

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 327 Household Movers
SPONSOR(S): Careers & Competition Subcommittee, Yarborough
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 336

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	12 Y, 0 N, As CS	Wright	Anstead
2) Commerce Committee	27 Y, 0 N	Wright	Hamon

SUMMARY ANALYSIS

In order for an intrastate mover to operate in Florida, the mover must register with the Department of Agriculture and Consumer Services (DACS) and comply with the provisions of chapter 507, F.S.

The bill provides that a mover commits a violation of Florida law by knowingly refusing or failing to disclose in writing to a customer before a household move that the mover or an employee of a mover who has access to the customer's dwelling or property has been convicted of certain sexual offenses.

Upon a finding by DACS that a mover has knowingly refused or failed to disclose such criminal history, DACS must impose a minimum \$10,000 administrative fine. If DACS instead chooses to pursue a civil remedy, it must seek a minimum \$10,000 civil penalty.

The bill directs DACS to deny or refuse to renew a registration if the mover has not satisfied a civil penalty or administrative fine related to this violation.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect on October 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 507, F.S., establishes the law applying to the operations of any mover or moving broker (broker) engaged in the intrastate transportation or shipment of household goods originating in this state and terminating in this state.¹ Movers and brokers engaged in the interstate transportation of household goods are regulated by the Federal Motor Carrier Safety Administration within the United States Department of Transportation.²

A 'mover' is a person who, for compensation, contracts for or engages in the loading, transportation or 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

A 'broker' is a person who, for compensation, arranges for another person to load, transport or 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

'Household goods' means personal effects or property commonly found in a home, personal residence, or other dwelling, such as household furniture. It does not include freight or personal property moving to or from a place of business.⁵

'Household move' means the loading of household goods into a mode of transportation or shipment; the transportation or shipment of those household goods; and the unloading of those household goods, when the transportation or shipment originates and terminates at one of the following ultimate locations:

- From one dwelling to another;
- From a dwelling to a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent; or
- From a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent to a dwelling.⁶

Before providing moving services, a mover must provide a customer with a written contract containing the following:

- the name, telephone number, and physical address where the mover's employees are available during normal business hours;
- the date the contract or estimate is prepared and any proposed date of the move;
- the name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached;
- the name, telephone number, and physical address of any location where the goods will be held pending further transportation, including situations where the mover retains possession of goods pending resolution of a fee dispute with the shipper;

¹ s. 507.02(2), F.S.

² 49 C.F.R §§ 375.101 and 375.103 (2012).

³ s. 507.01(9), F.S.

⁴ s. 507.01(10), F.S.

⁵ s. 507.01(7), F.S.

⁶ s. 507.01(8), F.S.

- an itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods.
- acceptable forms of payment,⁷ and
- a phrase signifying that the mover is state-registered and identifying the mover's registration number.

A mover is not required to perform a criminal background check on employees.

Application for Registration

An applicant for a mover registration must provide:

- its legal business and trade name, mailing address, and business locations;
- the full names, addresses, and telephone numbers of its owners or corporate officers and directors and the Florida agent of the corporation;
- a statement whether it is a domestic or foreign corporation, its state and date of incorporation, its charter number, and, if a foreign corporation, the date it registered with the Department of State;
- the date on which the mover or broker registered its fictitious name if the mover or broker is operating under a fictitious or trade name;
- the name of all other corporations, business entities, and trade names through which each owner of the mover or broker operated, was known, or did business as a mover or moving broker within the preceding 5 years;
- proof of the required insurance or alternative coverages;
- statements attesting to the current and pending history of any mover owners, officers, directors, managing members, or general partners regarding:
 - crimes involving fraud, dishonest dealings, or any act of moral turpitude; and
 - civil fines or penalties arising out of any administrative or enforcement action brought by any government agency or private person based upon conduct involving fraud, dishonest dealing, or any violation of ch. 507, F.S.⁸

DACS may deny, refuse to renew, or revoke the registration of any mover or broker when it determines that the mover or broker, or any of the mover's or broker's directors, officers, owners, or general partners has:

- failed to meet the requirements for registration as provided in ch. 507;
- been convicted of a crime involving fraud, dishonest dealing, or any other act of moral turpitude;
- not satisfied a civil fine or penalty arising out of any administrative or enforcement action brought by any governmental agency or private person based upon conduct involving fraud, dishonest dealing, or any violation of this chapter;
- pending against him or her any criminal, administrative, or enforcement proceedings in any jurisdiction, based upon conduct involving fraud, dishonest dealing, or any other act of moral turpitude; or
- had a judgment entered against him or her in any action brought by DACS or the Department of Legal Affairs under this chapter or the Florida Deceptive and Unfair Trade Practices Act.⁹

Crimes of moral turpitude have not been defined by statute. Applicable case law has generally defined them as acts of "baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man."¹⁰ The determination that a crime involves moral turpitude is made based on the statutory definition or nature of the crime, not the specific conduct predicated a particular conviction.¹¹ Some

⁷ s. 507.05, F.S.

