

STORAGE NAME: h3793s1.grr

DATE: April 8, 1998

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3793

RELATING TO: Itinerant Merchants

SPONSOR(S): Committee on Law Enforcement and Public Safety and Representative Meek and Others

COMPANION BILL(S): SB 1068 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- | | | | |
|-----|--|--------|--------|
| (1) | BUSINESS REGULATION AND CONSUMER AFFAIRS | YEAS 4 | NAYS 3 |
| (2) | LAW ENFORCEMENT AND PUBLIC SAFETY | YEAS 4 | NAYS 3 |
| (3) | GOVERNMENTAL RULES AND REGULATIONS | | |
| (4) | FINANCE AND TAXATION | | |
| (5) | | | |

I. SUMMARY:

Currently, flea market vendors are required to register with the Department of Revenue (DOR) and to collect and remit sales tax. However, compliance varies widely. Business activities that include "occasional and isolated sales" are exempt from collecting sales tax and many flea market vendors assume their activities fall under this exemption. DOR states it is unable to distinguish between flea market vendors who are actually conducting ongoing businesses from those who are making only occasional sales.

CS/HB 3793 defines "itinerant merchant" to mean "any person...who solicits, engages in, transacts or offers for sale any new or used merchandise in one location or while traveling from place to place in this state." The term "itinerant merchant" also includes "any person who does not intend to become or who does not become a permanent merchant at any one location and who, for the purpose of transacting such business, rents, hires, leases, occupies, or uses any building, structure, lot, tract, motor vehicle, sample case, display case, or any portion thereof, for the exhibition and sale of goods, wares, or merchandise."

The bill requires these merchants to obtain and keep for one year invoices or receipts for the new merchandise they are selling. In addition, law enforcement officers may request the merchant to produce the receipts and are authorized to confiscate any merchandise for which a merchant does not have a receipt. Persons annually conducting five or fewer garage sales from their homes are exempt from the provisions of the bill.

A violation of the record keeping provisions is a first degree misdemeanor, punishable by up to one year in prison or a fine of up to \$1,000. Selling stolen property is considered a second degree felony. The act takes effect July 1 of the year in which enacted. There is no fiscal impact to government and the cost to itinerant merchants is indeterminate.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Currently, flea market vendors are required to register with the Department of Revenue (s. 212.18, F.S.) and to collect and remit sales tax (s. 212.06, F.S.). However, compliance varies widely. Business activities that include "occasional and isolated sales" are exempt from collecting sales tax (s. 212.02 (2), F.S.) and many flea market vendors assume their activities fall under this exemption. The Department of Revenue states it is unable to distinguish between flea market vendors who are actually conducting ongoing businesses from those who are making only occasional sales.

Additionally, law enforcement officials believe that flea market sales are often fencing operations where significant amounts of stolen merchandise are sold. However, since these vendors are not required to keep proof-of-purchase records, law enforcement officials have no basis for taking action.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 3793 defines "itinerant merchant" to mean "any person...who solicits, engages in, transacts or offers for sale any new or used merchandise in one location or while traveling from place to place in this state." The term "itinerant merchant" also includes "any person who does not intend to become or who does not become a permanent merchant at any one location and who, for the purpose of transacting such business, rents, hires, leases, occupies, or uses any building, structure, lot, tract, motor vehicle, sample case, display case, or any portion thereof, for the exhibition and sale of goods, wares, or merchandise."

Persons meeting the description of "itinerant merchant" would be subject to registration with the Department of Revenue and be required to collect and remit sales tax, pursuant to s. 212.06, F.S. The bill provides that individuals who occasionally sell tangible personal property from their home, do not hold themselves out as engaged in business, and do not have more than 5 such events per year are not considered to be itinerant merchants. In addition, persons who make sales presentations upon invitation of the property owner or legal occupant and persons who sell products for future delivery via samples, catalogs or brochures are also exempt from the requirements of CS/HB 3793.

The bill requires itinerant merchants to retain invoices or receipts for all new merchandise purchased or obtained for resale. The invoice or receipt must identify:

- the name of the merchandise;
- the quantity purchased;
- the date sold;
- the price; and
- the name, address and description of the business which sold the merchandise.

If the person who sold such merchandise to the itinerant merchant was an individual, the invoice or receipt must contain:

- the person's driver's license number or a state-issued identification card number;
- the dates of issuance or expiration of the driver's license or identification card; and

- the person's date of birth.

Invoices or receipts must be kept at the location where the merchandise is sold and must be retained for 1 year after the merchandise is sold.

An itinerant merchant who does not adhere to the record keeping requirements commits a first degree misdemeanor, punishable by up to one year in prison or a fine of up to \$1,000. Those merchants who sell stolen property commit a second degree felony, punishable by up to 15 years in prison, a fine of up to \$10,000 and may be subject to the habitual felony offender provisions.

The bill also authorizes a law enforcement officer to request the itinerant merchant to produce invoices and receipts if the officer reasonably believes that the merchandise may have been stolen. Such merchandise may be confiscated until the itinerant merchant produces the required invoice or receipt. A sworn affidavit may be substituted for an invoice or receipt.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

Yes. Law enforcement officers may use these provisions to recover and return stolen property.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. Individuals defined as "itinerant merchants" are required to retain invoices or receipts for all new merchandise and may be subject to registration with the Department of Revenue and must collect and remit sales tax.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. The bill places new requirements on individuals meeting the definition of "itinerant merchant".

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

None. The bill does not assign the provisions to a particular statute.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Creates statutory language defining "itinerant merchant", placing certain requirements on those merchants, and providing penalties for violations of the act.

Section 2. Provides for the act to take effect July 1 of the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Itinerant merchants will have added record keeping expenses. Additionally, those merchants not currently collecting and remitting sales tax may be subject to closer scrutiny which could result in penalties and/or their assuming the responsibility and cost of collecting the tax.

2. Direct Private Sector Benefits:

Merchants and individuals victimized by theft may recover their merchandise and possessions.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This act does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This act does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This act does not reduce the percentage of a state tax shared with counties or municipalities.

V. **COMMENTS:**

1. The definition of "itinerant merchant" includes a vague phrase stating "who does not intend to become".
2. Proponents state that one intent of the bill is to clarify that these merchants are subject to the tax code provisions.
3. A law enforcement officer may request a receipt or invoice if the officer "reasonably believes that merchandise may have been stolen...". This language may place a difficult burden of proof on law enforcement, yet it also may protect flea market vendors from over zealous enforcement of the act.

VI. **AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

The Committee on Business Regulation and Consumer Affairs adopted two amendments that are traveling with the bill. The first:

1. Specifically cross-references ch. 212, F. S., in the definition of "itinerant merchant" to make it clear that these merchants are retailers required to collect and remit sales tax.
2. Exempts direct sellers, such as Amway and Tupperware sales persons, from the provisions of the act.
3. Includes a definition of new merchandise that excludes farm, dairy, seafood, and nursery products to assure that people owning home gardens are not required to have a receipt for those products.
4. Specifies that itinerant merchants are required to have receipts only for new merchandise.

The second amendment removes the language declaring that failure to produce a receipt is prima facie evidence that the merchandise is stolen.

On April 1, 1998, the Committee on Law Enforcement and Public Safety incorporated both of these amendments into a committee substitute.

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VII. SIGNATURES:

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