

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 928

SPONSOR: Senator Diaz-Balart

SUBJECT: Freight forwarders

DATE: February 7, 2000

REVISED: \_\_\_\_\_

|    | ANALYST          | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|------------------|----------------|-----------|------------------|
| 1. | <u>Schmeling</u> | <u>Maclure</u> | <u>CM</u> | <u>Favorable</u> |
| 2. | _____            | _____          | <u>FR</u> | _____            |
| 3. | _____            | _____          | _____     | _____            |
| 4. | _____            | _____          | _____     | _____            |
| 5. | _____            | _____          | _____     | _____            |

## I. Summary:

This bill requires a freight forwarder to furnish an exporter with a detailed warehouse receipt at the time tangible personal property is delivered to the freight forwarder, and it requires a freight forwarder to mail a copy of the airway bill or bill of lading to the exporter within two weeks of receipt of such bill. A freight forwarder must maintain copies of each warehouse receipt, airway bill, and bill of lading for three years. The bill additionally provides penalties for noncompliance by a freight forwarder.

This bill amends section 212.13, Florida Statutes.

## II. Present Situation:

Under ch. 212, F.S., the State of Florida levies a six percent sales tax on most sales of tangible personal property in the state and on some services. Sales tax is imposed on the sales price of each item or article of tangible personal property, unless otherwise exempt, when the property is delivered to the purchaser or his representative in this state. However, pursuant to s. 212.06(5)(a)1., F.S., the tax does not apply to tangible personal property irrevocably committed to the exportation process at the time of sale, when such process has been continuous or unbroken. Rule 12A-1.064(1)(b) of the Florida Administrative Code (F.A.C.) states that the mere intent by the seller and the purchaser that the property will be exported is not sufficient to establish the exemption, nor does delivery of the property to a point in Florida for subsequent transportation outside the state necessarily constitute placing the property irrevocably in the exportation process.

Rule 12A-1.064(1)(b) of the F.A.C. prescribes five conditions upon which the state considers tangible personal property to be irrevocably committed to the exportation process, one of which is:

- When the dealer is required by the terms of the sale contract to deliver the goods to a common carrier for final and certain movement of such property to its out-of-state destination. Sales by a Florida dealer are exempt when the dealer delivers the merchandise to the transportation terminal for shipment outside this state and secures a dock or warehouse receipt and a copy of the bill of lading. On shipments to points outside the United States, a shipper's export declaration shall also be obtained.

Exporters customarily contract with a freight forwarder who arranges for transportation of tangible personal property. Generally, the exporter receives a receipt from the freight forwarder which indicates the forwarder has taken possession of the property. The freight forwarder is under contract to ship the property to a foreign port. Frequently, a freight forwarder takes possession of the property and holds the property while awaiting the arrival of a vessel or consolidation of the property with other orders bound for the same destination. Usually, a freight forwarder does not receive a bill of lading or an airway bill until the items that the freight forwarder has agreed to ship are accepted by a common carrier. It is customary for the freight forwarder to provide the exporter with a copy of the bill of lading or airway bill upon shipment by a common carrier. However, in some instances, the freight forwarder does not deliver a bill of lading or airway bill to the exporter.

For the purposes of determining whether certain items of tangible personal property are subject to Florida sales tax, the Department of Revenue audits persons who conduct certain tax exempt activities such as exporting. Exporters who cannot produce a bill of lading or airway bill demonstrating that the property they bought tax free was shipped out of Florida may face the imposition of state taxes and fines.

### **III. Effect of Proposed Changes:**

The bill amends s. 212.13, F.S., to require a freight forwarder, which is in the business of receiving goods and making arrangements for air and water transportation of the goods out-of-state, to provide a warehouse receipt to the person who engaged the freight forwarder at the time of delivery to the freight forwarder. The receipt must contain the following:

- the name, address, and telephone number of the freight forwarder;
- a preprinted warehouse receipt number;
- the date the goods were delivered to the freight forwarder; and
- a brief description of the goods.

The bill further requires the freight forwarder to provide a copy of the transportation company's airway bill or bill of lading to the person for whom the freight forwarder arranged transportation. This information must be mailed to that person within two weeks of receipt of the bill by the freight forwarder from the transportation company.

A freight forwarder must maintain copies of each warehouse receipt, airway bill, and bill of lading for a period of three years, and failure of a freight forwarder to provide documentation or maintain records as required by this bill is a second-degree misdemeanor.

The bill specifies that a warehouse receipt and airway bill or bill of lading is evidence that the goods were exported for purposes of determining whether the goods are exempt from taxation.

Finally, the bill provides for a January 1, 2001, effective date.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Freight forwarders may experience indeterminate costs relating to the record production and record keeping required by this bill.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

This bill requires a warehouse receipt to be issued to an exporter at the time tangible personal property is "*delivered to the freight forwarder*" (emphasis provided). Because in some instances, a freight forwarder will pick-up property, this language may create uncertainty, as "delivered to" seems to imply delivery to the freight forwarder's place of business, not the mere taking of possession of the property by the freight forwarder.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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