

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: CS/CS/SB 296

INTRODUCER: Community Affairs Committee, Commerce and Tourism Committee, and Senator Wise

SUBJECT: Household Moving Services

DATE: April 19, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McCarthy	Cooper	CM	Fav/CS
2.	Gizzi	Yeatman	CA	Fav/CS
3.	Blizzard	Meyer, C.	BC	Pre-meeting
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill requires movers and moving brokers to register with the Department of Agriculture and Consumer Services (department) biennially instead of annually and clarifies the definition of storage. The bill also preempts local government ordinances regulating movers of household goods or moving brokers that were enacted after January 1, 2011. The bill allows local government ordinances that were enacted prior to January 1, 2011, to remain in effect provided that such ordinances levy “reasonable” registration fees that do not exceed the cost of administering such ordinance. In addition, registration and bonding may be required only of a mover or moving broker whose principal place of business is located in the jurisdiction having such ordinance.

The preemption provisions in this bill do not preempt a local government’s authority to levy a local business tax.

The bill has no negative fiscal impact on state funds as a result of the staggered expiration date for the renewal period. The Revenue Estimating Conference adopted a positive fiscal impact of \$100,000 on February 22, 2011.

This bill substantially amends the following sections of the Florida Statutes: 507.01, 507.03, 507.07, and 507.13.

II. Present Situation:

Federal law expressly permits states to regulate the intrastate transportation of household goods.¹ Chapter 507, F.S., under which household moving services are regulated, “applies to the operations of any mover or moving broker engaged in the intrastate transportation or shipment of household goods originating in this state and terminating in this state.”²

Movers and Moving Brokers Registration

Section 507.01(9), F.S., defines “mover” to mean a person who, for compensation, contracts for or engages in the loading, transportation, shipment, or unloading of household goods as part of a household move. The term does not include a postal, courier, envelope, or package service that does not advertise itself as a mover or moving service.³ “Moving broker” is classified as a person who, for compensation, arranges for another person to load, transport, ship, or unload household goods as part of a household move or who, for compensation, refers a shipper to a mover by telephone, postal or electronic mail, internet website, or other means.⁴

Section 507.03, F.S., requires any “mover” or “moving broker” that wishes to do business in Florida to register annually with the Department of Agriculture and Consumer Services. In order to obtain a registration certificate, the mover or moving broker must file an application, pay a \$300 annual registration fee, and meet certain statutory qualifications, including proof of insurance coverage.⁵

Failure to comply with these intrastate registration requirements may subject a mover or moving broker to a “cease and desist order and fines of up to \$5,000.”⁶

Insurance Coverage and Liability Limitations

Section 507.04, F.S., requires that movers and moving brokers maintain liability and motor vehicle insurance. A mover operating more than two vehicles is required to maintain liability insurance coverage in the amount of at least \$10,000 per shipment, and the mover’s liability must not be less than 60 cents per pound per article.⁷ Movers operating two or fewer vehicles may maintain a performance bond or certificate of deposit in the amount of \$25,000, in lieu of maintaining liability insurance.⁸ All movers must maintain motor vehicle insurance coverage. The amount of coverage required is determined by the weight of the commercial motor vehicle.⁹

¹ See 49 U.S.C. 14501(c)(2)(B).

² Section 507.02(2), F.S.

³ Section 507.01(9), F.S.

⁴ Section 507.01(10), F.S.

⁵ Section 507.03(1), F.S.

⁶ Florida Department of Agriculture and Consumer Services, *Intrastate Moving Information For Businesses*, available online at <http://www.800helpfla.com/moving.html> (last visited on April 7, 2011). See also, ss. 507.09 and 507.10, F.S.

⁷ Section 507.04(1)(a) and (4), F.S.

⁸ Section 507.04(1)(b), F.S.

⁹ Section 507.04(2)(a)-(c), F.S.

Contractual provisions that limit a mover's liability for a shipper's goods are required to be disclosed by the mover in writing to the seller, along with the valuation rate "at the time that the estimate and contract for services are executed" and prior to providing any moving services.¹⁰ Movers that offer valuation coverage must also inform the shipper "of the opportunity to purchase" such coverage in the disclosure.¹¹ However, any contract for moving services that seeks to limit a mover's liability beyond the minimum valuation rate of "60 cents per pound per article" is void under s. 507.04(4), F.S.

