

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 340

SPONSOR: Regulated Industries Committee and Senator Campbell

SUBJECT: Movers Regulation Act

DATE: February 14, 2001      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	RI	Favorable/CS
2.	_____	_____	AG	_____
3.	_____	_____	FT	_____
4.	_____	_____	AGG	_____
5.	_____	_____	AP	_____

**I. Summary:**

The bill creates the Movers Regulation Act to: create definitions, provide intent and application, require movers to obtain a permit, pay a filing fee and post security before conducting business, require a written estimate for moving costs, require a written contract, prohibit specified acts, and provide for enforcement and penalties. The bill also includes certain violations of the Act in the Florida Racketeer Influenced and Corrupt Organization Act.

The bill creates an as yet unnumbered section of the statutes, and substantially amends section 895.02, Florida Statutes.

**II. Present Situation:**

There is no express regulation of moving companies or practices.

By statute, the Division of Consumer Services (the division) within the Department of Agriculture and Consumer Services (the department) is the clearinghouse for matters relating to consumer protection, consumer information, and consumer services generally. s. 570.544(3), F.S. The division receives complaints from consumers and transmits them to the agency most directly concerned in order that the complaint may be expeditiously handled in the best interest of the complaining consumer. According to information supplied by the division, there are approximately 1,000 businesses engaged in intrastate moving in Florida. The division has received approximately 550 complaints per year for the last 2 years. County offices in Miami-Dade, Broward, and Palm Beach reported receiving a total of 367 complaints last year. The Department of Legal Affairs was unable to provide a total number of complaints received.

Section 11.62, F.S., (“Sunrise Act”) states the intent of the Legislature that “no profession or occupation be subject to regulation by the state unless the regulation is necessary to protect the

public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose.”

The Florida Deceptive and Unfair Trade Practices Act, ss. 501.201-213, F.S., makes 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. s. 501.204, F.S. Enforcement authority for the Act is divided between the State Attorneys and the Department of Legal Affairs. s. 501.202(2), F.S. Enforcement authority lies with a State Attorney if the violation occurs in or affects one judicial circuit. Id. It lies with the Department of Legal Affairs if the state Attorney defers action or if the violation occurs in or affects more than one judicial circuit. Id.

To remedy a violation, the enforcing authority may bring:

- an action to obtain a declaratory judgment that an act or practice violates this part,
- an action to enjoin any person who has violated, is violating, or is otherwise likely to violate, this part, or
- an action on behalf of one or more consumers for the actual damages caused by an act or practice in violation of this part. s. 501.207, F.S.

Upon motion of the enforcing authority or any interested party, the court may make appropriate orders, including, but not limited to, appointment of a master or receiver or sequestration or freezing of assets, to reimburse consumers found to have been damaged; to carry out a transaction in accordance with consumers' reasonable expectations; to strike or limit the application of clauses of contracts to avoid an unconscionable result; to order any defendant to divest herself or himself of any interest in any enterprise, including real estate; to impose reasonable restrictions upon the future activities of any defendant to impede her or him from engaging in or establishing the same type of endeavor; to order the dissolution or reorganization of any enterprise; or to grant other appropriate relief. Id. Any injunctive order, whether temporary or permanent, issued by the court is effective throughout the state unless otherwise provided in the order. Id.

Additionally, any person, firm, corporation, association, or entity, or any agent or employee of the foregoing, who is willfully using, or has willfully used, a method, act, or practice declared unlawful, or who is willfully violating any of the rules of the department promulgated under this part, is liable for a civil penalty of not more than \$10,000 for each such violation. Willful violations occur when the person knew or should have known that his or her conduct was unfair or deceptive or prohibited by rule. s. 501.2075, F.S.

The Florida Deceptive and Unfair Trade Practices Act also authorizes anyone aggrieved by a violation of the Act to bring an action to obtain a declaratory judgment that an act or practice violates the Act and to enjoin a person who has violated, is violating, or is otherwise likely to violate the Act. s. 501.211, F.S. In any individual action brought by a consumer who has suffered a loss as a result of a violation, the consumer may recover actual damages, plus attorney's fees and court costs. Id.

The Florida RICO (Racketeer Influenced and Corrupt Organization) Act, ch. 895, F.S., provides remedies for commission of specified crimes 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, provided at least one of such incidents occurred after the effective date of the Act and that the last of such incidents occurred within 5 years after a prior incident of racketeering conduct. Any person convicted of engaging in such activity is guilty of a felony of the first degree. s. 895.04, F.S. However, if by engaging in the racketeering activity, the person derived pecuniary value or caused personal injury or property damage or other loss, in lieu of the usual fine, he or she may be sentenced to pay a fine that does not exceed 3 times the gross value gained or 3 times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred. Id.

