

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 Commerce Committee

BILL: CS/SB 320

INTRODUCER: Commerce Committee and Senator Garcia

SUBJECT: Household moving services

DATE: March 10, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Cooper	CM	Fav/CS
2.	_____	_____	CA	_____
3.	_____	_____	JU	_____
4.	_____	_____	GA	_____
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:

This CS preempts local government ordinances regulating movers of household goods or moving brokers that were enacted after January 1, 2010. Therefore, local government ordinances enacted prior to January 1, 2010, may remain in effect, provided that such ordinances levy “reasonable” registration fees that do not exceed the cost of administering the ordinances. However, these existing ordinances only apply to a mover or moving broker if the mover or moving broker’s principal place of business is located in the jurisdiction having such an ordinance. The CS further clarifies that the preemption does not apply to a local government’s authority to levy local business taxes.

In addition, the CS:

- Excludes movers from liability in certain circumstances;
- Allows movers to refuse to transport a shipper’s packed goods under certain circumstances;
- Requires movers to register biennially, rather than annually, with the Department of Agriculture and Consumer Services; and
- Clarifies the definition of storage.

This CS substantially amends the following sections of the Florida Statutes: 507.01, 507.03, 507.04, 507.06, 507.07, and 507.13.

II. Present Situation:

Federal law expressly permits states to regulate the intrastate transportation of household goods.¹ Chapter 507, F.S., under which household moving services are regulated, “applies to the operations of any mover or moving broker engaged in the intrastate transportation or shipment of household goods originating in this state and terminating in this state.”²

Movers and Moving Brokers Registration

Section 507.01(9), F.S., defines “mover” to mean a person who, for compensation, contracts for or engages in the loading, transportation, 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 “Moving broker” is classified as a person who, for compensation, arranges for another person to load, transport, 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

Section 507.03, F.S., requires that any “mover” or “moving broker” wishing to do business in Florida must register annually with the Florida Department of Agriculture and Consumer Services (FDACS). To obtain a registration certificate, the mover or moving broker must file an application, pay a \$300 annual registration fee, and meet certain statutory qualifications, including proof of insurance coverage.⁵

Failure to comply with these intrastate registration requirements may subject a mover or moving broker to a “cease and desist order and fines of up to \$5,000.”⁶

Insurance Coverage and Liability Limitations

Section 507.04, F.S., requires that movers and moving brokers maintain liability and motor vehicle insurance. A mover operating more than two vehicles is required to maintain liability insurance coverage in the amount of at least \$10,000 per shipment, and the mover’s liability must not be less than 60 cents per pound per article.⁷ Movers operating two or fewer vehicles may maintain a performance bond or certificate of deposit in the amount of \$25,000, in lieu of maintaining liability insurance.⁸ All movers must maintain motor vehicle insurance coverage and the amount of coverage required is determined by the weight of the commercial motor vehicle.⁹

¹ See 49 U.S.C. 14501(c)(2)(B).

² Section 507.02(2), F.S.

³ Section 507.01(9), F.S.

⁴ Section 507.01(10), F.S.

⁵ Section 507.03(1), F.S.

⁶ Florida Department of Agriculture and Consumer Services, *Intrastate Household Moving, Licensing Permits Registrations*, <http://www.doacs.state.fl.us/onestop/cs/move.html> (last visited on February 3, 2010). See also, ss. 507.09 and 507.10, F.S.

⁷ Section 507.04(1)(a) and (4), F.S.

⁸ Section 507.04(1)(b), F.S.

⁹ Section 507.04(2)(a)-(c), F.S.

Contractual provisions that limit a mover's liability for a shipper's goods are required to be disclosed by the mover in writing to the seller along with the valuation rate "at the time that the estimate and contract for services are executed" and prior to providing any moving services.¹⁰ Movers that offer valuation coverage must also inform the shipper "of the opportunity to purchase" such coverage in the disclosure.¹¹ However, any contract for moving services that seeks to limit a mover's liability beyond the minimum valuation rate of "60 cents per pound per article" is void under s. 507.04(4), F.S.

Violations and Penalties

Current law regulates movers and moving brokers by specifying certain contract, delivery, and storage requirements.¹² Furthermore, s. 507.07, F.S., prohibits certain acts by movers and moving brokers and makes it a violation for movers and moving brokers to:

- Conduct or engage in the business of moving without first being registered annually with the department;
- Knowingly make a false statement, representation, or certification of a document required to be submitted or retained;
- Misrepresent or deceptively represent: the contract for services or inventory of goods; the timeframe for delivery or storage of goods; the price, size, nature, extent, qualities, or characteristics of services offered; or a shipper's rights, privileges, or benefits;
- Fail to honor and comply with provisions of the contract for services;
- Withhold delivery of household goods against the wishes of the shipper and after the shipper has paid according to the estimate provided in the service contract;
- Include a contract provision purporting to waive or limit a shipper's right or benefit as provided in this chapter;
- Seek or solicit a waiver or acceptance from a shipper of a provision limiting a shipper's right or benefit;
- Solicit services without clearly disclosing the mover's fixed business address;
- Commit any other act of fraud, misrepresentation, or failure to disclose a material fact;
- Refuse or fail, after notice, to produce any document or record or disclose any information required to be produced or disclosed; or
- Knowingly make a false statement in response to any request or investigation by the department, Department of Legal Affairs, or the state attorney.¹³

Movers that commit any of the above-listed prohibited acts may be subject to administrative, civil, or criminal penalties.¹⁴ Violations under ch. 507, F.S., may also be deemed an unfair or deceptive act or practice or unfair method of competition in violation of the Florida Deceptive

¹⁰ Section 507.04(4), F.S.

