

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 Committee on Appropriations

BILL: CS/CS/SB 654

INTRODUCER: Criminal Justice Committee; Agriculture Committee; and Senator Montford

SUBJECT: Agricultural Storage and Shipping

DATE: April 19, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Halley	AG	Fav/CS
2.	Clodfelter	Cannon	CJ	Fav/CS
3.	Blizzard	Hansen	AP	Favorable
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/CS/SB 654 expands the protections provided to owners of marked or branded field boxes used for storage or transportation of agricultural or other commercial commodities. The bill creates similar protection provisions for owners of plastic bulk merchandise containers by providing definitions, setting forth procedures that must be followed for sale and purchase of five or more such containers, establishing record keeping requirements, and establishing criminal penalties for violation of the terms. In addition, the bill authorizes an owner of plastic bulk merchandise containers to bring a civil action for damages from a person who violates these terms. Finally, the bill provides exemptions for licensed waste haulers and charitable organizations.

The bill has an insignificant fiscal impact on state and local governments. (See Section V).

The bill substantially amends section 506.19, Florida Statutes.

The bill creates sections 506.265 and 506.266, Florida Statutes.

II. Present Situation:

Chapter 506, F.S., 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 upon the filing and recording of identifying data with the Department of Agriculture and Consumer Services (DACS) by establishing penalties for:

- Unauthorized possession of protected containers;
- Alteration or obliteration of marks or brands on protected containers;
- Purchase of protected containers from other than owner;
- Refusal to deliver protected containers to the registered owner upon demand; and
- Sending protected containers out of state.¹

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.² However, the above statutory protections do not currently apply to similar items used for transportation or storage of agricultural products.

Theft of Plastic Containers and Pallets

Recently, there has been a number of incidents that appear to reflect an escalation in the theft of plastic pallets and other reusable containers. Examples of these incidents include:

- The Los Angeles (LA) County Sheriff's Department has formed a five-person task force to track tens of thousands of pallets and crates that are stolen from businesses, then shredded, recycled, and resold to the firms from which they were taken. The newspaper article that reported this activity describes this scheme as being similar to the better known recycling crime, stealing copper wire and other metals, and relates that this type of crime is becoming a nationwide problem due to the rise in the price of oil, which has driven up the cost of plastic. In the past year, that LA task force turned over 47 cases for criminal prosecution and recovered more than \$6 million in stolen plastic.³
- In 2012, law enforcement agents in Michigan charged four men with stealing plastic pallets from industrial yards and then fencing the pallets through legitimate and illegitimate businesses as part of an alleged organized crime operation.⁴
- The State of Arizona passed a law in 2011 to help track down people who stole plastic pallets for their value at recycling centers. It was estimated that Arizona businesses were losing about \$3 million a year due to this type of theft.⁵
- In California, a law requiring proof of ownership or permission to sell pallets that have ownership markings became effective on January 1, 2013.⁶

¹ ss. 506.24-506.28, F.S.

² ss. 506.501-506.519.

³ See <http://articles.latimes.com/print/2012/nov/25/local/la-me-plastics-20121126> (last viewed on March 13, 2013).

⁴ See <http://detroit.cbslocal.com/2012/07/06/four-charged-in-organized-crime-crackdown/> (last viewed on March 13, 2013); http://www.michigan.gov/ag/0,4534,7-164-46849_47203-281856--,00.html (last viewed on March 13, 2013).

⁵ Ariz. Rev. Stat. s. 44-1799.81 (2012). See also http://azstarnet.com/business/local/new-rules-aim-to-stop-theft-of-plastic-pallets/article_6e5bbf87-9cf7-554e-a760-4bcd1c1f95cc.html (last viewed on March 13, 2013).

