

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/SB 336

INTRODUCER: Regulated Industries Committee and Senator Hutson and others

SUBJECT: Household Movers

DATE: April 4, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	Fav/CS
2.	<u>Blizzard</u>	<u>Betta</u>	<u>AEN</u>	Recommend: Fav/CS
3.	<u>Blizzard</u>	<u>Hansen</u>	<u>AP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 336 prohibits a mover from knowingly refusing or failing to provide written notice to a customer before a household move that the mover or an employee of the mover who has access to the customer's dwelling or property is a convicted sexual predator in Florida, or has been convicted of a similar offense of another jurisdiction, regardless of when the felony offense was committed.

The bill requires the Department of Agriculture and Consumer Services (DACS) to either impose an administrative fine or seek a civil penalty of \$10,000 or more for each violation of that requirement.

In addition, the bill requires the DACS to deny or refuse to renew the registration of a mover or the mover's directors, officers, owners, or general partners, if the mover has not satisfied a civil fine or penalty imposed for refusing or knowingly failing to provide the customer with the required written notice.

The bill does not have a fiscal impact on state funds.

The bill takes effect on October 1, 2017.

II. Present Situation:

Chapter 507, F.S., provides for the regulation by the DACS of movers and moving brokers engaged in the **intrastate** transportation or shipment of household goods originating in this state and terminating in this state.¹ Chapter 507, F.S., does not apply to shipments contracted by the United States, the state, or any local government or political subdivision of the state.²

A mover or moving broker who is engaged in **intrastate** moving is required to register with the DACS.³ Section 507.03(1), F.S., specifies the information that must be provided to the DACS, including the mover's or broker's legal business and trade name, mailing address, business locations, and the full names, addresses, and telephone numbers of owners or corporate officers, directors, and the Florida agent of the corporation.

The certificate of registration must be prominently displayed in the mover's or broker's primary place of business.⁴ The registration fee is \$300 per year,⁵ and the registration is renewed biennially.⁶

Movers and moving 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.⁷

Definitions

Section 507.01(7), F.S., defines the terms "household goods" or "goods" to mean:

personal effects or other personal property commonly found in a home, personal residence, or other dwelling, including, but not limited to, household furniture. The term does not include freight or personal property moving to or from a factory, store, or other place of business.

Section 507.01(8), F.S., defines the terms "household move" or "move" to mean:

the loading of household goods into a vehicle, moving container, or other 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, regardless of whether the mover temporarily stores the goods while en route between the originating and terminating locations:

- (a) From one dwelling to another dwelling;

¹ Section 507.02(2), F.S.

² *Id.*

³ Section 507.03 (1), F.S.

⁴ Section 507.03(2), F.S.

⁵ Section 507.03(3)(a), F.S.

⁶ Section 507.03(4), F.S.

⁷ See "Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations," 47 C.F.R part 375 (2003).

- (b) From a dwelling to a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent; or
- (c) From a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent to a dwelling.

Section 507.01(9), F.S., defines the term "mover" to mean:

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.

Section 507.01(10), F.S., defines the term "moving broker" or "broker" to mean:

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.

Denial of Registration or Registration Renewal

Section 507.03(8), F.S., permits the DACS to deny, refuse to renew, or revoke the registration of any mover or moving broker when it determines that the mover or moving broker, or any of the mover's or moving broker's directors, officers, owners, or general partners has:

- Failed to meet the requirements for registration as provided in this chapter;
- 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 the department or the Department of Legal Affairs under this chapter or ss. 501.201-501.213, [F.S.,] the Florida Deceptive and Unfair Trade Practices Act.

Administrative Remedies

Section 507.09(1), F.S., authorizes the DACS to issue an order for one or more of the following administrative remedies if it finds that a mover or moving broker, or a person employed or contracted by a mover or broker, has violated or is operating in violation of ch. 507, F.S., or rules or orders issued pursuant to the chapter:

- Issuing a notice of noncompliance under s. 120.695, F.S.⁸
- Imposing an administrative fine in the Class II category pursuant to s. 570.971, F.S., for each act or omission.
- Directing that the person cease and desist specified activities.
- Refusing to register or revoking or suspending a registration.
- Placing the registrant on probation, subject to the conditions specified by the department.

