

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 1393	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	State Affairs Committee; Agriculture & Natural Resources Subcommittee; Beshears	116 Y's	0 N's
COMPANION BILLS:	(CS/CS/SB 654)	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 1393 passed the House on April 24, 2013, and subsequently passed the Senate on April 26, 2013. Reports across the country indicate that, due to the increased cost of plastic, the theft of plastic pallets and merchandise containers has escalated. Current law provides certain protections for owners of marked or branded field boxes, pallets, crates, containers, or receptacles used in the production, harvesting, packing, transportation, or marketing of fruits or vegetables or their byproducts by establishing penalties for violations of specific provisions relating to the containers. However, these statutory protections do not currently apply to similar items used for transportation or storage of agricultural products.

The bill expands the current statutory protections for owners of certain containers to include those used for storage and transportation of agricultural or other commodities. The bill also creates similar protections for owners of plastic bulk merchandise containers by requiring a person who purchases five or more plastic bulk merchandise containers from one seller to:

- Obtain from the seller proof of ownership of the containers.
- Maintain a record that contains the date of the transaction; the seller's or consignee's name, address, and telephone number; and, a description of the containers, including the number of containers being sold, each container's serial number, and other identifying marks.
- Verify the seller's identity with a valid driver's license or other government-issued photo identification card and maintain a copy of the identification card in the record of the sale.
- Make a non-cash payment for five or more plastic bulk merchandise containers and record the method of payment used in each transaction.

In addition, the bill requires a purchaser to maintain required records for at least two years after the date of purchase or delivery, whichever is later. State attorneys may inspect these records at any time upon notice.

The bill also defines the term "value" as having the same meaning as in s. 812.012, F.S.,¹ and provides that a person who violates these provisions in a transaction valued at \$10,000 or less commits a first degree misdemeanor. A violation relating to a transaction valued at more than \$10,000 is a third degree felony. A person who violates these provisions is liable to the owner of a stolen plastic bulk merchandise container for three times the replacement value of the stolen container. The owner of the stolen container may bring an action in a court of competent jurisdiction to recover monetary damages, attorney fees, and costs incurred in maintaining the action.

The bill has an insignificant fiscal impact on state and local government (See Fiscal Comments).

The bill was approved by the Governor on June 17, 2013, ch. 2013-211, L.O.F., and takes effect October 1, 2013.

¹ Section 812.012, F.S., defines value as it relates to the particular situation described in the bill as: 1. The market value of the property at the time and place of the offense or, if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense; and 2. The value of a written instrument that does not have a readily ascertainable market value, in the case of an instrument such as a check, draft, or promissory note, is the amount due or collectible or is, in the case of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation, the greatest amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Section 506.19, F.S., specifies that a person who owns containers² used in the general production, harvesting, packing, transportation, or marketing of fruits or vegetables or their byproducts in the state may adopt for his/her exclusive use and ownership a particular mark or brand to designate and distinguish his/her ownership of the containers. An owner may identify his/her containers with such mark or brand in the form of such combinations, initials, symbols, designs, or names as he/she may desire, by plainly and distinctly stamping, stenciling, painting, cutting, etching, or burning the mark or brand into or upon both ends or sides of such containers. The presence of the identifying mark or brand must be filed and recorded with the Department of Agriculture and Consumer Services (department) and serves as prima facie evidence in any court in the state of ownership of such container by the person who recorded the mark or brand with the department and bears the registered number.

Chapter 506, F.S.,³ provides protection for owners of marked or branded field boxes, pallets, crates, containers, or receptacles used in the production, harvesting, packing, transportation, or marketing of fruits or vegetables or their byproducts by establishing penalties for:

- Unauthorized possession of protected containers;
- Alteration or obliteration of marks or brands on protected containers;
- Purchase of protected containers from persons other than the registered owner;
- Refusal to deliver protected containers to the registered owner upon demand; and
- Sending protected containers out of state.

Other sections of chapter 506, F.S. provide protection for owners of shopping carts, laundry carts, dairy cases, egg baskets, poultry boxes, and bakery containers.⁴ However, the above statutory protections do not currently apply to similar items used for transportation or storage of agricultural products.

Recently, there have been numerous reports regarding the theft of plastic pallets and other reusable containers. An article in the Los Angeles Times reported that this is becoming a nationwide problem due to the rise in the price of oil, which has driven up the cost of plastic. Arizona enacted legislation in 2012 to track down persons stealing the plastic pallets and turning them in for cash value at recycling centers. California has also enacted legislation to protect plastic pallets from theft. In Florida, a man was recently arrested for allegedly stealing pallets from a Home Depot parking lot. Though he claimed that he thought the pallets were trash and could be taken, he was charged with grand theft. He eventually pled guilty to disorderly conduct.

