

STORAGE NAME: h0237a.ag.doc
DATE: March 15, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
AGRICULTURE & CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 237
RELATING TO: Movers Regulation Act
SPONSOR(S): Representative Seiler
TIED BILL(S): None

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

- (1) AGRICULTURE & CONSUMER AFFAIRS (CCC) YEAS 3 NAYS 5
 - (2) CRIME PREVENTION, CORRECTIONS, & SAFETY (HCC)
 - (3) COUNCIL FOR COMPETITIVE COMMERCE
 - (4)
 - (5)
-

I. SUMMARY:

House bill 237 creates the Movers Regulation Act. The act provides definitions, provides intent and application, requires movers to obtain a permit, pay a filing fee and post security before conducting business, requires a written estimate for moving costs, requires a written contract, prohibits specified acts, and provides for enforcement and penalties. The bill also includes certain violations of the Act in the Florida Racketeer Influenced and Corrupt Organization Act.

The bill creates a new, as yet unnumbered section of the statutes, and substantially amends section 895.02, Florida Statutes.

The fees required by the bill do not generate sufficient revenue to make the Movers Regulation Act self-supporting; therefore, enactment will create a negative fiscal impact to state government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

1. The bill provides for a new governmental regulatory program. Moving companies and practices are not now regulated.
2. To obtain a permit, an applicant must pay a filing fee.

B. PRESENT SITUATION:

There is no express regulation of moving companies or practices.

Section 570.544(3), F.S., designates the Division of Consumer Services (division) within the Department of Agriculture and Consumer Services (DACCS) as the clearinghouse for matters relating to consumer protection, consumer information, and consumer services generally. The division receives complaints from consumers and transmits them to the appropriate agency for investigation and resolution in the best interest of the complainant. According to the division, there are approximately 1,000 businesses engaged in intrastate moving in Florida. During the last 2 years, the division has received approximately 550 complaints per year. County offices in Miami-Dade, Broward, and Palm Beach reported receiving a total of 367 complaints last year. The Department of Legal Affairs has also received complaints, but was unable to provide a total number.

Section 11.62, F.S., ("Sunrise Act") states the intent of the Legislature that "no profession or occupation be subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose."

Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act, chapter 501, part II, F.S., makes unlawful and provides remedies for unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce. Enforcement authority for the Act is divided between the State Attorneys and the Department of Legal Affairs. Enforcement authority lies with a State Attorney if the violation occurs in or affects one judicial circuit. If the state Attorney defers action or if the violation occurs in or affects more than one judicial circuit, enforcement lies with the Department of Legal Affairs.

To remedy a violation, the enforcing authority may bring:

- an action to obtain a declaratory judgment that an act or practice violates this part,
- an action to enjoin any person who has violated, is violating, or is otherwise likely to violate, this part, or
- an action on behalf of one or more consumers for the actual damages caused by an act or practice in violation of this part.

Upon motion of the enforcing authority or any interested party, the court may make appropriate orders, including, but not limited to:

- appointing a master or receiver or sequestration or freezing of assets, to reimburse consumers found to have been damaged;
- carrying out a transaction in accordance with consumers' reasonable expectations;
- striking or limiting the application of clauses of contracts to avoid an unconscionable result;
- ordering any defendant to divest herself or himself of any interest in any enterprise, including real estate;
- imposing reasonable restrictions upon the future activities of any defendant to impede her or him from engaging in or establishing the same type of endeavor;
- ordering the dissolution or reorganization of any enterprise; or
- granting other appropriate relief.

Any injunctive order, whether temporary or permanent, issued by the court is effective throughout the state unless otherwise provided in the order.

Additionally, any person, firm, corporation, association, or entity, or any agent or employee of the foregoing, who is willfully violating any provisions of this part or any rules of the department promulgated under this part, is liable for a civil penalty of not more than \$10,000 for each such violation. Willful violations occur when the person knew or should have known that his or her conduct was unfair or deceptive or prohibited by rule.

The Florida Deceptive and Unfair Trade Practices Act also authorizes anyone aggrieved by a violation of the Act to bring an action to obtain a declaratory judgment that an act or practice violates the Act and to enjoin a person who has violated, is violating, or is otherwise likely to violate the Act. In any individual action brought by a consumer who has suffered a loss resulting from a violation, the consumer may recover actual damages, plus attorney's fees and court costs.

Racketeer Influenced and Corrupt Organization (RICO) Act

The Florida RICO (Racketeer Influenced and Corrupt Organization) Act, ch. 895, F.S., provides remedies for commission of specified crimes in a pattern of racketeering activity, engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents. At least one of such incidents must have occurred after the effective date of the Act, and the last of such incidents must have occurred within 5 years after a prior incident of racketeering conduct.

