

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1393 Agricultural Storage and Shipping Containers

SPONSOR(S): Agriculture & Natural Resources Subcommittee, Beshears

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 654

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Kaiser	Blalock
2) Criminal Justice Subcommittee	12 Y, 1 N	Jones	Cunningham
3) Agriculture & Natural Resources Appropriations Subcommittee			
4) State Affairs Committee			

SUMMARY ANALYSIS

Reports across the country indicate that, due to the increased cost of plastic, the theft of plastic pallets and merchandise containers has escalated. Current law provides certain protections for owners of marked or branded field boxes, pallets, crates, containers, or receptacles used in the production, harvesting, packing, transportation, or marketing of fruits or vegetables or their byproducts by establishing penalties for violations of specific provisions relating to the containers. However, these statutory protections do not currently apply to similar items used for transportation or storage of agricultural products.

The bill expands the current statutory protections for owners of certain containers to include those used for storage and transportation of agricultural or other commodities. The bill also creates similar protections for owners of plastic bulk merchandise containers by requiring a person who purchases five or more plastic bulk merchandise containers from one seller to:

- Obtain from the seller proof of ownership of the containers.
- Maintain a record that contains the date of the transaction; the seller's or consignee's name, address, and telephone number; and, a description of the containers, including the number of containers being sold, each container's serial number, and other identifying marks.
- Verify the seller's identity with a valid driver's license or other government-issued photo identification card and maintain a copy of the identification card in the record of the sale.
- Make a non-cash payment for five or more plastic bulk merchandise containers and record the method of payment used in each transaction.

In addition, the bill requires a purchaser to maintain required records for at least two years after the date of purchase or delivery, whichever is later. State attorneys may inspect these records at any time upon notice.

A person who violates these provisions in a transaction valued at \$10,000 or less commits a first degree misdemeanor. A violation relating to a transaction valued at more than \$10,000 is a third degree felony.

A person who violates these provisions is liable to the owner of a stolen plastic bulk merchandise container for three times the replacement value of the stolen container. The owner of the stolen container may bring an action in a court of competent jurisdiction to recover monetary damages, attorney fees, and costs incurred in maintaining the action.

The bill has a negligible positive fiscal impact on state government and may have a negative fiscal impact on state and local governments. See fiscal section.

The bill has an effective date of October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 506.19, F.S., provides that a person who owns containers¹ used in the general production, harvesting, packing, transportation, or marketing of fruits or vegetables or their byproducts in the state may adopt for his/her exclusive use and ownership a particular mark or brand to designate and distinguish his/her ownership of the containers. An owner may identify his/her containers with such mark or brand in the form of such combinations, initials, symbols, designs, or names as he/she may desire, by plainly and distinctly stamping, stenciling, painting, cutting, etching, or burning the mark or brand into or upon both ends or sides of such containers. The presence of the identifying mark or brand must be filed and recorded with the Department of Agriculture and Consumer Services (department) and serves as prima facie evidence in any court in the state of ownership of such container by the person who recorded the mark or brand with the department and bears the registered number.

Chapter 506, F.S.,² provides protection for owners of marked or branded field boxes, pallets, crates, containers, or receptacles used in the production, harvesting, packing, transportation, or marketing of fruits or vegetables or their byproducts by establishing penalties for:

- Unauthorized possession of protected containers;
- Alteration or obliteration of marks or brands on protected containers;
- Purchase of protected containers from persons other than the registered owner;
- Refusal to deliver protected containers to the registered owner upon demand; and
- Sending protected containers out of state.

Other sections of ch. 506, F.S. provide protection for owners of shopping carts, laundry carts, dairy cases, egg baskets, poultry boxes, and bakery containers.³ However, the above statutory protections do not currently apply to similar items used for transportation or storage of agricultural products.

Recently, there have been numerous reports regarding the theft of plastic pallets and other reusable containers. An article in the Los Angeles Times reported that this is becoming a nationwide problem due to the rise in the price of oil, which has driven up the cost of plastic. Arizona enacted legislation in 2012 to track down persons stealing the plastic pallets and turning them in for cash value at recycling centers. California has also enacted legislation to protect plastic pallets from theft. In Florida, a man was recently arrested for allegedly stealing pallets from a Home Depot parking lot. Though he claimed that he thought the pallets were trash and could be taken, he was charged with grand theft. He eventually pled guilty to disorderly conduct.

Effect of Proposed Changes

The bill amends s. 506.19, F.S., to provide that persons who own containers used for the storage or transport of agricultural or other commercial goods may adopt a mark or brand for his/her exclusive use and ownership, which is similar to what is currently allowed for containers used in the general production, harvesting, packing, transportation, or marketing of fruits or vegetables or their byproducts. The bill also specifies that, for purposes of any court of administrative proceeding, if a copy of the mark or brand is filed and recorded with the department, the presence of the identifying mark or brand and the required registration number on any container is prima facie evidence of ownership.

