

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 2006

SPONSOR: Commerce and Economic Opportunities Committee, Regulated Industries Committee, Senator Campbell, and others

SUBJECT: Household Movers

DATE: February 28, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	RI	Favorable/CS
2.	Gillespie	Maclure	CM	Favorable/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Committee Substitute for Senate Bill 2006 requires a household mover to relinquish a consumer’s household goods if the consumer pays the estimated amount of the moving charges or the mover fails to produce a written estimate, prohibits a mover from withholding goods while refusing to accept various methods of payment unless specified in the moving contract, and, upon request, requires a mover to inform the consumer of the location where the withheld household goods are stored while lawfully withholding goods for payment. The committee substitute provides criminal penalties for proscribed acts. The committee substitute authorizes county ordinances regulating local moving that originates and terminates within the county (intra-county), but prohibits inter-county ordinances (local moving that originates and terminates in two or more counties) unless the ordinances of the partnering counties are uniform and identical, establish a single registration and fee-payment system that directs the fees to fund the regulation, and provide a uniform set of forms.

This committee substitute creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Regulation of Household Movers

In Florida, movers of household goods are regulated under federal law and local ordinances. The Federal Motor Carrier Safety Administration within the United States Department of Transportation regulates interstate and foreign moving. Four counties have enacted ordinances that regulate local moving: Broward, Miami-Dade, Palm Beach, and Pinellas. There is currently no state law regulating movers of household goods.

Interstate and Foreign Moving Regulations

Federal regulations governing interstate and foreign moving require that a mover must, before receiving household goods, prepare an order for service, which includes, among other things, the name and address of the shipper (i.e., the consumer), a complete description of the services ordered, the estimated charges for the services, and the signatures of both the shipper and the mover or the mover's agent (49 C.F.R. s. 375.5). Upon receipt of household goods, the mover must also provide the shipper with a copy of the bill of lading, which is an enforceable contract between the mover and the shipper. The bill of lading must include, among other things, the name and address of the mover, the dates for pickup and delivery of the household goods, and the accepted forms of payment of the moving charges (49 C.F.R. s. 375.6).

The federal regulations also provide for binding and non-binding estimates of moving costs (49 C.F.R. s. 375.3), which are included as an addendum to the bill of lading, thereby making the estimate part of the contract between the shipper and the mover. A mover may charge a shipper for producing a binding estimate, which must be in writing. A shipper may not be required to pay moving charges exceeding the amount of a binding estimate. Conversely, a non-binding estimate must be furnished to a shipper in writing at no charge, but it is not binding on the mover. Upon payment, however, of 110 percent of a non-binding estimate, the mover is required to relinquish possession of the household goods and defer demand for payment of the balance of the moving charges until 30 days after delivery (49 C.F.R. s. 375.3(d)). If the shipper requests services that are not included in the estimate, however, the mover may demand payment of these additional services at the time of delivery.¹ Payment must be provided in an accepted form described in the bill of lading.

Local Moving Regulations in Broward, Miami-Dade, and Palm Beach Counties

Broward County,² Miami-Dade County,³ and Palm Beach County⁴ have each enacted similar ordinances regulating movers of household goods. Commonly cited as the "tri-county" ordinances, each ordinance allows the respective county to regulate local moving that:

- Originates and terminates in the county;
- Originates in the county and terminates in one of the other two counties; or
- Originates in one of the other two counties and terminates in the county.

¹ Federal Motor Carrier Safety Administration, U.S. Department of Transportation, *Your Rights and Responsibilities When You Move*, Publication OCE-100, reprinted in *Transportation of Household Goods in Interstate Commerce*, 23, available at <http://www.fmcsa.dot.gov/pdfs/HHG.PDF> (last modified July 20, 2001) [also available at <http://www.fmcsa.dot.gov/factsfigs/rights.htm> (last visited Feb. 23, 2001)].

² *Broward County Moving Ordinance* (ss. 20-176.90–20-176.107.2, *Broward County Code of Ordinances*).