Fines and Penalties

Section 570.971(1), F.S., authorizes the DACS to impose the following fines based on the class category assigned in the law violated:

- (a) Class I. - For each violation in the Class I category, a fine not to exceed \$1,000 may be imposed.
- (b) Class II. - For each violation in the Class II category, a fine not to exceed \$5,000 may be imposed.
- (c) Class III. - For each violation in the Class III category, a fine not to exceed \$10,000 may be imposed.
- (d) Class IV. - For each violation in the Class IV category, a fine of \$10,000 or more may be imposed.

A person who violates ch. 570, F.S., which relates to the functions and programs of the DACS, or any rule adopted by the DACS under ch. 570, F.S., may be subject to an administrative fine under the Class II category in addition to any penalty provided by law.⁹

The DACS may refuse to issue or renew any license, permit, authorization, certificate, or registration to a person who has not paid a penalty.¹⁰

Florida Administrative Code Rule 5J-15.002 provides the penalty guidelines for violations of ch. 507, F.S., or rules adopted by the DACS. The DACS may issue a Notice of Noncompliance for a first violation in which the DACS determines that the violator was unaware of the rule or unclear as to how to comply with the rule.¹¹ The DACS may impose fines for “minor violations” that range from \$1,000 to \$2,500.¹² At present, for a “major violation,” the DACS may impose an administrative fine that ranges from \$1,000 to \$5,000, suspend or revoke the license, or impose any of the penalties provided in s. 507.09(1)(b)-(e), F.S.¹³

⁸ Section 120.695(2)(a), F.S., provides that 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.”

⁹ Section 570.971(3), F.S.

¹⁰ Section 570.971(4), F.S.

¹¹ See Fla. Admin. Code R. 5J-15.002(8)(a) (2015).

¹² 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.”

¹³ 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.”

Criminal Penalties

Section 507.11(1), F.S., provides that a mover or a mover's employee, agent, or contractor who refuses to comply with an order from a law enforcement officer to relinquish a shipper's household goods after the officer determines that the shipper has tendered payment of the amount of a written estimate or contract, or after the officer determines that the mover did not produce a signed estimate or contract supporting the demanded payment, commits a felony of the third degree, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.¹⁴

A person or business who violates any other provision of ch. 507, F.S., commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.¹⁵

Sexual Predator Criteria

Florida law requires certain persons to register as a sexual predator or sexual offender. The distinction between a sexual predator and a sexual offender depends on the offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred.¹⁶ "Sex offender" is defined in s. 943.0435, F.S.; the term "sex offenders" when under the custody, control, or supervision of the Department of Corrections is defined in s. 944.607, F.S.; the term "sexual predator" is defined in s. 775.21, F.S.; and the term "sex offender" when a juvenile is adjudicated delinquent is defined in s. 943.0435(1)(h)1.d., F.S.

A sexual predator or sexual offender must comply with a number of registration requirements.¹⁷ Most of the requirements relate to the registration of particular identifying and residence information, but other information may also be required (e.g., vehicular information, attendance at an institution of higher education, and temporarily or permanently departing from or reentering Florida).

Section 775.21(4)(a)1., F.S., defines a sexual predator as a person who is convicted, on or after October 1, 1993, of the following offenses:¹⁸

¹⁴ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000. Section 775.084, F.S., provides increased penalties for habitual offenders.

¹⁵ Section 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

¹⁶ See generally, ss. 775.21, 943.0435, 944.607, and 985.4815, F.S. "All sex offenders that are required to register have been convicted of certain qualifying felonies set forth in Florida statutes or have registration requirements in other states.... Some sex offenders are designated by the court as sexual predators because they are deemed to present an extreme threat to public safety as demonstrated through repeated sex offenses, the use of physical violence, or preying on child victims." *Sex Offender Registration and Monitoring: Statewide Requirements, Local Practices, and Monitoring Procedures*, Report No. 15-16, p. 2 (footnote omitted), Office of Program Policy Analysis & Government Accountability, The Florida Legislature. This report is available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1516rpt.pdf> (last visited February 1, 2017).

¹⁷ *Id.* Failure to comply with these requirements is generally a third degree felony. See ss. 775.21, 943.0435, and 985.4815, F.S.

¹⁸ These convictions may only be used as a qualifying offense for designation as a sexual predator if there is a finding that the conviction has a sexual component. The sexual predator designation may not be applied if it is clear that the qualifying crime is totally devoid of a sexual component. *Raines v. State*, 805 So. 2d 999, 1003 (Fla. 4th DCA 2001); see also *Robinson v. State*, 873 So. 2d 1205 (Fla. 2004), and *Munroe v. State*, 69 So.3d 1044 (Fla. 2nd DCA 2011).