The bill creates s. 506.265, F.S., which provides the following definitions:

¹ For ease of reading, “container” is used in this analysis to refer to field boxes, pallets, crates, containers, or receptacles.

² Sections 506.19-506.28, F.S.

³ Sections 506.501-506.519, F.S.

- “Bona fide purchaser” means a person who in good faith makes a purchase without knowledge of another person’s outstanding rights.
- “Noncash payment” means payment by a method other than the use of coins or currency.
- “Plastic bulk merchandise container” means a plastic crate or shell used by a product manufacturer, distributor, or retailer for the bulk transportation or storage of goods, and includes a plastic pallet used as a portable platform upon which containers, products, or materials may be placed to facilitate handling.
- “Proof of ownership” means a bill of sale or other evidence showing that a person who claims to be the owner of an item is the bona fide purchaser who purchased the item for fair market value.

The bill also provides that a person who purchases five or more plastic bulk merchandise containers from one seller must:

- Obtain from the seller proof of ownership of the containers.
- Maintain a record that contains the date of the transaction; the seller’s or consignee’s name, address, and telephone number; and a description of the containers, including the number of containers being sold, each container’s serial number, and other identifying marks.
- Verify the seller’s identity with a valid driver’s license or other government-issued photo identification card and maintain a copy of the identification card in the record of the sale.
- Make a noncash payment for five or more plastic bulk merchandise containers and record the method of payment used in each transaction.

In addition, the bill provides that a purchaser must maintain required records for at least two years after the date of purchase or delivery, whichever is later. State attorneys of the judicial circuits may inspect these records at any time upon reasonable notice.

A person who violates these provisions in a transaction valued at \$10,000 or less commits a misdemeanor of the first degree, punishable by a definite term of imprisonment not exceeding one year or a fine not exceeding \$1,000.⁴ A person who violates these provisions in a transaction valued at more than \$10,000 commits a felony of the third degree, punishable by a term of imprisonment not exceeding five years or a fine not exceeding \$5,000.⁵ In the case of habitual offenders, the term of imprisonment cannot exceed 10 years.

A person who violates these provisions is liable to the owner of a stolen plastic bulk merchandise container for three times the replacement value of the stolen container. The owner of the stolen container may bring an action in a court of competent jurisdiction to recover monetary damages, attorney fees, and costs incurred in maintaining the action.

These provisions do not apply to the collection, receipt, or recycling of plastic bulk merchandise containers by the operator of a waste management facility or an entity exempt from federal income tax under s. 503(c)(3) of the Internal Revenue Code.

B. SECTION DIRECTORY:

Section 1: Amends s. 506.19, F.S., authorizing the use of certain brands and marks on containers used for the storage and transport of agricultural and other commercial products to designate and distinguish ownership of containers.

Section 2: Creates s. 506.265, F.S., providing definitions; providing requirements for the sale and purchase of a specified number of plastic bulk merchandise containers; providing that prosecuting attorneys may inspect records of purchase at any time upon reasonable notice; providing criminal and

⁴ Sections 775.082 and 775.083, F.S.

⁵ Sections 775.082 and 775.083, F.S.

civil penalties; and providing an exception for the operator of a waste management facility and certain tax-exempt entities.

Section 3: Provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments section.

2. Expenditures:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of this bill. However, the bill may have a negative prison bed impact on the Department of Corrections because it creates a new third degree felony for a person who violates s. 506.265, F.S., in a transaction valued at more than \$10,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative jail bed impact on the local governments because it creates a new first degree misdemeanor for a person who violates s. 506.265, F.S., in a transaction valued at \$10,000 or less.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of plastic bulk merchandise containers that wish to be protected by the provisions of this legislation will incur charges of an indeterminate amount in order to comply with the registration and record-keeping requirements.

D. FISCAL COMMENTS:

The Department of Agriculture and Consumer Services anticipates an insignificant increase in revenues from an increase in registrations for containers used for the storage and transportation of agricultural or other commodities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On Wednesday, March 20, 2013, the Agriculture and Natural Resources Subcommittee adopted one amendment to HB 1393. The amendment:

- Provides a definition for “noncash payment;”
- Changes the penalty from a first degree felony to a third degree felony for unlawful possession of containers valued at more than \$10,000;
- Provides an exemption from the provisions of the bill for entities exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code; and
- Corrected one scrivener’s error in the bill where the word “money” should have been “monetary.”