Any person convicted of engaging in such activity is guilty of a felony of the first degree. However, if by engaging in the racketeering activity, the person derived pecuniary value or caused personal injury or property damage or other loss, in lieu of the usual fine, he or she may be sentenced to pay a fine not exceeding 3 times the gross value gained or 3 times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

The RICO Act also provides civil remedies. After making due provision for the rights of innocent persons, any circuit court may enjoin violations of the Act by issuing appropriate orders and judgments, including, but not limited to:

- ordering any defendant to divest himself or herself of any interest in any enterprise, including real property,
- imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which the defendant was engaged in violation of the Act,
- ordering the dissolution or reorganization of any enterprise,
- ordering the suspension or revocation of a license, permit, or prior approval granted to any enterprise by any agency of the state, or
- ordering the forfeiture of the charter of a corporation organized under the laws of the state, or the revocation of a certificate authorizing a foreign corporation to conduct business within the state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of the Act and that, for the prevention of future criminal activity, the public interest requires the charter of the corporation forfeited and the corporation dissolved or the certificate revoked.

Additionally, all property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of a provision the Act is subject to civil forfeiture to the state.

C. EFFECT OF PROPOSED CHANGES:

Operating Permits

The bill requires any person wishing to operate as a mover within Florida to obtain an operating permit from the DACS before engaging in business. To obtain the permit, the person must file an application, pay a filing fee, and post security.

The proposed filing fee is \$300, to be deposited into the DACS' Operating Trust Fund. If 6 months or less remain before the annual renewal date, the fee is reduced to \$150. Security must be in the form of a surety bond, an irrevocable letter of credit, or a certificate of deposit that may be withdrawn only on the order of the DACS. The required security must be a minimum of \$50,000, and must be conditioned upon compliance by the applicant with the Act. The DACS can establish a greater amount of security to ensure the general welfare of the public and the interests of the moving industry.

The bill allows the DACS to deny or refuse to renew the operating permit of any mover based upon a determination that a mover or any of its directors, officers, owners, or general partners:

- Failed to meet the requirements for initial application or renewal.
- Have been found by a court of competent jurisdiction to have committed a crime, regardless of adjudication or plea of no contest, involving fraud, a prior criminal violation of this section, or theft involving transportation or storage of household goods for compensation.
- Have not satisfied a civil fine, administrative fine, or other penalty arising out of any administrative or enforcement action brought by any governmental agency or private person based upon conduct involving fraud; theft; a violation of part II of chapter 501, F.S.; dishonest dealing; a violation of a local moving ordinance; or failure to comply with the terms

and conditions of any judgment, consent decree, cease and desist order, settlement agreement, or assurance of voluntary compliance arising out of such enforcement action.

- Misrepresented or concealed a material fact on the application, renewal application, or replacement application for an operating permit.
- Aided or abetted a person who has not obtained an operating permit to evade or avoid any provision of this section.
- Have previously attempted to operate without a permit required by the Act

If an operating permit is denied, the mover may request that the DACS hold a hearing and review the decision. The mover must pay a nonrefundable filing fee, established by rule of the DACS. The DACS is to hold a hearing and enter a written order. This order may be appealed to a court of competent jurisdiction.

Each operating permit must be renewed annually. A nonrefundable renewal fee of \$300 must be paid unless the mover holds a municipal or county license issued under an ordinance containing standards at least equal to the requirements of the Act. All renewal fees are to be deposited into the DACS' Operating Trust Fund for purposes of administering the Act. The DACS may impose a late fee on any renewal application not timely filed.

A permit is not valid while being used under any other name or in any other location, and permits are not transferable.

Written Estimates

A mover must provide a written estimate to a prospective shipper indicating the total and complete costs for transportation services, including all accessorial services. A mover cannot take possession or control of any household goods unless the prospective shipper has approved the written estimate by signature. A mover cannot request a shipper to sign a blank estimate or initial a blank or otherwise incomplete estimate form or contract. A prospective shipper cannot waive the right to a written estimate. The estimate must contain a disclosure that the prospective shipper has a right to a written estimate and that it is unlawful for a mover to charge more than the written estimate unless circumstances previously unknown to the mover prevent the mover from obtaining reasonable access to the destination.

A mover cannot impose a fee for preparing an estimate unless the fee is clearly and conspicuously disclosed and the prospective shipper gives written authorization to prepare the estimate.

Contract for Services

Before performing any services for a shipper, including loading the household goods onto a truck, the mover and the shipper must execute a written contract for services. The contract must contain specified information including total costs for transportation and accessorial services, acceptable methods of payment, and the maximum amount of payment due at the time of delivery.

Charges in Excess of the Estimate

A mover can increase the total contract charges only if circumstances of which the mover had no prior knowledge prevent the mover from obtaining reasonable access to the place of destination. If this occurs, the mover is to immediately relinquish to the shipper all the shipper's household goods and complete in a timely manner all transportation and accessorial services required to be performed under the contract for services. The mover must also provide a written explanation of

charges in excess of the written estimate, including a complete description of the circumstances preventing reasonable access to the destination and the total cost of any additional service.