Effect of Proposed Changes

The bill amends s. 506.19, F.S., to specify that persons who own containers used for the storage or transport of agricultural or other commercial goods may adopt a mark or brand for his/her exclusive use and ownership, which is similar to what is currently allowed for containers used in the general production, harvesting, packing, transportation, or marketing of fruits or vegetables or their byproducts.

² For ease of reading, "container" is used in this analysis to refer to field boxes, pallets, crates, containers, or receptacles.

³ Sections 506.19-506.28, F.S.

⁴ Sections 506.501-506.519, F.S.

The bill also specifies that, for purposes of any court of administrative proceeding, if a copy of the mark or brand is filed and recorded with the department, the presence of the identifying mark or brand and the required registration number on any container is prima facie evidence of ownership.

The bill creates s. 506.265, F.S., which provides the following definitions:

- “Bona fide purchaser” means a person who in good faith makes a purchase without knowledge of another person’s outstanding rights.
- “Non-cash payment” means payment by a method other than the use of coins or currency.
- “Plastic bulk merchandise container” means a plastic crate or shell used by a product manufacturer, distributor, or retailer for the bulk transportation or storage of goods, and includes a plastic pallet used as a portable platform upon which containers, products, or materials may be placed to facilitate handling.
- “Proof of ownership” means a bill of sale or other evidence showing that a person who claims to be the owner of an item is the bona fide purchaser who purchased the item for fair market value.

The bill also specifies that a person who purchases five or more plastic bulk merchandise containers from one seller must:

- Obtain from the seller proof of ownership of the containers.
- Maintain a record that contains the date of the transaction; the seller’s or consignee’s name, address, and telephone number; and a description of the containers, including the number of containers being sold, each container’s serial number, and other identifying marks.
- Verify the seller’s identity with a valid driver’s license or other government-issued photo identification card and maintain a copy of the identification card in the record of the sale.
- Make a non-cash payment for five or more plastic bulk merchandise containers and record the method of payment used in each transaction.

In addition, the bill specifies that a purchaser must maintain required records for at least two years after the date of purchase or delivery, whichever is later. State attorneys of the judicial circuits may inspect these records at any time upon reasonable notice.

The bill also defines the term “value” as having the same meaning as in s. 812.012, F.S.,⁵ and provides that a person who violates these provisions in a transaction valued at \$10,000 or less commits a misdemeanor of the first degree, punishable by a definite term of imprisonment not exceeding one year or a fine not exceeding \$1,000.⁶ A person who violates these provisions in a transaction valued at more than \$10,000 commits a felony of the third degree, punishable by a term of imprisonment not exceeding five years or a fine not exceeding \$5,000.⁷ In the case of habitual offenders, the term of imprisonment cannot exceed 10 years.

A person who violates these provisions is liable to the owner of a stolen plastic bulk merchandise container for three times the replacement value of the stolen container. The owner of the stolen container may bring an action in a court of competent jurisdiction to recover monetary damages, attorney fees, and costs incurred in maintaining the action.

⁵Section 812,012, F.S., defines value as it relates to the particular situation described in the bill as: 1. The market value of the property at the time and place of the offense or, if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense; and 2. The value of a written instrument that does not have a readily ascertainable market value, in the case of an instrument such as a check, draft, or promissory note, is the amount due or collectible or is, in the case of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation, the greatest amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

⁶ Sections 775.082 and 775.083, F.S.

⁷ Sections 775.082 and 775.083, F.S.

These provisions do not apply to the collection, receipt, or recycling of plastic bulk merchandise containers by the operator of a waste management facility or an entity exempt from federal income tax under s. 503(c)(3) of the Internal Revenue Code.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments section.

2. Expenditures:

The Criminal Justice Impact Conference met on April 4, 2013, and determined that there will be an insignificant impact on prison beds as a result of a person convicted of violating requirements in the purchase of plastic bulk containers valued at more than \$10,000 as defined in s. 506.265, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of plastic bulk containers that wish to be protected by the provisions of this legislation will incur charges of an indeterminate amount to comply with the registration and record-keeping requirements.

D. FISCAL COMMENTS:

The Department of Agriculture and Consumer Services anticipates an insignificant increase in revenues from an increase in the filing of marks and brands for identifying containers used for the storage and transportation of agricultural or other commodities. The filing of marks or brands is usually a one-time occurrence. The filing fee is \$2.00 and the certificate fee is \$1.00 for a total of \$3.00 per application.