³ *Miami-Dade County Moving Ordinance* (ss. 8A-325–8A-349, *Code of Metropolitan Dade County, Florida*).

⁴ *Palm Beach County Moving Ordinance* (ss. 17-281–17-300, *Palm Beach County Code*).

The Broward and Miami-Dade ordinances require a mover to be registered with the county and pay an annual registration fee: \$325 per year in Broward County and \$400 per year in Miami-Dade County. A mover in Palm Beach County is not required to have a registration certificate, but instead must obtain an operating permit and pay an annual \$1,000 permit fee. Each of the ordinances also requires vehicle decals. In Miami-Dade County, the vehicle decals are included within the annual fees. In Broward County, the decal fees are assessed at \$50 per year for each vehicle used to transport household goods. In Palm Beach County, the annual decal fees are \$10 for each vehicle.

Each of the three ordinances requires a mover to prepare a written contract for service and an estimate of the moving charges. A mover may charge a shipper for preparation of the written estimate, and a shipper may not waive the written estimate. The ordinances specify that the estimates are binding, allowing the mover to charge no more than the amount of the written estimate, plus 10 percent. It is a violation of the ordinances if a mover fails to relinquish a shipper's household goods for refusal of the shipper to pay an amount that exceeds the written estimate, plus 10 percent. In Palm Beach County, however, the mover may also require excess charges if the mover had no prior knowledge the mover would be denied reasonable access to the pickup or delivery location.

The ordinances require substantially similar contracts for service, which must contain, among other things, the name, telephone number, and address where the mover's employees are on duty during business hours; the name and telephone number of the shipper; the dates for pickup and delivery of the household goods; a complete description of the services ordered; the accepted forms of payment of the moving charges; and the signatures of both the shipper and the mover. Each of the ordinances requires the contract for service to contain certain disclosure statements that inform shippers of their rights under the respective ordinances. These disclosure statements are substantially similar, but are not identical. The ordinances also require movers to accept at least two of the following three forms of payment:

- Cash, cashier's check, money order, or traveler's check;
- Personal check; or
- Credit card.

The ordinances require a mover, after a move is completed, to investigate and settle a claim of lost or damaged goods. The Broward and Miami-Dade ordinances allow a shipper to file a claim within 60 days after delivery, while the Palm Beach ordinance allows claims to be filed within 30 days after delivery.

Each of the three counties maintains a consumer protection office, which receives and investigates consumer complaints against movers. The ordinances of each county provide civil and criminal penalties. The Miami-Dade ordinance authorizes, for each offense, no more than a civil penalty of \$10,000, a \$500 fine, and 60 days in county jail. The Broward and Palm Beach ordinances allow no more than a \$500 fine and 60 days in county jail for each offense. Additionally, the ordinances authorize the respective consumer protection offices to impose administrative remedies against the registration certificate or operating permit of a mover who violates the ordinance.

Local Moving Regulations in Pinellas County

The Pinellas County Moving Ordinance⁵ is substantially similar to the “tri-county” ordinances in Broward, Miami-Dade, and Palm Beach counties, except the Pinellas ordinance is exclusively complaint-driven and does not require a mover to obtain a registration certificate or operating permit or to pay the associated fees. Similar to the tri-county ordinances, the Pinellas ordinance allows the county to regulate moving that:

- Originates and terminates in Pinellas County;
- Originates in Pinellas County and terminates in Hillsborough or Pasco counties; or
- Originates in Hillsborough or Pasco counties and terminates in Pinellas County.

Unlike the tri-county ordinances, however, Hillsborough and Pasco counties have not enacted similar ordinances to Pinellas County. The Pinellas ordinance requires similar contracts for service, written estimates, and disclosure statements as the tri-county ordinances. Under the Pinellas ordinance, however, it is a violation if a mover fails to relinquish a shipper’s household goods for refusal of the shipper to pay an amount that exceeds the written estimate, plus 20 percent. The Pinellas County Department of Consumer Protection receives and investigates complaints against movers. For each offense, the ordinance authorizes no more than a \$500 fine and 60 days in county jail.

