1, 1996.”.

15 **27.** Page 2716, line 1: delete lines 1 to 10.

16 (END)