Violations and Penalties

Current law regulates movers and moving brokers by specifying certain contract, delivery, and storage requirements.¹² Furthermore, s. 507.07, F.S., prohibits certain acts by movers and moving brokers and makes it a violation for movers and moving brokers to:

- Conduct or engage in the business of moving without first being registered annually with the department.
- Knowingly make a false statement, representation, or certification of a document required to be submitted or retained.
- Misrepresent or deceptively represent: the contract for services or inventory of goods; the timeframe for delivery or storage of goods; the price, size, nature, extent, qualities, or characteristics of services offered; or a shipper's rights, privileges, or benefits.
- Fail to honor and comply with provisions of the contract for services.
- Withhold delivery of household goods against the wishes of the shipper and after the shipper has paid according to the estimate provided in the service contract.
- Include a contract provision purporting to waive or limit a shipper's right or benefit as provided in this chapter.
- Seek or solicit a waiver or acceptance from a shipper of a provision limiting a shipper's right or benefit.
- Solicit services without clearly disclosing the mover's fixed business address.
- Commit any other act of fraud, misrepresentation, or failure to disclose a material fact.
- Refuse or fail, after notice, to produce any document or record or disclose any information required to be produced or disclosed.
- Knowingly make a false statement in response to any request or investigation by the department, the Department of Legal Affairs, or the state attorney.¹³

Movers that commit any of the above-listed prohibited acts may be subject to administrative, civil, or criminal penalties.¹⁴ Violations under ch. 507, F.S., may also be deemed an unfair or deceptive act or practice, or an unfair method of competition in violation of the Florida

¹⁰ Section 507.04(4), F.S.

¹¹ *Id.*

¹² *See* ss. 507.05 and 507.06, F.S.

¹³ Section 507.07, F.S.

¹⁴ *See* ss. 507.09, 507.10, and 507.11, F.S.

Deceptive and Unfair Trade Practices Act, subjecting a violator to a civil penalty of up to \$10,000 per violation.¹⁵

Local Ordinances and Regulations

Currently, ch. 507, F.S., allows municipalities and counties to adopt local ordinances or regulations relating to the moving of household goods in addition to state regulations that are required by the statute.¹⁶ Broward, Miami-Dade, Palm Beach, Hillsborough, and Pinellas counties currently have ordinances regulating household moving.¹⁷ Movers or moving brokers whose principal place of business is located in a county or municipality that has such ordinances requiring local licensing or registration are required to obtain local registration in addition to registering with the state.¹⁸ Florida law also allows for local taxes, fees, and bonding related to movers and moving brokers.¹⁹

Chapter 205, F.S., authorizes a local government to levy a business tax for the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction, called a local business tax.²⁰ The local business tax “does not mean any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection,” which are “in addition to, but not in lieu of,” the local business tax.²¹

According to the Federal Motor Carrier Safety Administration (FMCSA), Florida, California, New York, and New Jersey are “hot spots” for moving fraud.²² The FMCSA has partnered with state attorneys general, local law enforcement agencies, and industry and consumer groups to oversee and prevent fraud in the moving industry.²³

III. Effect of Proposed Changes:

This bill amends the requirements for household moving services and preempts certain local ordinances and regulations.

Section 1 amends s. 507.01, F.S., to narrow the definition of the term “storage” to mean the “temporary” warehousing of a shipper’s goods while under the care, custody, and control of a mover. Many movers store a shipper’s goods for a short period of time in order to combine loads from different shippers to reduce costs.

¹⁵ Section 507.08, F.S.

¹⁶ Section 507.13(1), F.S.

¹⁷ Information received from the Department of Agriculture and Consumer Services (Feb. 4, 2011) (Information is on file with the Commerce and Tourism Committee).

¹⁸ Section 507.03(4), F.S.

¹⁹ See s. 507.13(1), F.S.

²⁰ Local business taxes were formerly known as “local occupational license taxes.” See ch. 2006-152, Laws of Fla.

²¹ See s. 205.022(5), F.S.

²² See Federal Motor Carrier Safety Administration, *Background: The Regulation of Household Goods Movers*, <http://www.protectyourmove.gov/about/background/background.htm> (last visited April 8, 2011) (stating that to combat moving fraud “Florida’s Attorney General has a compliant system, provides moving tips, and makes moving companies’ business histories available to the public”).

