

STORAGE NAME: h1591.leps
DATE: April 7, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LAW ENFORCEMENT AND PUBLIC SAFETY
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1591

RELATING TO: Private Investigative Services

SPONSOR(S): Representative Flanagan

STATUTE(S) AFFECTED: ss. 493.6101, 493.6102, 493.6105, 493.6108, 493.6115, 493.6118,
493.6121, 493.6201, 493.6301, 493.6305, and 493.6404, F.S.

COMPANION BILL(S): CS/SB 1228

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

- (1) LAW ENFORCEMENT AND PUBLIC SAFETY
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

The bill revises various provisions relating to the Department of State's regulation of private security, private investigation, and repossession professions. The bill redefines the term "felony" for purposes of the regulation to conform to the State Constitution; provides grounds for a person's disqualification for licensure or licensure revocation for specified acts; revises the department's authority to enforce subpoenas; revises exemptions to the requirements of Ch. 493, F.S., for specified persons; revises the minimum training requirements for a statewide firearms license; makes other minor substantive changes relating to the department's regulation of the use of firearms; and establishes a protocol for uniforms and equipment for employed licensed security professionals.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 493, F.S., provides for the regulation of private security, private investigation, and repossession professions by the Division of Licensing of the Department of State. The law grants the department authority to ensure that the public is protected from the provision of private investigation, security and recovery services by individuals who have a criminal history or are insufficiently or improperly trained in the field, or are unlicensed, or by agencies that are improperly insured, or are managed in a manner that does not assure compliance with the law or rules by its licensed employees. The chapter provides licensure requirements and definitions. The chapter defines "private investigation" to mean bodyguard services or the investigation by a person for the purpose of obtaining specified information.

The law provides grounds for which disciplinary action may be taken against licensees, agencies, and against any unlicensed persons engaging in activities regulated under the chapter. The Department of State may use the grounds for disciplinary action specified in the chapter to deny an applicant's license. The chapter authorizes the Division of Licensing to issue subpoenas, administer oaths, require the production of papers, and take the deposition of any person so subpoenaed. The law provides exemptions from its requirements, including an exemption for appointed law enforcement officers or corrections officers performing their official duties.

Statewide firearms licensees (Class "G" license) must satisfy the minimum training requirements established by department rule. The law establishes the criteria for training, including 24 hours of range and classroom training taught and administered by a licensed firearms instructor. The law limits the range training to 8 hours of the total minimum training requirements. The minimum training requirement increases by 4 hours every 2 years, subsequent to October 1, 1992, up to a maximum of 48 hours.

According to the Division of Licensing, the minimum training requirement is currently 28 hours. The training requirement may be met by an applicant who shows proof that he is an active law enforcement officer currently certified under the Criminal Justice Standards and Training Commission (CJSTC) or if the applicant holds a certificate required of firearms instructors (Class "K" license). Firearms instructors (Class "K" license) are required to possess a valid instructor's certificate from a recognized firearms training entity such as CJSTC. The law also requires recertification training requirements each year of the 2-year licensure period. To obtain a statewide firearm license, an applicant's physical fitness must be certified by a licensed medical physician, osteopathic physician, or physician authorized to act as a licensed physician by a federal agency or department.

Licensees under Ch. 493, F.S., may only carry a firearm of the specific type and caliber for which they are qualified by training. Private investigators (Class "C" license) and private investigative agency managers (Class "MA" license) who have been issued a statewide firearms license (Class "G" license) may carry a .38 caliber revolver; or a .380 caliber or 9 millimeter semiautomatic pistol; or a .357 caliber revolver with .38 caliber ammunition only. Security officers (Class "D" licensees) must perform all security-related duties in a uniform which bears at least one patch or emblem visible at all times clearly identifying their employing agency.

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Part IV of Ch. 493, F.S., consisting of ss. 493.6401-493.6406, F.S., relates to repossession services. Section 493.6404, F.S., requires a licensee who repossesses a vehicle, mobile home, or motorboat to make a complete inventory of any personal effects found in a recovered vehicle if the personal items are not covered by the security agreement relating to the recovered vehicle. The law also requires the reposessor to notify the debtor to whom the personal effects belong before disposing of the effects.

Section 10, Article X of the Florida Constitution defines the term "felony" as used in the State Constitution and in the laws of the state to mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or by imprisonment in the state penitentiary.