Consumer Complaints

Under federal regulations, movers of household goods in interstate or foreign commerce are required to maintain procedures for responding to complaints and inquiries from shippers (49 C.F.R. s. 375.13). These procedures must allow disputes between a shipper and a mover to be resolved by neutral arbitration (49 U.S.C. s. 14708).

In Florida, the Division of Consumer Services within the Department of Agriculture and Consumer Services is the clearinghouse for matters relating to consumer protection, consumer information, and consumer services generally (s. 570.544(3), F.S.). The division receives complaints from consumers and transmits them to the agency most directly concerned in order that the complaint may be expeditiously handled in the best interests of the complaining consumer. If there is no agency, the division seeks a settlement of the complaint using formal or informal methods of mediation and conciliation. According to the division, the division received 407 consumer complaints against household movers in 1997, 440 complaints in 1998, 409 complaints in 1999, 230 complaints in 2000, and 351 complaints in 2001. The Department of Legal Affairs has also investigated complaints against household movers, including complaints referred by various county consumer protection offices.

According to the Florida Movers and Warehousemen’s Association, there are approximately 700 movers operating in this state. An analysis prepared by the association of consumer complaints filed in 2000 with the Division of Consumer Services cites 164 complaints involving interstate moving and 283 intrastate complaints. Of the intrastate complaints, 118 were attributed to claim disputes, 114 were billing disputes, 39 were service complaints, seven involved stolen

⁵ Sections 42-356–42-368, *Pinellas County Code*.

property, four concerned storage, and one additional complaint was unspecified. According to the association, these intrastate complaints were concentrated geographically. (See Table 1 below, which depicts the number of intrastate complaints by county for those counties with more than four complaints.)

(Table 1) Consumer Complaints of Intrastate Moving by County, 2000

<i>County</i>	<i>Complaints</i>	<i>County</i>	<i>Complaints</i>
Broward	124	Martin	9
Miami-Dade	41	Duval	8
Hillsborough.....	21	Lee	7
Palm Beach.....	12	Orange	7
Pinellas	10	Sarasota	5

Each of the county consumer protection offices in Broward, Miami-Dade, Palm Beach, and Pinellas counties investigates complaints against household movers, regardless of whether the office has jurisdiction over the complaint. For example, the offices will attempt to mediate complaints involving interstate moving, which is regulated under federal law. The offices also mediate intrastate cases, which originate or terminate at locations throughout Florida.

The Broward County Consumer Affairs Division investigates complaints and enforces its tri-county ordinance. According to the consumer affairs division, Broward County investigated 133 consumer complaints in 2001.⁶ Of these complaints, the division resolved 107 complaints involving local moving under the tri-county ordinance, 10 interstate cases, and three complaints involving intrastate moving originating or terminating at locations in Florida outside of Broward, Miami-Dade, or Palm Beach counties. In 2001, the consumer affairs division recovered \$39,000 from movers: \$32,700 from tri-county cases, \$6,500 from interstate cases, and \$500 from intrastate cases. As of the date of this staff analysis, 13 cases remain pending.

Since 1996, the Miami-Dade County Consumer Services Department has investigated approximately 525 consumer complaints against household movers, of which 337 involved local moving under its tri-county ordinance.⁷ The consumer services department has recovered more than \$23,440 from movers. The department estimates that it receives about 10 consumer inquiries for each complaint it investigates.

In 2001, the Palm Beach County Division of Consumer Affairs logged more than 2,600 telephone inquiries involving moving regulations.⁸ The consumer affairs division investigated 195 complaints, of which 148 involved local moving under its tri-county ordinance, 35 interstate cases, and 12 complaints involving intrastate moving originating or terminating at locations in Florida outside of Broward, Miami-Dade, or Palm Beach counties. The consumer affairs division also reports that it recovered approximately \$14,490 from movers in 2001.