²³ *Id.*

Section 2 amends s. 507.03, F.S., to change the registration renewal requirement by providing for a biennial requirement instead of an annual requirement. This section also grants the department the authority to extend the registration expiration date up to 12 months in order to establish staggered expiration dates of movers to prevent the department from receiving an influx of registration renewals and to allow for more efficient processing of renewals. The registration fee will continue to be calculated at the rate of \$300 per year.

Additionally, this section removes the requirement that movers and brokers obtain a local license or register locally, and deletes the provision requiring movers and moving brokers to pay for local license or registration fees in addition to the state registration fee.²⁴ However, movers and brokers are still required to pay the state registration fee required under s. 507.03, F.S.

Section 3 amends s. 507.07, F.S., to make technical changes to the language in order to comport with the amendments made in section 2 of the bill, which would require movers to register with the department biennially instead of annually.

Section 4 amends s. 507.13, F.S., to provide that ch. 507, F.S., shall preempt a local government ordinance or regulation that regulates transactions relating to movers of household goods or moving brokers.

However, ordinances enacted before January 1, 2011, or amendments to those ordinances, may remain in effect, provided such ordinances levy “reasonable” registration fees that do not exceed the cost of administering the ordinances. These existing ordinances apply only to a mover or moving broker if the mover or moving broker’s principal place of business is located within the jurisdiction having such an ordinance.

This section also clarifies that the preemption does not apply to a local government’s authority to levy a local business tax, pursuant to ch. 205, F.S.

Section 5 provides that this bill shall take effect on July 1, 2011, and shall apply retroactively to local ordinances or regulations adopted on or after January 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(b), of the Florida Constitution, requires any general law that reduces a local government’s authority to raise revenues in the aggregate, to be passed by a two-thirds vote of the membership of each house of the Legislature.²⁵ By limiting a local government’s authority to levy registration fees, this bill will reduce a local government’s revenue-raising authority.

Article VII, section 18(d), of the Florida Constitution, provides an exemption if the law is determined to have an insignificant fiscal impact.²⁶ An insignificant fiscal impact means

²⁴ Note: Section 6 of the bill addresses local registration requirements of movers and moving brokers.

²⁵ FLA. CONST. art. VII, s. 18(b).

²⁶ FLA. CONST. art. VII, s. 18(d).

an amount not greater than the average statewide population for the applicable fiscal year times ten cents (FY 2011-2012 \$1.9 million).²⁷

The Revenue Estimating Conference has determined that the biennial registration requirements would have a proposed fiscal impact of \$100,000 on the General Inspection Trust Fund within the department. The Revenue Estimating Conference states that the preemption of local fees will have an indeterminate fiscal impact on local governments.²⁸ If it is determined that the preemption of local fees has more than an insignificant fiscal impact, it will require a two-thirds vote of the membership of each house of the Legislature for passage.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Retroactive Application

Section 4 of this bill provides that this act shall not preempt an ordinance or regulation originally enacted by a county before January 1, 2011, or a subsequent amendment to such ordinance or regulation. This bill will therefore operate retroactively to January 1, 2011, and will affect local ordinances or regulations that were adopted between January 1, 2011, and July 1, 2011, which is the date the bill takes effect.

Pursuant to Florida case law, even when the Legislature clearly intends for a statute to apply retroactively, a court will reject such an application if the statute: impairs a vested right, creates a new obligation, or imposes a new penalty.²⁹ However, statutes that do not alter contractual or vested rights, and only relate to procedure can be applied retroactively.³⁰

The Florida Supreme Court has recognized that a statute may be applied retroactively if it meets the following conditions.

- There is clear evidence that the Legislature intended to apply the statute retroactively.

²⁷ Florida Economic Estimating Conference, Short-Run Tables, on file with the Senate Committee on Community Affairs.

²⁸ Revenue Estimating Conference, *Fiscal Impact, General Household Moving Services* (Feb. 22, 2011) (on file with the Senate Committee on Community Affairs).

²⁹ *Mendez v. Progressive Express Ins. Co.*, 35 So. 3d 873 (Fla. 2010). See also *Metropolitan Dade County v. Chase Fed. Housing Corp.*, 737 So. 2d 494, 499 (Fla. 1999) (stating that “[t]he general rule is that in the absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities and duties is presumed to apply prospectively).

