

Amendment No. 1 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Committee on Business Regulation offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause

and insert:

Section 1. Definitions.--For the purposes of this act, the term:

(1) "Accessorial services" means any service performed by a mover which results in a charge to the shipper and is incidental to the transportation service, including, but not limited to, valuation coverage; preparation of written inventory; storage, packing, unpacking, or crating of articles; hoisting or lowering; waiting time; long carry, which is defined as 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. Accessorial services also include services not performed by the mover but by a third party at the request of the shipper or mover, if

Amendment No. 1 (for drafter's use only)

1 the charges for such services are to be paid to the mover by
2 the shipper at or prior to the time of delivery.

3 (2) "Compensation" means money, fee, emolument, quid
4 pro quo, barter, remuneration, pay, reward, indemnification,
5 or satisfaction.

6 (3) "Contract for service" or "bill of lading" means a
7 written document which authorizes services from the named
8 mover and lists the services and all costs associated with the
9 transportation of household goods and accessorial services to
10 be performed.

11 (4) "Department" means the Department of Agriculture
12 and Consumer Services.

13 (5) "Estimate" means a written document which sets
14 forth the total cost and the basis of such costs related to a
15 shipper's move, which shall include, but not be limited to,
16 transportation or accessorial services.

17 (6) "Household goods" means personal effects or other
18 personal property found in a home, personal residence, storage
19 facility, or other location, including property in a
20 storehouse or warehouse facility that is owned or rented by a
21 shipper or shipper's agent, but does not include freight or
22 personal property moving to or from a factory, store, or other
23 place of business.

24 (7) "Mover" means any person who engages in the
25 transportation or shipment of household goods for
26 compensation.

27 (8) "Shipper" means any person who uses the services
28 of a mover to transport or ship household goods.

29 (9) "Storage" means warehousing of the shipper's goods
30 while under the care, custody, and control of the mover.

31 Section 2. Construction; intent; application.--

Amendment No. 1 (for drafter's use only)

1 (1) The provisions of this act shall be construed
2 liberally to:

3 (a) Establish the law of this state governing the
4 transportation, shipment, and affiliated storage of household
5 goods.

6 (b) Address moving practices in this state in a manner
7 not inconsistent with federal law relating to consumer
8 protection.

9 (2) The provisions of this act shall apply to the
10 operations of any mover engaged in the intrastate
11 transportation of household goods, except this act shall not
12 be construed to include shipments contracted by the United
13 States, the state, or any local government or political
14 subdivision of the state. The provisions of this act shall
15 only apply to the transportation of household goods
16 originating in this state and terminating in this state.

17 (3) It is the intent of this act to secure the
18 satisfaction and confidence of shippers and members of the
19 public when using a mover.

20 (4) Nothing in this act shall be construed to remove
21 the authority or jurisdiction of any federal agency with
22 respect to goods or services regulated or controlled under
23 other provisions of law.

24 Section 3. Registration.--

25 (1) Each mover shall annually register with the
26 department, providing its legal business and trade name,
27 mailing address, and business locations; the full names,
28 addresses, telephone numbers, and social security numbers of
29 its owners or corporate officers and directors and the Florida
30 agent of the corporation; a statement whether it is a domestic
31 or foreign corporation, its state and date of incorporation,

Amendment No. 1 (for drafter's use only)

1 its charter number, and, if a foreign corporation, the date it
2 registered with the State of Florida, and occupational license
3 where applicable; the date on which a mover registered its
4 fictitious name if the mover is operating under a fictitious
5 or trade name; the name of all other corporations, business
6 entities, and trade names through which each owner of the
7 mover operated, was known, or did business as a mover within
8 the preceding 5 years; and proof of purchase of adequate bond
9 or establishment of a letter of credit or certificate of
10 deposit as required in this act.

11 (2) A certificate evidencing proof of registration
12 shall be issued by the department and must be prominently
13 displayed in the mover's primary place of business.

14 (3) Registration fees shall be \$300 per year per
15 mover. All amounts collected shall be deposited by the
16 Treasurer to the credit of the General Inspection Trust Fund
17 of the department for the sole purpose of administration of
18 this act.

19 (4) Any person applying for or renewing a local
20 license or registration to engage in business as a mover must
21 exhibit a current registration certificate from the department
22 before the local license or registration may be issued or
23 reissued.