- In Seminole County, a man who was arrested for allegedly stealing plastic pallets from the parking lot of a big-box hardware store was originally charged with petit theft but entered a plea to disorderly conduct.⁷ In another incident in southeast Florida in October 2012, police officers made an arrest for grand theft when they investigated a report of a suspicious vehicle behind a strip center and found a trailer with 10 plastic pallets that had been taken from the back of a large grocery store.⁸
- In another area of Florida, in December 2012, a company that rents plastic pallets had reason to track a pallet with an imbedded built-in radio-frequency identification (RFID) tag. The company's investigator found 252 of its pallets on a vacant lot. After the lot owner failed to return the pallets as agreed, a follow-up investigation disclosed that the 252 pallets were gone and 98 other pallets were on a trailer parked on the vacant lot.⁹

III. Effect of Proposed Changes:

Section 1 amends s. 506.19, F.S., to expand the protections provided to owners of marked or branded field boxes or other specified containers used for fruits or vegetables to cover owners of containers used in the storage or transport of agricultural or other commercial goods. The bill also makes technical and grammatical changes.

Section 2 creates s. 506.265, F.S., to establish procedures covering the purchase of plastic bulk merchandise containers as follows:

- Creates the following definitions:
 - “Bona fide purchaser” means a good faith purchaser without knowledge of another person’s outstanding rights.
 - “Plastic bulk merchandise container” means a plastic crate or shell, including a plastic pallet, used by a product manufacturer, distributor, or retailer for bulk transportation.
 - “Proof of ownership” means a bill of sale or other evidence showing that the owner is a bona fide purchaser who purchased the item for fair market value.
- Requires a person who purchases five or more plastic bulk merchandise containers from one seller to obtain proof of the seller’s ownership and maintain a record with specific details about the seller and the containers. The purchaser must verify the seller’s identity with a valid driver’s license or government-issued photo identification card and keep a copy. A noncash payment must be made and recorded. The bill defines “non-cash payment” as payment by a method other than use of coins or currency.
- Requires these records to be maintained for two years from the date of purchase or delivery, whichever is later, and that the records be made available for inspection by state attorneys of the judicial circuit on reasonable notice.
- Exempts licensed waste haulers and entities that are exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code from compliance with this section.

⁶ Cal. Bus & Prof Code s. 21609.7 (2012).

⁷ See <http://www.palletenterprise.com/articledatabase/view.asp?articleID=3659> (last viewed on March 13, 2013). See also <http://www.thelawman.net/Recent-Cases/Theft-from-Home-Depot.shtml> (last viewed on March 13, 2013).

⁸ Phone conversation February 26, 2013 with Luis Tanzi, Field Enforcement Regional Manager, IGPS Company, LLC.

⁹ *Ibid.* The incident is still under investigation.

Section 3 creates s. 506.266, F.S., to provide penalties for violation of s. 506.265, F.S., as follows:

- “Value” is defined by referring to the definition contained in chapter 812, F.S., Florida’s general criminal statutes.
- A transaction valued at \$10,000 or less is a misdemeanor of the first degree, punishable as provided in ss. 775.082 or 775.083, F.S.
- A transaction valued at more than \$10,000, is a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.
- The violator is liable to the owner for three times the replacement value of the stolen plastic bulk merchandise containers. The owner is authorized to bring action in a court of competent jurisdiction to recover money damages and attorney fees and costs.

Section 4 provides that this act shall take effect October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Owners of branded, plastic bulk merchandise containers that wish to avail themselves of the protections offered by this bill will incur some additional expense of an indeterminate amount in order to comply with the registration and record keeping requirements of the bill.

C. Government Sector Impact:

The DACS estimates that it would incur a minimal fiscal or operational impact in order to comply with the recording requirements of the bill. This impact can be handled within existing resources.

The Criminal Justice Impact Conference reviewed a similar bill on April 4, 2013, and determined there would be an indeterminate, but insignificant impact on prison beds as a result of violating purchase requirements of plastic bulk containers, as defined in section 506.265, F.S.

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 Criminal Justice on March 18, 2013:

The CS defines “noncash payment” as a method of payment other than the use of coins or currency. It also provides an exemption for possession of plastic bulk merchandise containers by charitable organizations.

CS by Agriculture on March 4, 2013:

The CS defines “value” when used to determine whether a violation is a misdemeanor or felony by reference to the definition in chapter 812, F.S., the Florida general criminal statutes. The bill changes a violation involving a value in excess of \$10,000 from a first degree felony to a third degree felony.

- B. **Amendments:**

None.