⁶ Telephone Interview with Mona Fandel, Director of the Broward County Consumer Affairs Division (Feb. 22, 2002).

⁷ Telephone Interview with Cathy Grimes Peel, Deputy Director of the Miami-Dade County Consumer Services Department (Feb. 22, 2002).

⁸ Telephone Interview with Dennis Moore, Director of the Palm Beach County Division of Consumer Affairs (Feb. 22, 2002).

The Pinellas County Department of Consumer Protection disposed of 43 consumer complaints in 2001.⁹ Of these complaints, six complaints resulted in a refund for the shipper, and nine cases were resolved by the mover's adjusting of the shipper's account. In three cases, the mover repaired the shipper's goods, and one complaint led to a criminal investigation.

Power of Local Governments to Regulate Movers

In Florida, the State Constitution permits counties to enact ordinances that are not inconsistent with state law.¹⁰ The State Constitution¹¹ also grants municipalities the power to enact ordinances on any subject that state law may address, except:

- The subjects of annexation, merger, and exercise of extraterritorial power;
- Any subject expressly prohibited by the State Constitution;
- Any subject expressly preempted to state or county government by the State Constitution or by law; or
- Any subject preempted to a county under a county charter (s. 166.021(3), F.S.).

If a conflict exists between a county ordinance and an ordinance of a municipality located within the county, in charter counties, the county charter would specify whether the county ordinance or the municipal ordinance prevails.¹² In non-charter counties, the county ordinance does not apply in those municipalities with municipal ordinances that conflict with the county ordinance.¹³

III. Effect of Proposed Changes:

Felony Offenses

The committee substitute requires a household "mover" (person engaged in the transportation or shipment of household goods for compensation) or a mover's employee, agent, or contractor to comply with an order from a law enforcement officer to relinquish a shipper's (i.e., a consumer's) household goods after the officer determines:

- The shipper paid the estimated amount of the moving charges in the written moving contract; or
- The mover did not produce a contract or estimate.

⁹ Telephone Interview with Sheryl D. Goodman-Lord, Director of Pinellas County Consumer Protection (Feb. 22, 2002).

¹⁰ Section 1(f) and (g), Art. VIII of the State Constitution; *see also* s. 125.01, F.S.

¹¹ Section 2(b), Art. VIII of the State Constitution.

¹² Section 1(g), Art. VIII of the State Constitution.

¹³ Section 1(f), Art. VIII of the State Constitution.

Under these circumstances, the committee substitute provides that the mover's refusal to relinquish the household goods is a felony of the third degree, which is punishable by no more than 5 years in prison and a \$5,000 fine for each offense.

The committee substitute applies to movers of "household goods," which is defined as personal effects or other personal property found in a home, personal residence, storage facility, or other location, including property in a storehouse or warehouse facility that is owned or rented by a shipper or a shipper's agent. The committee substitute does not apply to freight or personal property moving to or from a factory, store, or other place of business.

Misdemeanor Offenses

The committee substitute also requires a mover to relinquish household goods to a shipper and place the goods inside the shipper's dwelling if the shipper has paid the estimated amount of the moving charges in the written moving contract. The committee substitute prohibits a mover from:

- Refusing to relinquish prescription medicines or children's goods under any circumstances;
- Refusing to relinquish household goods to a shipper, or refusing to place the goods inside the shipper's dwelling, based on the mover's refusal to accept a particular form of payment, including:
 - Cash, cashier's check, money order, travelers check;
 - Personal check; or
 - Credit card, charge card, or debit card,unless the accepted methods of payment are clearly and conspicuously disclosed in the written moving contract;
- Failing to notify the shipper, when lawfully withholding the shipper's household goods for payment, of the location where the withheld goods are stored within five days after receiving a written request from the shipper that includes the address where the shipper may receive the notice; or
- Requiring a prospective shipper to waive the rights or requirements provided by the committee substitute.