24 (5) Each contract of a mover must include the phrase
25 "...(NAME OF FIRM)... is registered with the State of Florida
26 as a Mover. Registration No."

27 (6) Each advertisement of a mover must include the
28 phrase "Fla. Mover Reg. No."

29 (7) No registration shall be valid for any mover
30 transacting business at any place other than that designated
31 in its application, unless the department is first notified in

Amendment No. 1 (for drafter's use only)

1 writing in advance of any change of location. A registration
2 issued under this act shall not be assignable, and the mover
3 shall not be permitted to conduct business under more than one
4 name except as registered. A mover desiring to change its
5 registered name or location or designated agent for service of
6 process at a time other than upon renewal of registration
7 shall notify the department of such change.

8 (8) The department may deny or refuse to renew the
9 registration of any mover based upon a determination that the
10 mover, or any of its directors, officers, owners, or general
11 partners:

12 (a) Has failed to meet the requirements for
13 registration as provided in this act;

14 (b) Has been convicted of a crime involving fraud,
15 dishonest dealing, or any other act of moral turpitude;

16 (c) Has not satisfied a civil fine or penalty arising
17 out of any administrative or enforcement action brought by any
18 governmental agency or private person based upon conduct
19 involving fraud, dishonest dealing, or any violation of this
20 act;

21 (d) Has pending against him or her any criminal,
22 administrative, or enforcement proceedings in any
23 jurisdiction, based upon conduct involving fraud, dishonest
24 dealing, or any other act of moral turpitude; or

25 (e) Has had a judgment entered against him or her in
26 any action brought by the department or the Department of
27 Legal Affairs pursuant to this act or ss. 501.201-501.213,
28 Florida Statutes, the Florida Deceptive and Unfair Trade
29 Practices Act.

30 Section 4. Security requirements.--

31 (1) An application must be accompanied by a

Amendment No. 1 (for drafter's use only)

1 performance bond in the amount of \$25,000. The surety on such
2 bond shall be a surety company authorized to do business in
3 the state.

4 (2) In lieu of the performance bond required in
5 subsection (1), an applicant for registration may establish a
6 certificate of deposit or an irrevocable letter of credit in a
7 Florida banking institution in the amount of \$25,000. The
8 department shall be the beneficiary to this certificate of
9 deposit, and the original shall be filed with the department.
10 Any such letter of credit shall provide that the issuer will
11 give the department not less than 120 days' written notice
12 prior to terminating or refusing to renew the letter of
13 credit.

14 (3) The performance bond, letter of credit, or
15 certificate of deposit shall be in favor of the department for
16 the use and benefit of any customer who is injured by the
17 fraud, misrepresentation, breach of contract, financial
18 failure, or violation of any provision of this act by the
19 mover. Such liability may be enforced either by proceeding in
20 an administrative action as specified in subsection (4) or by
21 filing a judicial suit at law in a court of competent
22 jurisdiction. However, in such court suit the performance
23 bond, letter of credit, or certificate of deposit posted with
24 the department shall not be amenable or subject to any
25 judgment or other legal process issuing out of or from such
26 court in connection with such lawsuit, but such performance
27 bond, letter of credit, or certificate of deposit shall be
28 amenable to and enforceable only by and through administrative
29 proceedings before the department. It is the intent of the
30 Legislature that such performance bond, letter of credit, or
31 certificate of deposit shall be applicable and liable only for

Amendment No. 1 (for drafter's use only)

1 the payment of claims duly adjudicated by order of the
2 department. The performance bond, letter of credit, or
3 certificate of deposit shall be open to successive claims, but
4 the aggregate amount may not exceed the amount of the
5 performance bond, letter of credit, or certificate of deposit.

6 (4) Any shipper may file a claim against the
7 performance bond, letter of credit, or certificate of deposit
8 which shall be made in writing to the department within 180
9 days after an alleged violation has occurred or is discovered
10 to have occurred. The proceedings shall be held in accordance
11 with chapter 120, Florida Statutes.

12 (5) The department may waive the performance bond,
13 letter of credit, or certificate of deposit requirement on an
14 annual basis if the mover has had 5 or more consecutive years
15 of experience as a mover in Florida in compliance with this
16 act; has not had any civil, criminal, or administrative action
17 instituted against the mover by any governmental agency or any
18 action involving fraud, theft, misappropriation of property,
19 or moral turpitude; and has a satisfactory consumer complaint
20 history with the department. Such waiver may be revoked if the
21 mover violates any provision of this act.