The RICO Act also provides civil remedies. s. 895.05, F.S. Any circuit court may, after making due provision for the rights of innocent persons, enjoin violations of the Act by issuing appropriate orders and judgments, including, but not limited to:

- ordering any defendant to divest himself or herself of any interest in any enterprise, including real property,
- imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which the defendant was engaged in violation of the Act,
- ordering the dissolution or reorganization of any enterprise,
- ordering the suspension or revocation of a license, permit, or prior approval granted to any enterprise by any agency of the state, or
- ordering the forfeiture of the charter of a corporation organized under the laws of the state, or the revocation of a certificate authorizing a foreign corporation to conduct business within the state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of the Act and that, for the prevention of future criminal activity, the public interest requires the charter of the corporation forfeited and the corporation dissolved or the certificate revoked.

Additionally, all property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of a provision the Act is subject to civil forfeiture to the state.

### **III. Effect of Proposed Changes:**

Section 1 of the bill creates the Movers Regulation Act. The Act applies only to the transportation of household goods originating and terminating within this state.

#### **Operating Permits**

Any person seeking to operate as a mover in this state must obtain an operating permit from the Department of Agriculture and Consumer Services before engaging in business. To obtain the permit, the person must file an application, pay a filing fee, and post security.

The filing fee is \$300, to be deposited into the department's Operating Trust Fund. If six months or less remain before the annual renewal date, the fee is reduced to \$150. The security must be in the form of a surety bond, an irrevocable letter of credit, or a certificate of deposit that may be withdrawn only on the order of the department. The security must be a minimum of \$50,000, and must be conditioned upon compliance by the applicant with the Act. The department can establish a greater amount of security to ensure the general welfare of the public and the interests of the moving industry.

The department may deny or refuse to renew the operating permit of any mover based upon a determination that a mover or any of its directors, officers, owners, or general partners:

- Failed to meet the requirements for initial application or renewal.
- Have been found by a court of competent jurisdiction to have committed a crime, regardless of adjudication or plea of no contest, involving fraud, a prior criminal violation of this section, or theft involving transportation or storage of household goods for compensation.
- Have not satisfied a civil fine, administrative fine, or other penalty arising out of any administrative or enforcement action brought by any governmental agency or private person based upon conduct involving fraud; theft; a violation of part II of chapter 501, Florida Statutes; dishonest dealing; a violation of a local moving ordinance; or failure to comply with the terms and conditions of any judgment, consent decree, cease and desist order, settlement agreement, or assurance of voluntary compliance arising out of such enforcement action.
- Misrepresented or concealed a material fact on the application, renewal application, or replacement application for an operating permit.
- Aided or abetted a person who has not obtained an operating permit to evade or avoid any provision of this section.
- Have previously attempted to operate without a permit required by the Act

If the department denies an operating permit, the mover may request that the department hold a hearing and review the decision. The mover must pay a nonrefundable filing fee, established by rule of the department. The department is to hold a hearing and enter a written order. This order may be appealed to a court of competent jurisdiction.

Each operating permit must be renewed annually. A nonrefundable renewal fee of \$300 must be paid unless the mover holds a municipal or county license issued under an ordinance that contains standards at least equal to the requirements of the Act. All renewal fees are to be deposited into the department's Operating Trust Fund for the purposes of administering the Act. The department may impose a late fee on any renewal application that is not timely filed.

A permit is not valid while being used under any other name or in any other location and permits are not transferable.

#### Written Estimates

A mover must provide a written estimate to a prospective shipper that indicates the total and complete costs for transportation services, including all accessorial services. A mover cannot take

possession or control of any household goods unless the prospective shipper has approved the written estimate by signature. A mover cannot request a shipper to sign a blank estimate or initial a blank or otherwise incomplete estimate form or contract. A prospective shipper cannot waive the right to a written estimate. The estimate must contain a disclosure that the prospective shipper has a right to a written estimate and that it is unlawful for a mover to charge more than the written estimate unless circumstances previously unknown to the mover prevent the mover from obtaining reasonable access to the destination.

A mover cannot impose a fee for preparing an estimate unless the fee is clearly and conspicuously disclosed and the prospective shipper gives written authorization to prepare the estimate.

#### Contract for Services

Before performing any services for a shipper, including loading the household goods onto a truck, the mover and the shipper must execute a written contract for services. The contract must contain specified information including the total costs for transportation and accessorial services, the methods of payment which are acceptable, and the maximum amount of payment due at the time of delivery.

#### Charges in Excess of the Estimate

A mover can increase the total contract charges only if circumstances of which the mover had no prior knowledge prevent the mover from obtaining reasonable access to the place of destination. If this occurs, the mover is to immediately relinquish to the shipper all the shipper's household goods and complete in a timely manner all transportation and accessorial services required to be performed under the contract for services. The mover must also provide a written explanation of the charges in excess of the written estimate, including a complete description of the circumstances that prevented reasonable access to the destination and the total cost of any additional service.

The mover cannot refuse to relinquish to a shipper the shipper's household goods, fail to place household goods inside the shipper's dwelling, or fail to complete in a timely manner all transportation and accessorial services required to be performed solely because the shipper has refused to pay or agree to pay a fee in excess of the written estimate.

In any action by the mover to recover additional fees, the mover has the burden of proving that circumstances at the point of destination prohibited reasonable access and that the additional charges were reasonable in relation to the changed circumstances and the original contract price.

