

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 Criminal Justice

BILL: CS/SB 654

INTRODUCER: Agriculture Committee and Senator Montford

SUBJECT: Agricultural Storage and Shipping

DATE: March 13, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Halley	AG	Fav/CS
2.	Clodfelter	Cannon	CJ	Pre-meeting
3.			AP	
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:

CS/SB 654 provides statutory protection for stamped or marked containers used for storage or transportation of agricultural or other commercial goods in addition to the types of containers that are presently provided protection by being enumerated in the statutes. The bill creates similar protection 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 these terms. In addition, it authorizes an owner of plastic bulk merchandise containers to bring a civil action for damages from a person who violates these terms. It also exempts licensed waste haulers from compliance with the terms of the bill relating to plastic bulk merchandise containers.

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 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 ch. 506, F.S., provide protection for owners of shopping carts, laundry carts, dairy cases, egg baskets, poultry boxes, and bakery containers.²

The above statutory protection is exclusive to items listed and that sort of protection does not cover similar items used for transportation or storage of agricultural products not listed or other consumer goods.

Theft of Plastic Containers and Pallets

There have recently 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 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, 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 last year, that LA task force turned over 47 cases for criminal prosecution and recovered more than \$6 million in stolen plastic.³
- In the summer of 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 and it was estimated then that Arizona businesses were losing about \$3 million a year due to this type of theft.⁵ In California, a law requiring proof

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).

of ownership or permission to sell pallets that have ownership markings became effective on January 1, 2013.⁶

- 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:

- It 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.
- It 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.
- It 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.
- It exempts licensed waste haulers 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.

Although the bill requires that payment for five or more pallets be made by a “noncash payment,” it does not define the term. While many people think of “cash” as referring only to currency (paper money and coins), it can also refer to checks and certain other types of payment. The only definition of “cash” in the Florida Statutes is in s. 627.066(1)(b), F.S., which defines the term to mean “coins, currency, checks, drafts, or money orders.” However, the definition is only applicable to the statutory section in which it is found.

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 ch. 812, F.S., Florida’s general criminal statutes.
- If the transaction is valued at \$10,000 or less, it is a misdemeanor of the first degree, punishable as provided in ss. 775.082 or 775.083, F.S.
- If the transaction is valued at more than \$10,000, it 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.

D. Other Constitutional Issues:

As previously discussed, the bill does not define the term “noncash payment.” The lack of a definition makes it unclear whether the bill is intended to prohibit only payment with currency, or if it is also intended to prohibit payment with checks or certain other instruments. In certain situations, this ambiguity would make the criminal provisions of the bill susceptible to challenge as being void for vagueness.

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 unknown amount in order to comply with the registration and record-keeping requirements of the bill.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services estimates that it would incur a minimal fiscal or operational impact in order to comply with the recording requirements of the bill.

The Criminal Justice Impact Conference has not yet considered whether the bill would have an impact on requirements for prison bed space, but it is not likely to be significant.

VI. Technical Deficiencies:

As previously noted, the bill does not include a definition of “noncash payment” and the meaning of the term is not clear.

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 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 ch. 812, F.S., the Florida general criminal statutes. It changes a violation involving a value in excess of \$10,000 from a first degree felony to a third degree felony.

B. Amendments:

None.