- A capital, life, or first degree felony violation, or any attempt thereof, of any of the criminal offenses prescribed in the following statutes in this state or a similar offense in another jurisdiction:
 - Section 787.01, F.S., kidnapping, or s. 787.02, F.S., false imprisonment, where the victim is a minor;
 - Section 794.011, F.S., sexual battery;
 - Section 800.04, F.S., lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
 - Section 847.0145, F.S., selling or buying of minors;
 - A violation of a similar law in another jurisdiction; or

- Any felony violation, or attempt thereof, of the following offenses:
 - Section 393.135(2), F.S., sexual misconduct with an individual with a developmental disability;
 - Section 394.4593(2), F.S., sexual misconduct with a person in the custody of the Department of Children and Families or in treatment facility;
 - Section 787.01, F.S., kidnapping, or s. 787.02, F.S., false imprisonment, where the victim is a minor;
 - Section 787.025(2)(c), F.S., luring or enticing a child;
 - Section 787.06(3)(b),(d),(f),(g), or former (h), F.S., relating to human trafficking;
 - Section 794.011, F.S., sexual battery, excluding s. 794.011(10), F.S.;¹⁹
 - Section 794.05, F.S., unlawful activity with certain minors;
 - Former s. 796.03, F.S., procuring a person under the age of 18 for prostitution;
 - Former s. 796.035, F.S., selling or buying of minors into sex trafficking or prostitution;
 - Section 800.04, F.S., lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
 - Section 810.145(8)(b), F.S., relating to video voyeurism;
 - Section 825.1025, F.S., lewd or lascivious battery upon or in the presence of an elderly person or disabled person;
 - Section 827.071, F.S., sexual performance by a child;
 - Section 847.0135, F.S., excluding s. 847.0135(6), F.S., knowingly owning or operating an Internet service used for pornography;
 - Section 847.0145, F.S., selling or buying of minors;
 - Section 895.03, F.S., racketeering activity involving at least one of sexual offenses listed;
 - Section 916.1075(2), F.S., sexual misconduct with a forensic client;
 - Section 985.701(1), F.S., sexual misconduct with a juvenile offender; or
 - A violation of a similar law in another jurisdiction.

III. Effect of Proposed Changes:

The bill creates s. 507.03(9), F.S., to provide that the DACS must deny or refuse to renew the registration of a mover or the mover's directors, officers, owners, or general partners if the mover has not satisfied a civil fine or administrative fine imposed for a violation of s. 507.07(9), F.S.

¹⁹ Section 794.011(10), F.S., relates to falsely accusing specified persons of sexual battery.

The bill creates s. 507.07(9), F.S., to prohibit a mover from knowingly refusing or failing 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 predator felony offense listed in s. 775.21(4)(a)1., F.S., or convicted of a similar offense of another jurisdiction, regardless of when such felony offense was committed.

The bill amends s. 507.09(1)(b), F.S., to require the DACS to impose a Class IV category administrative fine for each violation of s. 507.07(9), F.S., if it does not seek a civil penalty for the same offense. A Class IV category fine is \$10,000 or more for each violation in the category.²⁰

The bill amends s. 507.10, F.S., relating to the civil penalties that the DACS may impose, to require the DACS to seek a civil penalty in the Class IV category for each violation of s. 507.07(9), F.S., if it does not impose an administrative fine for the same offense. A Class IV category penalty requires a fine of \$10,000 or more for each violation in the category.²¹

The bill takes effect on October 1, 2017.

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:

Under CS/SB 336, movers may incur expenses related to providing customers with written notices that it or an employee who has access to the dwelling or property of the customer has been convicted of a sexual predator offense.

²⁰ See s. 570.971(1)(d), F.S.

²¹ *Id.*

C. **Government Sector Impact:**

The DACS indicates the provisions in the bill can be implemented within existing resources.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 507.03, 507.07, 507.09, and 507.10.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on February 8, 2017:

The committee substitute:

- Revises s. 507.03(9), F.S., to include a mover's failure to satisfy an administrative penalty imposed for a violation of s. 507.07(9), F.S., as a basis for the DACS to deny or refuse to renew the registration of a mover or the mover's directors, officers, owners, or general partners;
- Amends s. 507.09(1)(b), F.S., to require the DACS to impose a Class IV category administrative fine if it does not seek civil penalty for the same offense; and
- Revises s. 507.10, F.S., to require the DACS to seek a civil penalty in the Class IV category for each violation of s. 507.07(9), F.S., if it does not impose an administrative fine for the same offense.

B. **Amendments:**

None.