⁸ s. 507.03(1), F.S.

⁹ s. 507.03, F.S.

¹⁰ *Itani v. Ashcroft*, 298 F.3d 1213, 1215 (11th Cir. 2002).

¹¹ *Keungne v. United States AG*, 561 F.3d 1281, 1284 (11th Cir. 2009).

examples of crimes that have been held to involve moral turpitude are aggravated battery¹² and aggravated child abuse.¹³

Administrative Remedies and Penalties

DACS or the enforcing authority may impose fines for violations of law in the following categories:

- Class I- A fine not exceeding \$1,000 may be imposed for each violation of this class.
- Class II- A fine not exceeding \$5,000 may be imposed for each violation of this class.
- Class III- A fine not exceeding \$10,000 may be imposed for each violation of this class.
- Class IV- A fine of \$10,000 or more may be imposed for each violation of this class.¹⁴

DACS is authorized to issue an order for one or more of the following administrative remedies if it finds that a mover or broker, or a person employed or contracted by a mover or broker, has violated ch. 507, F.S., or rules or orders issued pursuant thereunder:

- issuing a notice of noncompliance,¹⁵
- imposing a Class II administrative fine for each act or omission,
- directing that the person cease and desist specified activities,
- refusing to register or revoking or suspending a registration, and/or
- placing the registrant on probation, subject to the conditions specified by DACS.¹⁶

Rule 5J-15.002 of the Florida Administrative Code provides the specific penalty guidelines for violations of ch. 507, F.S., or rules promulgated thereunder. DACS may issue a notice of noncompliance for certain first violations. DACS may impose fines for “minor violations” that range from \$1,000 to \$2,500.¹⁷ For “major violations,” DACS may impose an administrative fine that ranges from \$1,000 to \$5,000 or impose any of the other penalties provided in s. 507.09(1)(b)-(e), F.S.¹⁸

Civil Penalties

DACS is permitted to seek a civil penalty in the Class II category for each violation of this chapter.¹⁹

Sexual Offense Criteria

Section 775.21(4)(a)1., F.S., lists felony criminal offenses that, upon conviction, designate the offender as a “sexual predator.” Those criminal offenses are as follows:

- sexual misconduct by a care or support provider with an individual with a developmental disability who meets certain criteria (s. 393.135(2), F.S.);
- sexual misconduct by an employee of the Department of Children and Families (DCF) with a patient who meets certain criteria (s. 394.4593(2), F.S.);
- kidnapping, where the victim is a minor (s. 787.01, F.S.);
- false imprisonment, where the victim is a minor (s. 787.02, F.S.);
- luring or enticing a child, where the victim is a minor (s. 787.025(2)(c), F.S.);
- human trafficking (s. 787.06(3)(b), (d), (f), or (g) and former s. 787.06(3)(h), F.S.);

¹² *Sosa-Martinez v. United States AG*, 420 F.3d 1338, 1342 (11th Cir. 2005).

¹³ *Garcia v. United States AG*, 329 F.3d 1217, 1222 (11th Cir. 2003).

¹⁴ s. 570.97(1), F.S.

¹⁵ A “notice of noncompliance” is “a notification by the agency charged with enforcing the rule issued to the person or business subject to the rule. A notice of noncompliance may not be accompanied with a fine or other disciplinary penalty” (s. 120.695, F.S.).

¹⁶ s. 507.09(1), F.S.

¹⁷ *See Fla. Admin. Code R. 5J-15.002(8)(b)* (2015). The DACS defines a “minor violation” as a violation of specified provisions and a violation that “does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm.”

¹⁸ *See Fla. Admin. Code R. 5J-15.002(8)(c)* (2015). The DACS defines a “major violation” as a violation of specified provisions and a violation that “results in economic or physical harm to a person or adversely affects the public health, safety, or welfare, or creates a significant threat of such harm.”

¹⁹ s. 507.10(2), F.S.

