

STORAGE NAME: h0893s1.sgc.doc
DATE: March 11, 2002

**HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: CS/HB 893
RELATING TO: Regulation of Movers
SPONSOR(S): Council for Smarter Government and Representative(s) Johnson

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION YEAS 6 NAYS 3
 - (2) FISCAL POLICY & RESOURCES (W/D)
 - (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 11 NAYS 1
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

Currently, intrastate household movers are not regulated at the state level in Florida. The bill creates a regulatory program within the Division of Consumer Services of the Department of Agriculture and Consumer Services (DACS) relating to the regulation of household movers.

The bill provides definitions, including the definition of "mover" to mean any person who engages in the transportation or shipment of household goods for compensation. The bill specifies: "The provisions of this act shall only apply to the transportation of household goods originating in this state and terminating in this state."

The bill provides intent and application; requires movers to register with the DACS; specifies qualifications; requires fees; requires written estimates for moving costs; requires a written contract; specifies certain operating procedures; prohibits specified acts; and provides for enforcement and penalties. The bill allows local regulation to preempt state regulation.

The bill is designed to create a new regulatory program within the DACS and assesses fees for funding the operation of the program. The DACS initially anticipates costs of the program to exceed \$416,000 for start-up and the first year of operation. Revenues are estimated by the DACS to approach \$210,000 annually. The DACS recommends 6 additional FTEs.

The effective date of the bill is July 1, 2002.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

1. Less Government - The bill provides for a new governmental regulatory program. Moving companies and practices are not now regulated at the state level.

2. Lower taxes - An applicant and registered mover must pay fees as a part of the registration process or to renew a registration. Registrants and unlicensed operators are subject to fines for violations.

B. PRESENT SITUATION:

Currently, there is no express regulation of moving companies or practices in state law.

The "Sunrise Act" statutorily establishes a procedure to assist the legislature in determining when regulation is warranted. Section 11.62, F.S., mandates that no unregulated profession or occupation become regulated by the state, "...unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage." The "Act" further states that if regulation is imposed, it must be established at the minimum level that will accomplish its purpose.

Proponents of regulation are required by s. 11.62 (4), F.S., to submit to the Legislature and the Department of Business and Professional Regulation (DBPR) a variety of information, including: 1. the proposed legislation; 2. the number of individuals or businesses that would be subject to regulation; 3. documentation of the nature and extent of harm to the public; 4. the cost of the proposed regulation; and, etc. These statutory requirements apply even if the proposed regulatory program is not intended to be located in the DBPR.

The DBPR is required by s. 11.62(5), F.S., to submit to the legislature: 1. projected costs to implement the new regulation; 2. evaluation of the legislation in conforming to existing professional regulatory laws; and, 3. less restrictive alternatives to regulation, if applicable.

Section 11.62 (3), F.S., states that the Legislature shall consider the following factors in determining whether to regulate a profession or occupation: 1. whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare and whether the potential for harm is recognizable and not remote; 2. whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability; 3. whether the public is or can be

effectively protected by other means; and, 4. whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

Section 570.544(3), F.S., designates the Division of Consumer Services within the Department of Agriculture and Consumer Services (DACS) as the clearinghouse for matters relating to consumer protection, consumer information, and consumer services generally. The Division of Consumer Services receives complaints from consumers and processes the complaint as it relates to the DACS or transmits the complaint to the appropriate state agency for investigation and resolution.

The Florida Deceptive and Unfair Trade Practices Act, chapter 501, part II, F.S., makes certain actions unlawful and provides remedies for unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce. Enforcement authority for the Act is divided between the State Attorneys and the Department of Legal Affairs.

The Florida RICO (Racketeer Influenced and Corrupt Organization) Act, chapter 895, F.S., provides remedies for the commission of specified crimes. The conduct of the crime must be: occurring in a pattern of racketeering activity; engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission; or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents.

C. EFFECT OF PROPOSED CHANGES:

The bill requires any person wishing to operate as a mover within Florida to register annually with the DACS before engaging in business. To obtain a registration certificate, the mover must file an application, pay a registration fee in the amount of \$300 and meet statutory qualifications. The bill requires the state registration number to be included as a part of all moving contracts and advertisements of the mover.

The DACS is authorized to deny or refuse to renew a registration for specified reasons including a crime involving moral turpitude, a crime involving fraud or dishonest dealings, or a crime punishable under the Florida Deceptive and Unfair Trade Practices Act.

The bill requires that a bond be deposited or a letter of credit or certificate of deposit be maintained in the amount of \$25,000. These security requirements may be waived for a registrant that has operated under the provisions of the act for a period of 5 or more consecutive years and is in good standing regarding violations. A mover who fails to maintain security as required and is found to be in violation of the law is made subject to forfeiture proceedings. Assets that are seized are limited to equipment that is used in the transportation or storage of a shipper's goods. Financial restitution is limited to the cost value of the goods.