³⁰ *Id.*

- Retroactive application is constitutionally permissible.³¹

In determining whether a retroactive application is constitutional, courts have generally held that due process considerations prevent retroactive legislation that impairs vested rights.³² However the Supreme Court has determined that this general rule is not absolute, and that courts have identified factors “to balance the considerations permitting or prohibiting an abrogation of value.”³³ In one case, the Supreme Court weighed the following three factors in considering the validity of retroactive legislation.

- The strength of the public interest served by the statute.
- The extent to which the right affected is abrogated.
- The nature of the right affected.³⁴

Since the retroactive provisions in this bill are aimed at local governments and not private citizens, it is unlikely that it will create due process concerns.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Movers and moving brokers will be required to pay their registration fees with the Department of Agriculture and Consumer Services biennially instead of annually.

Current local government ordinances regulating movers of household goods or moving brokers that were enacted prior to January 1, 2011, must be “reasonable” and limited to the amount necessary to administer the ordinance or regulation.

B. Private Sector Impact:

This bill may reduce business costs on household movers and moving brokers by requiring current local registration fees to be “reasonable” and limited to the amount necessary to administer the ordinance or regulation. According to the Department of Agriculture and Consumer Services, there are currently 808 intrastate movers and 6 moving brokers in the State of Florida.³⁵

This bill also reduces the state’s administrative burden on intrastate movers by requiring registration biennially instead of annually.³⁶ The biennial registration renewal requirement at the current rate of \$300 per year would require movers and moving brokers to pay \$600 every two years instead of \$300 per year.

³¹ *Metropolitan Dade County v. Chase Fed. Housing Corp.*, 737 So. 2d 494, 499 (Fla. 1999); *See also Promontory Enterprises, Inc. v. Southern Engineering & Contracting, Inc.*, 864 So. 2d 479 (Fla. 5th DCA 2004).

³² *State Dept. of Transportation v. Knowles*, 402 So. 2d 1155, 1157 (Fla. 1981).

³³ *Id.*

³⁴ *Id.*

³⁵ Information received from the Department of Agriculture and Consumer Services (Feb. 4, 2011) (Information on file with the Senate Committee on Commerce and Tourism).

³⁶ Florida Department of Agriculture and Consumer Services, *Agency Analysis Senate Bill 296*, at 2 (Jan. 21, 2011) (on file with the Senate Committee on Commerce and Tourism).

C. Government Sector Impact:

The state preemption of new local ordinances or regulations adopted after January 1, 2011, could lead to a loss of revenue from registration fees. Local governments that are permitted to continue to regulate intrastate movers (i.e. they have ordinances that were adopted prior to January 1, 2011), may also experience a loss in revenue since they would be required to review their registration fees to ensure that they are “reasonable” and necessary to cover the administrative costs of the ordinance.³⁷

The Revenue Estimating Conference has determined that the biennial registration requirements would have a positive fiscal impact of \$100,000 on the General Inspection Trust Fund. The Revenue Estimating Conference further states that the preemption of local fees will have an indeterminate fiscal impact on local governments.³⁸

The Department of Agriculture and Consumer Services has indicated that the preemption on local government ordinances as framed in the bill will not expand the duties or responsibilities of the department.³⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Community Affairs Committee on April 11, 2011:

This CS clarifies that this Act shall apply retroactively to local ordinances or regulations adopted on or after January 1, 2011.

CS by Commerce and Tourism Committee on March 29, 2011:

This CS deletes previous sections 3 and 4 of the original bill as filed. These sections proposed to:

- Allow a mover to exclude liability for items packed by the shipper, if the shipper declined in writing to allow the mover to inspect the box or crate containing the items, and the mover declared his or her exclusion from such liability; and

³⁷ *Id.*

³⁸ Revenue Estimating Conference, *Fiscal Impact, General Household Moving Services* (Feb. 22, 2011) (on file with the Senate Committee on Community Affairs).

³⁹ Information received from the Department of Agriculture and Consumer Services (Feb. 7, 2011) (Information on file with the Senate Committee on Commerce and Tourism).

- Allow a mover to refuse to transport or ship any of a shipper's household goods, as long as the shipper is notified of, and acknowledges in writing, the mover's refusal.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