22 Section 5. Estimates and contracts for service.--A
23 contract and estimate provided to a prospective shipper must
24 be in writing and include:

25 (1) The name, telephone number, and physical address
26 where the mover's employees are available during normal
27 business hours.

28 (2) The date and time the contract or estimate is
29 prepared and any proposed date of the move.

30 (3) The name and address of the shipper, the addresses
31 where the items are to be picked up and delivered, and a

Amendment No. 1 (for drafter's use only)

1 telephone number where the shipper may be reached.

2 (4) The name, telephone number, and physical address
3 of any location where the goods will be held pending further
4 transportation, including situations where the mover retains
5 possession of goods pending resolution of a fee dispute with
6 the shipper.

7 (5) An itemized breakdown and description and total of
8 all costs and services for transportation and accessorial
9 services to be provided during a move or storage of household
10 goods.

11 (6) The accepted methods of payment.

12 Section 6. Violations.--It is a violation of this act
13 to:

14 (1) Conduct business as a mover without first being
15 registered annually with the department.

16 (2) Conduct business as a mover without a performance
17 bond, a letter of credit, or a certificate of deposit.

18 (3) Knowingly make any false statement,
19 representation, or certification in any application, document,
20 or record required to be submitted or retained under this act.

21 (4) Knowingly require, request, encourage, or suggest,
22 directly or indirectly, that payment for the right to obtain a
23 contract for moving services or accessorial services must be
24 by credit card authorization or to otherwise announce a
25 preference for that method of payment over any other method
26 when no correct and true explanation for such preference is
27 stated.

28 (5) Misrepresent in any manner the shipper's right to
29 cancel and to receive an appropriate refund for services
30 provided by the mover.

31 (6) Misrepresent or deceptively represent:

Amendment No. 1 (for drafter's use only)

- 1 (a) The contract for services, bill of lading, or
2 inventory of household goods for the move estimated.
- 3 (b) The timeframe or schedule for delivery or storage
4 of household goods estimated.
- 5 (c) The price, size, nature, extent, qualities, or
6 characteristics of accessorial or moving services offered.
- 7 (d) The nature or extent of other goods, services, or
8 amenities offered.
- 9 (e) A shipper's rights, privileges, or benefits.
- 10 (7) Fail to inform a purchaser of a nonrefundable
11 cancellation policy prior to the mover accepting any
12 compensation, commission, or other valuable consideration.
- 13 (8) Fail to honor and comply with all provisions of
14 the contract for services or bill of lading regarding the
15 purchaser's rights, benefits, and privileges thereunder.
- 16 (9) Charge more than 10 percent above the cost of the
17 estimate of the contract unless authorized by the shipper
18 prior to pickup and transportation of the household goods. The
19 mover shall provide written justification for any amount
20 charged above the original estimate.
- 21 (10) Withhold delivery of household goods or in any
22 way hold goods in storage against the expressed wishes of the
23 shipper as delineated in the contract for services.
- 24 (11)(a) Include in any contract any provision
25 purporting to waive or limit any right or benefit provided to
26 shippers under this act.
- 27 (b) Seek or solicit such waiver or acceptance of
28 limitation from a shipper concerning rights or benefits
29 provided under this act.
- 30 (c) Use a local mailing address, registration
31 facility, drop box, or answering service in the promotion,

Amendment No. 1 (for drafter's use only)

1 advertising, solicitation, or sale of contracts, unless the
2 mover's fixed business address is clearly disclosed during any
3 telephone solicitation and is prominently and conspicuously
4 disclosed on all solicitation materials and on the contract.

5 (d) Do any other act which constitutes fraud,
6 misrepresentation, or failure to disclose a material fact.

7 (e) Refuse or fail, or for any of the mover's
8 principal officers to refuse or fail, after notice, to produce
9 any document or record or disclose any information required to
10 be produced or disclosed.

11 (f) Knowingly make a material false statement in
12 response to any request or investigation by the department,
13 the Department of Legal Affairs, or the state attorney.