¹¹ *Id.*

¹² *See* ss. 507.05 and 507.06, F.S.

¹³ Section 507.07, F.S.

¹⁴ *See* ss. 507.09, 507.10, and 507.11, F.S.

and Unfair Trade Practices Act, subjecting a violator to a civil penalty of up to \$10,000 per violation.¹⁵

Local Ordinances and Regulations

Currently, ch. 507, F.S., allows municipalities and counties to adopt local ordinances or regulations relating to the moving of household goods in addition to state regulations required by the statute.¹⁶ Broward, Miami-Dade, Palm Beach, and Pinellas counties currently have ordinances regulating household moving.¹⁷ Movers or moving brokers whose principal place of business is located in a county or municipality that has such ordinances requiring local licensing or registration are required to obtain local registration in addition to registering with the state.¹⁸ Florida law also allows for local taxes, fees, and bonding related to movers and moving brokers.¹⁹

Chapter 205, F.S., authorizes a local government to levy a business tax for the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction, called a local business tax.²⁰ The local business tax “does not mean any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection,” which are “in addition to, but not in lieu of,” the local business tax.²¹

According to the Federal Motor Carrier Safety Administration (FMCSA); Florida, California, New York, and New Jersey are “hot spots” for moving fraud.²² The FMCSA has partnered with state attorneys general, local law enforcement agencies, and industry and consumer groups to oversee and prevent fraud in the moving industry.²³

III. Effect of Proposed Changes:

SB 320 amends the requirements for household moving services and preempts certain local ordinances and regulations. The following paragraphs outline the sections of the CS:

Section 1 amends s. 507.01, F.S., to narrow the definition of the term “storage” to mean the “temporary” warehousing of a shipper’s goods while under the care, custody, and control of a mover.

Section 2 amends s. 507.03, F.S., to change the registration renewal requirement by providing for a biennial requirement instead of an annual requirement. This section also grants the Florida Department of Agriculture and Consumer Services (FDACS) the authority to extend the

¹⁵ Section 507.08, F.S.

¹⁶ Section 507.13(1), F.S.

¹⁷ Information received from the Department of Agriculture and Consumer Services on February 4, 2010. Information is on file with the Commerce Committee.

¹⁸ Section 507.03(4), F.S.

¹⁹ See s. 507.13(1), F.S.

²⁰ Local business taxes were formerly known as “local occupational license taxes.” See ch. 2006-152, L.O.F.

²¹ See s. 205.022(5), F.S.

²² See Federal Motor Carrier Safety Administration, *Background: The Regulation of Household Goods Movers*, <http://www.protectyourmove.gov/about/background/background.htm> (last visited February 3, 2010).

²³ *Id.*

registration expiration date up to 12 months in order to establish staggered expiration dates of movers to prevent the department from receiving an influx of registration renewals and to allow for more efficient processing of renewals. The registration fee will continue to be calculated at the rate of \$300 per year.

Additionally, this section removes the requirement that movers and brokers obtain a local license or register locally, and deletes the provision requiring movers and moving brokers to pay for local license or registration fees in addition to the state registration fee.²⁴ However, movers and brokers are still required to pay the state registration fee required under s. 507.03, F.S.

Section 3 amends s. 507.04, F.S., to allow a mover to exclude liability for items packed by the shipper, if the shipper declines in writing to allow the mover to inspect the box or crate containing the items, and the mover declares his or her exclusion from such liability.

Section 4 amends s. 507.06, F.S., to allow a mover to refuse to transport or ship any of a shipper's household goods, as long as the shipper is notified of, and acknowledges in writing, the mover's refusal. This section also changes the catch line to include "transportation or shipment" to correspond with the new language proposed in this section of the CS.

Section 5 amends s. 507.07, F.S., to make technical changes to the language in order to comport with the language amending s. 507.03, F.S., in section 2 of the CS, which would require movers to register biennially, instead of annually, with FDACS.

Section 6 amends s. 507.13, F.S., to preempt local governments from enacting ordinances regulating movers of household goods or moving brokers. However, ordinances enacted before January 1, 2010, or amendments to those ordinances, may remain in effect, provided such ordinances levy "reasonable" registration fees that do not exceed the cost of administering the ordinances. Additionally, these existing ordinances apply only to a mover or moving broker if the mover or moving broker's principal place of business is located within the jurisdiction having such an ordinance.