The bill requires a mover to provide a written estimate to a prospective shipper (owner of the goods) indicating the total costs for transportation services. The mover and the shipper must also execute a written contract for services. The contract must contain specified information including total costs for transportation and accessorial services.

The bill requires the mover to deliver the shippers goods but may withhold the delivery of the goods if the shipper has not made payment. The mover may not withhold prescription medicines or children's possessions.

Any person violating provisions of the law commits a violation of the Florida Deceptive and Unfair Trade Practices Act. The Act includes civil penalties of up to \$10,000 and \$15,000 for violations

against a senior citizen. The bill also provides for administrative sanctions that include a fine not to exceed \$5,000 per violation, in addition to, revocation and suspension of a registration. The proceeds of any fines collected are to be deposited into the DACS General Inspection Trust Fund. Unlawful activity would subject a violator to a 1st degree misdemeanor. A 3rd degree felony is imposed for the failure to produce the shipper's possessions where the mover's costs have been paid and a law enforcement officer has ordered the return of the goods.

The bill states that the provisions of the bill are not intended to preempt local ordinances or regulations relating to movers of household goods. It further states, the bill is not intended to limit the authority of local government to require, levy, or collect a registration fee or tax.

D. SECTION-BY-SECTION ANALYSIS:

The bill creates unnumbered provisions to be statutorily assigned by statutory revision upon passage.

Section 1. Provides definitions.

Section 2. Cites intent and application of the provisions of the act including the application of the act to the transportation of household goods originating in this state and terminating in this state

Section 3. Requires movers to register with the DACS and specifies information that must be provided; specifies fees; and cites causes for the denial of or refusal to renew a registration.

Section 4. Specifies security requirements to include bonds, certificates of deposit, or letters of credit in the amount of \$25,000; provides for forfeiture of transportation equipment of a mover if no security is maintained.

Section 5. Requires written estimates of moving costs to be provided by a mover and specifies certain contents and a written contract for services.

Section 6. Prohibits delivery of goods by a mover unless the shipper has not paid for services.

Section 7. Cites activities that constitute a violation of the provisions of the bill.

Section 8. Makes a violation a deceptive and unfair trade practice subject to the penalties of the Florida Deceptive and Unfair Trade Practices Act.

Section 9. Provides for administrative penalties including an administrative fine not to exceed \$5,000; specifies the DACS may adopt rules to implement administrative penalties.

Section 10. Provides for civil penalties in amounts not to exceed \$5,000.

Section 11. Provides for a 1st degree misdemeanor and a 3rd degree felony criminal penalty for specified violations.

Section 12. Provides for the deposit of fine revenues in the DACS General Inspection Trust Fund.

Section 13. Preempts regulation to local government.

Section 14. Effective date – July 1, 2002.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

<u>FY 02-03</u>	<u>FY 03-04</u>
\$210,000	\$210,000

The bill is designed to create a new regulatory program and assesses fees for funding the operation of the program. Revenues are estimated by the DACS to approach \$210,000 annually with an estimated 700 operating permits to be issued.

2. Expenditures:

<u>FY 02-03</u>	<u>FY 03-04</u>
\$416,292	\$390,306

The DACS anticipates costs of the program to exceed \$416,000 for start-up and the first year of operation. The DACS estimates an additional 6 FTEs are required to implement the new regulatory program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Fees are required to be paid in order to be properly registered. The creation of fines would subject a violator to financial penalties.

D. FISCAL COMMENTS:

None.

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce any state tax shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

The DACS is authorized to adopt rules to implement aspects of the new regulatory program relating to administrative fines.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 1, 2002, the Smarter Government Council adopted a Council Substitute. The CS differs from the bill by revising numerous provisions including the following:

The CS places regulatory oversight of the new program with the Division of Consumer Services of the Department of Agriculture and Consumer Services.

The CS deletes several definitions and requires registration rather than a permitting process. Fees are increased from \$250 to \$300.

The CS requires that a bond be deposited or a letter of credit or certificate of deposit be maintained in the amount of \$25,000. These security requirements may be waived for a registrant that has operated under the provisions of the act for a period of 5 or more consecutive years and is in good standing regarding violations. A mover who fails to maintain security as required in the CS and is found to be in violation of the law is made subject to forfeiture proceedings. Assets that are seized are limited to equipment that is used in the transportation or storage of a shipper's goods. Financial restitution is limited to the cost value of the goods.

The CS removes requirements on the part of the mover for signage, vehicle decals, certain insurance coverage, certain specified disclosures, certain record keeping requirements, and complaint, claims, and citation procedures.

The CS increases criminal penalties from a 2nd degree to a 1st degree misdemeanor. It removes the statement of severability.

The CS removes preemption to the state and allows local regulation to preempt state regulation.

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VI. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

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AS FURTHER REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Alan W. Livingston

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