The mover cannot refuse to relinquish to a shipper the shipper's household goods, fail to place household goods inside the shipper's dwelling, or fail to complete in a timely manner all transportation and accessorial services required to be performed solely because the shipper has refused to pay or agree to pay a fee in excess of the written estimate.

In any action by the mover to recover additional fees, the mover has the burden of proving that circumstances at the point of destination prohibited reasonable access and the additional charges were reasonable in relation to the changed circumstances and original contract price.

Enforcement and Penalties

Any person failing to comply with the Act commits a civil infraction and must pay a fine not to exceed \$500 per violation and may be sentenced to not more than 60 days' imprisonment. Each day of continuing violation is a separate offense. Additionally, the DACS may take any other appropriate legal action and the Department of Legal Affairs may prosecute violations under the Florida Deceptive and Unfair Trade Practices Act. It is a third degree felony for a mover to fail to comply with the contract for services and relinquish the shipper's goods either solely because the shipper has refused to pay or agree to pay fees in excess of the written estimate or solely because the shipper has selected a form of payment the mover disclosed as acceptable in the contract.

The DACS is to provide a serially numbered uniform citation form to notify a person of an alleged violation of the Act. Any authorized agent of the DACS or law enforcement officer may issue a citation upon probable cause that a person has violated the Act. A person who is issued a citation may pay the fine, which is an admission of the infraction, or contest the citation by appearing in a court having jurisdiction over misdemeanors. The court may impose a civil penalty not to exceed \$1,000, plus court costs. If a person fails to pay the fine or to appear in court, a default judgment may be entered and the judge shall impose a fine. If the fine is not paid, judgment may be entered up to the maximum civil penalty.

The proceeds of any fines collected are to be deposited into the DACS' Operating Trust Fund to be used to administer the Act.

Felony violations arise from failing to comply with the contract for services and relinquish the shipper's goods either solely because the shipper has refused to pay or agree to pay fees in excess of the written estimate or solely because the shipper has selected a form of payment that the mover disclosed as acceptable in the contract.

A severability clause is included providing that if any provision or application of the act is held invalid, any other provisions or applications that can be given effect without the invalid provision or application are not affected.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: creates the Movers Regulation Act. The Act applies only to the transportation of household goods originating and terminating within this state.

Section 2: includes felony violations of the Act in the Florida Racketeer Influenced and Corrupt Organization Act.

Section 3: provides a severability clause.

Section 4: provides that the bill takes effect July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

	Fund	Amount Year 1 (FY 01-02)	Amount Year 2 (FY 02-03)	Amount Year 3 (FY 03-04)
1. <u>Revenues:</u>				
N/A				
2. <u>Expenditures:</u>				
Non-Recurring Costs:				
OCO				
4 Professional OCO Packages @ \$1,500	GITF	\$ 6,000	\$ -0-	\$ -0-
1 Support Staff OCO Package @ \$2,000	GITF	2,000	-0-	-0-
OPS	GITF	4,134	-0-	-0-
One Time Expenses				
Fax Machine		1,129	-0-	-0-
Telephones compatible with Siemens System		1,200	-0-	-0-
AGMIC – Data base & AGMIC support	GITF	150,000	-0-	-0-
Consulting fees to establish new Database		125,000	-0-	-0-
Total Non-Recurring Costs (GITF)		<u>\$289,463</u>	<u>-0-</u>	<u>-0-</u>
Recurring Costs:				
Positions in Leon County	GITF			
2 Regulatory Consultants (PG 20)		\$ 85,240	\$ 87,797	\$ 90,431
1 Investigation Specialist II (PG 20)		42,620	43,899	45,216
1 Regulatory Specialist III (PG 19)		40,639	41,858	43,114
1 Senior Clerk (PG 11)		<u>29,672</u>	<u>30,562</u>	<u>31,479</u>
Total Salaries		<u>\$198,171</u>	<u>\$204,116</u>	<u>\$210,240</u>

Salaries and benefits were entered at 10% above minimum to ensure the ability to recruit quality staff and increased at 3% for the second and third years in anticipation of salary increases.