- sexual battery (s. 794.011, F.S., excluding s. 794.011(10), F.S.);
- unlawful sexual activity with certain minors (s.794.05, F.S.);
- procuring a person under the age of 18 for prostitution (former s. 796.03, F.S.);
- selling or buying of minors into sex trafficking or prostitution (former s. 796.035, F.S.);
- lewd or lascivious offense committed upon or in the presence of persons less than 16 years of age (s. 800.04, F.S.);
- video voyeurism of a minor (s. 810.145(8), F.S.);
- lewd or lascivious offense committed upon or in the presence of an elderly person or disabled adult (s. 825.1025, F.S.);
- sexual performance by a child (s. 827.071, F.S.);
- certain acts in connection with obscenity (s. 847.0133, F.S.);
- computer pornography related to minors (s. 847.0135, F.S., excluding s. 847.0135(6), F.S.);
- transmission of child pornography by electronic device/equipment (s. 847.0137, F.S.);
- transmission of material harmful to minors to a minor by electronic device/equipment (s. 847.0138, F.S.);
- selling or buying of minors for portrayal in a visual depiction engaging in sexually explicit conduct (s. 847.0145, F.S.);
- offenses concerning racketeering and illegal debts where the court makes a written finding that the racketeering activity involved at least one sexual offense listed above (s. 895.03, F.S.);
- sexual misconduct by a DCF provider with a forensic client who meets certain criteria (s. 916.1075(2), F.S.);
- sexual misconduct by an employee of the Department of Juvenile Justice with a juvenile offender (s. 985.701(1), F.S.);
- any similar offense committed in this state which has been redesignated from a former statute number to one of those listed above; and/or
- a violation of a similar law to those listed above in another jurisdiction.

The Florida Department of Law Enforcement has an online database to search certain public record information on sexual predators. A search may be conducted by a person's name or other identifying information.²⁰

Effect of Proposed Changes

The bill creates a new statutory violation for movers at s. 507.07(9), F.S., which states that a mover violates this chapter if the mover **knowingly** refuses or fails to disclose in **writing** to a customer **before** a household move that the **mover or an employee of the mover** who has access to the dwelling or property of the customer has been **convicted of a sexual offense**, defined as those listed in s. 775.21(4)(a)1., F.S., or similar offenses in other jurisdictions.

However, the bill does not require the mover to perform a background check on every employee.

The bill requires that DACS deny or refuse to renew the registration of a mover or deny a registration or renewal request by any of the mover's directors, officers, owners, or general partners if the mover has not satisfied a civil fine or penalty for a violation of s. 507.07(9), F.S.

The bill requires DACS to impose a minimum \$10,000 administrative fine upon a finding by DACS that a violation of s. 507.07(9), F.S., has occurred. If DACS instead chooses to pursue a civil remedy for such violation, it must seek a minimum \$10,000 civil penalty.

The bill takes effect on October 1, 2017.

²⁰ Florida Department of Law Enforcement, *Offender Search*, <https://offender.fdle.state.fl.us/offender/Search.jsp> (last visited March 9, 2017).

B. SECTION DIRECTORY:

- Section 1 Creates s. 507.03(9), F.S., relating to registration.
- Section 2 Creates s. 507.07(9), F.S., relating to violations.
- Section 3 Amends s. 507.09(1)(b), F.S., relating to administrative remedies and penalties.
- Section 4 Amends s. 507.10(2), F.S., relating to civil penalties.
- Section 5 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Movers may incur expenses related to providing customers with written notices and performing background checks on employees.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None

B. RULE-MAKING AUTHORITY:

DACS will need to amend rules regarding registration and penalties in ch. 5J-15, F.A.C.. Authority is granted by s. 507.09(3), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not give a specific timeframe for notification to the customer. The bill does not indicate what information needs to be in the notice, nor does it indicate whether the customer needs to sign such notification.

The bill does not require movers to perform background checks on every employee. It is unclear how the mover would “knowingly” hire an employee with this specific criminal history when they are not required to ask employees that specific question.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 22, 2017, the Careers and Competition Subcommittee adopted an amendment and reported the bill favorably as a subcommittee substitute. The amendment makes the bill identical to the Senate companion bill (CS/SB 336) by:

- including unsatisfied administrative fines for a violation of s. 507.07(9), F.S., as bases to deny or refuse to renew a mover registration.
- clarifying which criminal convictions necessitate disclosure to a customer prior to a household move.
- requiring DACS to impose a minimum \$10,000 administrative fine upon a finding by DACS that a violation of s. 507.07(9), F.S., has occurred. If DACS instead chooses to pursue a civil remedy for such violation, it must seek a minimum \$10,000 civil penalty.

This analysis is drafted to the committee substitute as passed by the Careers and Competition Subcommittee.