

**STORAGE NAME:** h0893a.br.doc  
**DATE:** February 21, 2002

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
BUSINESS REGULATION  
ANALYSIS**

**BILL #:** HB 893  
**RELATING TO:** Regulation of Movers  
**SPONSOR(S):** 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
- (3) SMARTER GOVERNMENT COUNCIL
- (4)
- (5)

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**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 Professions (division) of the Department of Business and Professional Regulation (DBPR) 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 obtain operating and vehicle permits from the division; specifies qualifications; requires fees and proof of insurance coverage; requires written estimates for moving costs; requires a written contract; specifies disclosures; specifies certain operating procedures; prohibits specified acts; and provides for enforcement and penalties. The bill preempts regulation to the state.

The bill is designed to create a new regulatory program within the DBPR and assesses fees for funding the operation of the program. The DBPR initially anticipates costs of the program to exceed \$700,000 for start-up and the first year of operation. Revenues are estimated by the DBPR to approach \$175,000 annually. A final fiscal impact by the DBPR has not been completed at this time.

On February 21, 2002, the Committee on Business Regulation adopted a strike everything amendment that is traveling with the bill. The amendment revises the regulatory program and places regulatory authority with the Division of Consumer Services within the Department of Agriculture and Consumer Services.

II. 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 permitholder must pay fees in order to obtain an operating or vehicle permit or to renew a permit. Permitholders 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 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.

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 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 Department 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 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 obtain an annual operating permit and vehicle decal from the division before engaging in business. To obtain the permits, the person must file an application, pay a filing fee and meet statutory qualifications.

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. 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 incomplete 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 to charge certain additional amounts. 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.

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 and disclosures including total costs for transportation and accessorial services, acceptable methods of payment, and the maximum amount of payment due at the time of delivery.

A mover can increase the total contract charges in an amount not to exceed 10 percent of the estimate or 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 charges in excess of the written estimate and the total cost of any additional service.

Additional requirements are specified in the bill. The bill: specifies acceptable means of payment for services and requires disclosure in the estimate and contract; requires the mover to perform duties within the time frames specified in the contract and provides for a grievance procedure to be

implemented by the division; specifies duties regarding liability limitations on the part of the mover; specifies contents of disclosure statements; requires retention of records by a mover; requires the development of a procedure by a mover for handling inquiries and complaints against a mover including access to appropriate records; prohibits a mover from collecting charges if the goods being moved are lost or are totally destroyed; specifies a claims procedure for damaged goods; prohibits the transfer of ownership of a moving company to another for the purpose of evading permit fees or civil penalties; provides a method of filing consumer complaints with the division and authorizes the DBPR to impose sanctions.

Any person violating provisions of the law commits a civil infraction and must pay a fine not to exceed \$500 per violation, in addition to, revocation and suspension of a permit by the division. The proceeds of any fines collected are to be deposited into the DBPR Professional Regulation Trust Fund to be used to administer the provisions of the bill. Unlicensed activity would subject a violator to a 2<sup>nd</sup> degree misdemeanor.

**D. SECTION-BY-SECTION ANALYSIS:**

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

**Section 1.** Cites the act as the "Florida Movers Regulation Act."

**Section 2.** Provides definitions.

**Section 3.** 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 4.** Requires movers to obtain an operating permit from the division and specifies information that must be provided including insurance coverage; requires a vehicle permit to be issued for each vehicle operated by the mover; specifies fees; provides for the adoption of rules; and authorizes the division to suspend or revoke a permit for specified offenses.

**Section 5.** Specifies minimum policy coverage for cargo valuation insurance, cargo legal liability insurance, and motor vehicle insurance and provides penalties for noncompliance.

**Section 6.** Specifies signage requirements for operating mover vehicles.

**Section 7.** Requires written estimates of moving costs to be provided by a mover and specifies certain contents and disclosures that must be made within the estimate.

**Section 8.** Requires a written contract for services to be completed and signed and specifies certain contents of the contract.

**Section 9.** Specifies disclosure requirements to be included within the contract for services.

**Section 10.** Prohibits charging costs for expenses over 10 percent of the written estimate except a mover may charge more if certain unforeseen events occur.

**Section 11.** Provides for a written statement of inventory by the mover under certain circumstances.

**Section 12.** Specifies acceptable means of payment for services and requires disclosure in the estimate and contract.

**Section 13.** Requires the mover to perform duties within the time frames specified in the contract and authorizes the shipper to file a grievance with the division.

**Section 14.** Specifies duties regarding liability limitations on the part of the mover and specifies the contents of disclosure statements.

**Section 15.** Requires retention of records and requires the development of a procedure for handling inquiries and complaints by a mover including access to appropriate records.

**Section 16.** Prohibits a mover from collecting charges if the goods being moved are lost or are totally destroyed.

**Section 17.** Specifies a claims procedure for damaged goods.

**Section 18.** Provides a method of filing consumer complaints with the division and authorizes the DBPR to impose sanctions.

**Section 19.** Prohibits the transfer of ownership of a moving company to another for the purpose of evading permit fees or civil penalties.

**Section 20.** Provides for civil penalties, in addition to, administrative sanctions, in amounts not to exceed \$500; specifies that the division shall enforce the act and further specifies the DBPR shall enforce the act; provides for a 2<sup>nd</sup> degree misdemeanor criminal penalty for unlicensed activity.

**Section 21.** Preempts regulation to the state.

**Section 22.** Provides severability.

**Section 23.** Effective date – July 1, 2002.

### III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill is designed to create a new regulatory program and assesses fees for funding the operation of the program. Revenues are initially estimated by the DBPR to approach \$175,000 annually with an estimated 700 operating permits to be issued. A final fiscal impact by the DBPR has not been completed at this time.

##### 2. Expenditures:

The DBPR initially anticipates costs of the program to exceed \$700,000 for start-up and the first year of operation. The DBPR has not proposed a final estimate of expenditures at this time, however, it is anticipated by the DBPR that a final estimate should exceed these initial projections.

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 permitted. The creation of fines would subject a violator to financial penalties.

D. FISCAL COMMENTS:

None.

IV. 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.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

The DBPR is authorized to adopt rules to implement aspects of the new regulatory program including certain fee amounts.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 21, 2002, the Committee on Business Regulation adopted a strike everything amendment that is traveling with the bill. The amendment differs from the bill by revising numerous provisions including the following:

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

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

The amendment 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.

The amendment 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 amendment increases criminal penalties from a 2<sup>nd</sup> degree to a 1<sup>st</sup> degree misdemeanor. It removes the statement of severability.

The Department of Agriculture and Consumer Services has not projected a potential fiscal impact at this time. However, it may be anticipated that the new program could approach similar revenue and expenditure levels anticipated by the Department of Business and Professional Regulation. Cost figures are estimated to exceed \$700,000 for start-up and the first year of operation. Revenues are estimated to approach \$175,000 annually.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Staff Director:

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Alan W. Livingston

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Paul Liepshutz