Expenses	GITF			
Expense package(4 professional @ \$9,915		\$ 39,660	\$ 39,660	\$ 39,660
Expense package (1 support Staff @ \$8,019)		8,019	8,019	8,019

Rent		20,842	21,884	22,978
AGMIC (GR or GITF) System Maintenance		40,000	42,000	44,100
Total Recurring or Annualized Costs				
	GITF	<u>\$306,692</u>	<u>\$315,679</u>	<u>\$324,997</u>
Revenues	GITF			
Anticipated Recurring		\$300,000*		
Total Operating Costs (Recurring & Non-recurring)	GITF	<u>\$300,000*</u>		
*The bill provides a registration fee of \$300, and there are an estimated 1,000 persons engaged in intrastate moving in Florida. The bill also provides that renewal fees will not be required for any mover that holds a municipal or county license that is issued under an ordinance containing standards at least equal to the requirements of this bill; therefore, it is unknown how much revenue will be collected after the first year.				
Non-Operating Costs:				
Administrative/Indirect Non-operating costs		\$ 27,839	\$ 28,631	\$ 29,445
General Revenue Service Charge		21,900	unknown	unknown
Total Non-Operating Costs	GITF	<u>\$ 49,739</u>	<u>\$ 28,631</u>	<u>\$ 29,445</u>
Grand Total of Costs		<u>\$645,894</u>	<u>\$344,310</u>	<u>\$354,442</u>
Grand Total of Revenues		<u>\$300,000</u>	unknown	unknown

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill preempts conflicting local ordinances, and allows local ordinances that are more restrictive. The bill will result in increased protection to Florida consumers victimized by unscrupulous businesses.

D. FISCAL COMMENTS:

Based upon information provided by the Florida Movers and Warehousemen Association, it is estimated that approximately 1,000 businesses are engaged in intrastate moving in Florida. County offices in Miami-Dade, Broward, and Palm Beach Counties reported receiving a total of 367 complaints last year. The Florida Attorney General's office was unable to provide the number of complaints they have received. The DACS' Division of Consumer Services has averaged approximately 550 complaints per year for the past 2 years.

To implement the provisions of this bill, the DACS states the following needs: FTE's – 2 Regulatory Consultants to process and review registration applications and security submissions, to handle consumer calls and to assist in processing the overload of consumer complaints; 1 Regulatory Specialist III to process, review and mediate consumer complaints; 1 Investigative Specialist II to investigate violations, as well as allegations of unfair and deceptive trade practices; and 1 Senior Clerk to handle the clerical responsibilities of receiving, coordinating, processing and preparing correspondence and documentation associated with this program.

The proposed legislation will not generate enough revenue to cover the estimated costs of the Movers Regulation Act; therefore, if enacted, some General Revenue funding may be necessary to carry out the duties and responsibilities related to this act.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

This bill does not reduce any state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The bill provides a fine not to exceed \$500 per violation. If a mover receives a citation alleging a violation, he may pay it, presumably at the rate of \$500, or go to court to contest it. If he goes to court, the court may impose a civil penalty that may not exceed \$1,000, plus court costs. This potential for a greater penalty for contesting the citation in court could be challenged as a violation of the constitutional right of access to courts. Art. I, s. 21, Fla. Const.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Enforcement and Penalties

The bill applies the criminal penalties of fines and imprisonment to a civil infraction. Additionally, the bill provides that the fine is not to exceed \$500 per violation. If a mover receives a citation alleging a violation, he may pay it, presumably at the rate of \$500, or go to court to contest it. However, if he goes to court, the court may impose a civil penalty that may not exceed \$1,000, plus court costs. This potential for a greater penalty for contesting the citation could be challenged as a violation of the constitutional right of access to courts. Art. I, s. 21, Fla. Const. The lines between civil and criminal penalties are further blurred, as the court that is to impose this civil penalty is to be "a court having jurisdiction of misdemeanors."

Local Ordinances

The bill expressly allows local government ordinances that impose additional or more restrictive requirements than those created in the Movers Regulation Act. The bill provides that a fee of \$300 must be paid with each application for a renewal of the operating permit, except that "a renewal fee is not required for any mover that holds a municipal or county license that is issued under an ordinance that contains standards at least equal to the requirements of this section, as determined by the department."

At the March 7, 2001, meeting of the Agricultural and Consumer Affairs Committee, the bill received an unfavorable vote of 3 yeas, 5 nays. The vote was then reconsidered and left pending. At the next meeting of the committee, March 14, 2001, no member brought the bill up for further consideration.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

A "strike all" amendment conforming the House bill to the Senate companion was adopted. The amended language differs from the original bill as follows. The amendment:

- Provides that an application for initial renewal of an operating permit may be denied on the basis that the applicant has previously attempted to operate without a permit required under the Movers Regulation Act.
- Deletes provisions authorizing a mover to require a deposit.
- Reduces from 90 to 30 days the time that a shipper has to pay charges in excess of the written estimate.
- Deletes a provision making it a felony for a mover to timely comply with all contract provisions when the mover does not have reasonable access to the destination.
- Deletes provisions relating to local ordinances, with the result that the bill no longer allows more restrictive local ordinances.

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VII. SIGNATURES:

COMMITTEE ON AGRICULTURE & CONSUMER AFFAIRS:

Prepared by:

Staff Director:

Susan D. Reese

Susan D. Reese