This section also clarifies that the preemption does not apply to a local government's authority to levy a local business tax, pursuant to ch. 205, F.S.

Section 7 provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of Article 18, Section VII of the Florida Constitution, prohibits the Legislature from "enacting, amending, or repealing any general law if the anticipated effect" is to reduce county or municipal aggregate revenue generating authority as it existed on February 1, 1989. The exception to this prohibition is if the Legislature passes such a law by 2/3 of the membership of each chamber.

²⁴ Note: Section 6 of the bill addresses local registration requirements of movers and moving brokers.

Subsection (d) provides an exemption from this prohibition. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times 10 cents (which is \$1.88 million for FY 2009/10), are exempt.

The Revenue Estimating Conference has not yet met to estimate the extent of this CS’s fiscal impact. Preliminary data indicates that few counties and cities levy this tax against household moving services or moving brokers. While indeterminate at this time, it is estimated that the impact of the CS, should it become law, is insignificant.

This CS limits a local government’s authority to levy registration fees and the amount of such registration fees for movers of household goods. To the extent this CS may be construed as a reduction of a county or municipalities revenue generating authority, it is subject to the restriction in subsection (b). However, it may be exempted from the restriction due to its insignificant fiscal impact.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Retroactive Application

Section 6 of the CS provides that it will operate retroactively to January 1, 2010. This will affect local ordinances or regulations adopted between January 1, 2010, and July 1, 2010, the CS’s effective date. Even when the Legislature clearly intends for a statute to apply retroactively, a court will reject such an application if the statute impairs a vested right, creates a new obligation, or imposes a new penalty.²⁵ However, statutes which do not alter contractual or vested rights, but relate only to remedies or procedure, can be applied retroactively.²⁶

Florida courts have recognized that a statute may be retroactively applied if:

- There is clear evidence that the Legislature intended to apply the statute retroactively; and
- Retroactive application is constitutionally permissible.²⁷

²⁵ *Menendez v. Progressive Express Ins. Co.*, WL 375080 (Fla. February 4, 2010). (Due to the recency of this opinion only a Westlaw citation is available. A copy of the opinion is on file with the Commerce Committee)

²⁶ *Id.*

²⁷ *Metropolitan Dade County v. Chase Fed. Housing Corp.*, 737 So. 2d 494 (Fla. 1999); *Promontory Enterprises, Inc v. Southern Engineering & Contracting, Inc.*, 864 So. 2d 479 (Fla. 5th DCA. 2004).

In determining whether retroactive application is constitutional, courts have generally held that due process considerations prevent the retroactive abolition of vested rights.²⁸ This is not an absolute rule, however, because the courts have identified factors that may be considered in determining whether to allow retroactivity. In one case, the Supreme Court weighed three factors in considering the validity of retroactivity:

- The strength of the public interest served by the statute;
- The extent to which the right affected is abrogated; and
- The nature of the right affected.²⁹

Since this CS is aimed at local governments and not private citizens, it is unlikely that it will create due process concerns.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Preemption of local government ordinances could lead to a loss of revenue from registration fees for local governments. Local governments that currently regulate household movers prior to January 1, 2010, may experience a loss in revenue because they will only be permitted to collect “reasonable” registration fees necessary to cover the administrative costs of ordinances.

B. Private Sector Impact:

To date there are 800 intrastate movers and 6 moving brokers in the state of Florida.³⁰ This CS may reduce business costs on household movers and moving brokers by requiring reasonable local registration fees limited to the amount of administering the ordinance or regulation.

This CS reduces the administrative burden on intrastate movers by requiring registration biennially.³¹ A biennial registration renewal requirement at the current rate of \$300 per year would require movers and moving brokers to pay \$600 every other year instead of \$300 per year.

Section 3 of this CS allows a mover to declare exclusion from liability for items packed by a shipper, in which the shipper has declined in writing to allow the mover to inspect the shipped items. Under this provision, a shipper may not be able to hold a mover or moving broker liable if the shipper has not permitted the mover to inspect the shipped goods. Therefore, the shipper will be unable to collect reimbursement for damage done to shipped goods.

²⁸ *State Dept. of Transportation v. Knowles*, 402 So. 2d 1155 (Fla. 1981).

²⁹ *Id.*

³⁰ *Supra* note 17.

³¹ Department of Agriculture and Consumer Services, *Senate Bill 320 Fiscal Impact* (November 6, 2009) (on file with the Senate Committee on Commerce).

C. Government Sector Impact:

According to FDACS, the preemption on local government ordinances as framed in the CS will not expand the duties or responsibilities of FDACS.³²

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.)

This CS differs from the bill in that the CS:

- Clarifies that a mover may only refuse to transport or ship goods, if the mover notifies the shipper and the shipper acknowledges the refusal in writing;
- Corrects an erroneous omission related to a reference to another section of law; and
- Changes the bill to permit any ordinance not preempted by state law to apply only to the mover or moving broker whose principal place of business is located within that jurisdiction.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³² *Supra* note 17.