The committee substitute provides that the failure or refusal of a mover to comply with these requirements is a misdemeanor of the first degree, which is punishable by no more than 1 year in county jail and a \$1,000 fine for each offense.

Written Contract or Estimate

In effect, the committee substitute allows a mover to withhold household goods for payment only when the mover has provided the shipper with a moving contract and the shipper has failed to pay the estimated amount of the moving charges specified in the contract. The committee substitute requires that, if a mover provides a moving contract to a prospective shipper under the auspices of the committee substitute, the moving contract and estimate must be in writing, include the date it is prepared, be signed and dated by the shipper, and contain:

- The name, telephone number, and address where the mover's employees are available during business hours;
- The name, telephone number, and address of the shipper;
- The proposed date of the move and locations for pickup and delivery of the household goods;
- The name, telephone number, and address of the location where the goods will be stored before shipping or during a fee dispute;
- An itemized description of the services ordered by the shipper and the estimated cost, if known at the time of the estimate; and
- The accepted methods of payment.

When requiring the moving contract to include an itemized description of the services ordered by the shipper, the committee substitute requires this description to include "accessorial services," which is defined as any service performed by a mover or third party at the request of the shipper or mover, if the charges are to be paid to the mover by the shipper at or before delivery, which is incidental to the transportation service. These accessorial services include valuation coverage; preparation of a written inventory; storage; packing, unpacking, or crating of articles; hoisting or lowering; waiting time; long carry (carrying articles excessive distances between the mover's vehicle and the residence); overtime loading and unloading; reweighing; disassembly or reassembly; elevator or stair carrying; boxing or servicing of appliances; and furnishing of packing or crating materials.

The committee substitute also provides that a mover may lawfully place goods in storage until payment is tendered and specifies that a mover's compliance with an order from a law enforcement officer to relinquish goods to a shipper is not a waiver or finding of fact regarding a right to seek further payment from the shipper.

Preemption of Local Moving Regulations

The committee substitute prohibits a county from enacting a local moving ordinance unless:

- The ordinance regulates local moving that originates and terminates within the county (intra-county); or
- The ordinance regulates local moving that originates and terminates within two more counties (inter-county) that:
 - Have enacted uniform and identical ordinances;
 - Require not more than a single registration and fee-payment system for partnering counties;
 - Require no more than one set of forms that are consistent with the committee substitute's requirements for the written moving contract or estimate; and
 - Require that any fees collected be directed only to funding moving regulation.

A practical effect of this provision is to allow local inter-county moving ordinances, such as the "tri-county" ordinances in Broward, Miami-Dade, and Palm Beach counties to remain in effect if the ordinances are amended to include uniform and identical provisions that conform to these requirements.

Effective Date

The bill provides an effective date of July 1, 2002.

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:**

The committee substitute requires counties that enact ordinances regulating local moving that originates and terminates in two or more counties (inter-county) to maintain uniform and identical moving ordinances. These uniform ordinances must require a single registration and fee-payment system for partnering counties, and any fees collected must be directed only to funding moving regulation.

B. Private Sector Impact:

Consumers will be able to secure their household goods from a mover after payment of the amount in the written estimates, will not be prevented from using common methods of payment without prior notice in the moving contracts, and will be informed of the location where their goods are stored while they are lawfully withheld for payment. The effect of the committee substitute is that consumers will not be compelled to pay moving charges in excess of the estimated amount in order to secure the household goods.

The committee substitute also has the effect of preventing movers from withholding household goods from consumers for payment when the estimated amount does not cover the total charges, characteristically in circumstances in which the total charges include moving costs attributed to factors (such as limited access to the pickup or delivery location) unknown to the mover when the estimate is prepared.

C. Government Sector Impact:

The committee substitute does not specify a state agency as responsible for enforcement or prosecution of violations. The committee substitute does, however, create criminal

penalties, which would be subject to prosecution by the state attorneys using existing funding.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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