14 Section 7. Deceptive and unfair trade practice.--Acts,
15 conduct, practices, omissions, failings, misrepresentations,
16 or nondisclosures which constitute a violation of this act
17 also constitute a deceptive and unfair trade practice for the
18 purpose of ss. 501.201-501.213, Florida Statutes, the Florida
19 Deceptive and Unfair Trade Practices Act, and administrative
20 rules adopted thereunder.

21 Section 8. Administrative remedies; penalties.--

22 (1) The department may enter an order doing one or
23 more of the following if the department finds that a mover or
24 person employed or contracted by a mover has violated or is
25 operating in violation of any of the provisions of this act or
26 the rules or orders issued thereunder:

27 (a) Issuing a notice of noncompliance pursuant to s.
28 120.695, Florida Statutes.

29 (b) Imposing an administrative fine not to exceed
30 \$5,000 for each act or omission.

31 (c) Directing that the person cease and desist

Amendment No. 1 (for drafter's use only)

1 specified activities.

2 (d) Refusing to register or revoking or suspending a
3 registration.

4 (e) Placing the registrant on probation for a period
5 of time, subject to such conditions as the department may
6 specify.

7 (2) The administrative proceedings which could result
8 in the entry of an order imposing any of the penalties
9 specified in subsection (1) are governed by chapter 120,
10 Florida Statutes.

11 (3) The department has the authority to adopt rules
12 pursuant to chapter 120, Florida Statutes, to implement this
13 section.

14 Section 9. Civil penalties; remedies.--

15 (1) The department may institute a civil action in a
16 court of competent jurisdiction to recover any penalties or
17 damages allowed in this act and for injunctive relief to
18 enforce compliance with this act.

19 (2) The department may seek a civil penalty of up to
20 \$5,000 for each violation of this act.

21 (3) The department may seek restitution for and on
22 behalf of any shipper aggrieved or injured by a violation of
23 this act.

24 (4) Any provision in a contract for services or bill
25 of lading from a mover that purports to waive, limit,
26 restrict, or avoid any of the duties, obligations, or
27 prescriptions of the mover, as provided in this act, is void
28 and unenforceable and against public policy.

29 (5) The remedies provided in this act are in addition
30 to any other remedies available for the same conduct.

31 (6) Upon motion of the department in any action

Amendment No. 1 (for drafter's use only)

1 brought under this act, the court may make appropriate orders,
2 including appointment of a master or receiver or sequestration
3 of assets, to reimburse shippers found to have been damaged,
4 to carry out a consumer transaction in accordance with the
5 shipper's reasonable expectations, or to grant other
6 appropriate relief.

7 Section 10. Criminal penalties.--Any person or
8 business that violates this act commits a misdemeanor of the
9 first degree, punishable as provided in s. 775.082 or s.
10 775.083, Florida Statutes.

11 Section 11. General Inspection Trust Fund;
12 payments.--Any moneys recovered by the department as a penalty
13 under this act shall be deposited in the General Inspection
14 Trust Fund.

15 Section 12. Local preemption.--The provisions of this
16 act are not intended to preempt any municipality or county or
17 other political subdivision of this state which has authority
18 to require, levy, or collect any registration fee or tax or to
19 require the registration or bonding in any manner of any mover
20 unless that authority conflicts with any special or general
21 act of the Legislature.

22 Section 13. This act shall take effect July 1, 2002.

25 ===== T I T L E A M E N D M E N T =====

26 And the title is amended as follows:

27 remove: the entire title

29 and insert:

30 A bill to be entitled
31 An act relating to regulation of movers;

Amendment No. 1 (for drafter's use only)

1 providing definitions; providing construction,
 2 intent, and application; providing for
 3 registration with the Department of Agriculture
 4 and Consumer Services; authorizing the
 5 department to adopt rules; providing for fees;
 6 providing for display of certain information;
 7 providing for local registration; providing
 8 requirements, procedures, criteria, and
 9 limitations; authorizing the department to
 10 charge certain fees; providing for denial of or
 11 refusal to renew registration; providing
 12 security requirements and procedures; requiring
 13 estimates of moving costs; providing
 14 requirements and criteria; specifying
 15 violations; providing that certain violations
 16 constitute deceptive and unfair trade
 17 practices; providing penalties; providing for
 18 relief; providing for deposit of funds;
 19 providing intent regarding preemption of local
 20 laws; providing an effective date.

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