#### Enforcement and Penalties

Any person who fails to comply with the Act commits a civil infraction and must pay a fine not to exceed \$500 per violation and may be sentenced to not more than 60 days' imprisonment. Each day of continuing violation is a separate offense. Additionally, the department may take any other appropriate legal action and the Department of Legal Affairs may prosecute violations under the Florida Deceptive and Unfair Trade Practices Act. It is a third degree felony for a mover to fail to comply with the contract for services and relinquish the shipper's goods either solely because the

shipper has refused to pay or agree to pay fees in excess of the written estimate or solely because the shipper has selected a form of payment which the mover disclosed as acceptable in the contract.

The department is to provide a serially numbered uniform citation form to notify a person of an alleged violation of the Act. Any authorized agent of the department or law enforcement officer may issue a citation upon probable cause that a person has violated the Act. A person who is issued a citation may pay the fine, which is an admission of the infraction, or appear in a court having jurisdiction over misdemeanors to contest the citation. The court may impose a civil penalty not to exceed \$1,000, plus court costs. If a person fails to pay the fine or to appear in court, a default judgment may be entered and the judge shall impose a fine. If the fine is not paid, judgment may be entered up to the maximum civil penalty.

The proceeds of any fines collected are to be deposited into the department's Operating Trust Fund to be used to administer the Act.

Section 2 includes felony violations of the Act in the Florida Racketeer Influenced and Corrupt Organization Act. Felony violations arise from failing to comply with the contract for services and relinquish the shipper's goods either solely because the shipper has refused to pay or agree to pay fees in excess of the written estimate or solely because the shipper has selected a form of payment that the mover disclosed as acceptable in the contract.

Section 3 is a severability clause, providing that if any provision or application of the act is held invalid, this does not affect any other provisions or applications that can be given effect without the invalid provision or application.

Section 4 provides that the bill takes effect July 1, 2001.

#### **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:**

The bill provides a fine not to exceed \$500 per violation. If a mover receives a citation alleging a violation, he may pay it, presumably at the rate of \$500, or go to court to contest it. If he goes to court, the court may impose a civil penalty that may not exceed \$1,000, plus court costs. This potential for a greater penalty for contesting the citation in court could be

challenged as a violation of the constitutional right of access to courts. Art. I, s. 21, Fla. Const.

## **V. Economic Impact and Fiscal Note:**

### **A. Tax/Fee Issues:**

The bill requires movers to apply for an operating permit and pay a fee of \$300, to be deposited in the Department of Agriculture and Consumer Affairs' Operating Trust Fund. It also requires renewal of the operating permit on an annual basis, with payment of a \$300 fee.

### **B. Private Sector Impact:**

Movers are required to pay permit application and renewal fees of \$300. They also must post security in the amount of \$50,000, the cost of which is unknown. Finally, they face fines, civil penalties, and imprisonment.

Mover's customers are better protected against fraud.

### **C. Government Sector Impact:**

The bill establishes a \$300 fee for an initial or renewal operating permit, which is to be deposited into the department's Operating Trust Fund. The department estimates that approximately 1,000 businesses are engaged in intrastate moving in Florida. At \$300 per application fee, the bill will provide fee revenues of \$300,000.

The bill also provides that fine proceeds are to be deposited in the department's Operating Trust Fund. The amount of fines is undeterminable.

The department estimates that the total costs for the first year of operating the regulatory program will be \$645,894. Total costs for the second year are estimated to be \$344,410, and for the third year \$354,442.

Any person who commits a third or subsequent violation is to appear in court. The citation "must clearly inform the person of any mandatory court appearance." This will require that the department agent or law enforcement officer issuing the citation have immediate access to the database of prior citations to know when to "clearly inform" the person being cited of the court appearance. Whether costs for such a database access system are included in the department's estimates is unknown.

## **VI. Technical Deficiencies:**

### **Enforcement and Penalties**

The bill applies the criminal penalties of fines and imprisonment to a civil infraction. Additionally, the bill provides that the fine is not to exceed \$500 per violation. If a mover receives a citation alleging a violation, he may pay it, presumably at the rate of \$500, or go to court to contest it. However, if he goes to court, the court may impose a civil penalty that may not

exceed \$1,000, plus court costs. This potential for a greater penalty for contesting the citation could be challenged as a violation of the constitutional right of access to courts. Art. I, s. 21, Fla. Const. The lines between civil and criminal penalties are further blurred, as the court that is to impose this civil penalty is to be “a court having jurisdiction of misdemeanors.”

#### Local Ordinances

Originally, the bill expressly allowed local government ordinances that imposed additional or more restrictive requirements than were being created in the Movers Regulation Act. This provision was deleted. However, the bill still provides that a fee of \$300 must be paid with each application for a renewal of the operating permit, except that “a renewal fee is not required for any mover that holds a municipal or county license that is issued under an ordinance that contains standards at least equal to the requirements of this section, as determined by the department.” Page 10, lines 19-23, CS/SB 340. This provision should be deleted from the bill.

#### **VII. Related Issues:**

None.

#### **VIII. Amendments:**

None.