B. EFFECT OF PROPOSED CHANGES:

Several technical and other, similar changes would be made to the laws regulating private investigators, private security, and repossession services. The bill would create a new paragraph in s. 493.6101, F.S., to define the word "felony" for purposes of the regulation of private investigative, private security, and repossession services to conform to the definition in s. 10, Art. X, Fla. Const. The word "felony" for purposes of Ch. 493, F.S., would mean a criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or imprisonment in the state penitentiary; a crime in any other state or a crime against the United States which is designated as felony; or an offense in any other state, territory, or country punishable by imprisonment for a term exceeding 1 year.

The bill would provide grounds for licensure disqualification or revocation of the license for any applicant or licensee who has been convicted of a felony until civil rights have been restored by the state and a period of 10 years has expired since final release from supervision. The bill also would require the Division of Licensing to deny an application or revoke a license for 3 years after the final release of an applicant or licensee from supervision if an applicant or licensee has been found guilty of, entered a plea of guilty to, or entered a plea of nolo contendere to a felony and adjudication of guilt is withheld.

The bill would revise an exemption to the requirements of Ch. 493, F.S., for an appointed law enforcement or correctional officer that authorizes the officer to perform official duties and any off-duty activity, not including repossession services, that are approved by the officer's superiors. This means that an officer would be exempt from the licensure requirements of Ch. 493, F.S., when the officer is performing official duties and any off-duty security activities approved by the officer's superiors. An exemption also would be provided for a person or firm that exclusively conducts genealogical research relying primarily on public records, historical information, or databases.

The minimum training requirements for statewide firearms licensees (Class "G") would be revised to require 28 hours of range and classroom training taught and administered by an instructor who holds a valid firearms instructor certificate from a recognized firearms training facility. The Department of State could waive the requirements for a statewide firearms applicant who shows proof of completing the training required for active law enforcement officers within the 12 months. The requirements for a statewide firearm applicant's physical fitness examination also would be revised to authorize the examination to be performed by any medical or osteopathic physician licensed under the

laws of another state in addition to a medical or osteopathic physician licensed to practice in Florida. The bill would authorize a licensed private investigator who is also licensed as a security officer to carry a 9 millimeter semiautomatic pistol while performing security-related services.

The grounds for which the Department of State may take disciplinary action against a licensee, agency, license applicant, or any unlicensed person engaged in activities regulated by law would be amended. The bill would specify that being found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, or being convicted of a crime that directly relates to the business for which a license is sought, would be grounds for which a license application may be denied or a licensee may be subject to discipline.

The enforcement procedures used by the department to enforce compliance with a subpoena would be amended. A person's refusal to comply with a subpoena issued by the Division of Licensing would allow the division to seek an order to require compliance with the subpoena in Leon County circuit court or in the circuit court of the county where the person resides. The subpoena enforcement mechanism would conform the authority of the Department of State to the authority currently granted to other state regulatory agencies.

Persons licensed as a private investigator or private investigator intern would be authorized to perform bodyguard services without being licensed as a security officer. A security officer who has been licensed for at least 2 years, along with a person currently holding a security agency manager license (Class "M"), could be designated as the manager of a security agency. A security officer would be required to return to his employer any uniform or any other equipment issued by the employer immediately upon resignation or termination of employment.

Section 493.6404, F.S., relating to the recovery of vehicles by licensed repossessioners, would be amended to allow a licensed repossessioner to notify a debtor by U.S. Postal Service proof of mailing, i.e., a receipt or return receipt, before disposing of the debtors personal effects that are not covered under a security agreement.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

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(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

Not applicable.

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

- (4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION RESEARCH:

Section 1: Deletes "bodyguard services" from the definition of "private investigation." (Bodyguard services are further addressed in Section 9.) The term "felony" is also defined to conform to and incorporate constitutional and other statutory definitions.

Section 2: Clarifies existing language which exempts law enforcement officers from requirements for licensure when engaging in off-duty security activities approved by superiors.

Section 3: Provides clarifying language and transfers language set forth in Section 5. Adds language exempting applicants from minimal training requirements upon certification under the Criminal Justice Standards and Training Commission or completion of training within the last 12 months.

Section 4: Recognizes determinations of physical fitness certified by physicians licensed on another state.

Section 5: Clarifies that a Class "C" private investigator also holding a "G" Statewide Firearms License and a Class "D" Security Officer License is permitted to carry a 9 millimeter semiautomatic pistol while performing security related duties.

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Section 6: Allows the Division the discretion to deny an application for licensure or discipline a licensee if the individual is found guilty or pled guilty or nolo contendere to, regardless of adjudication, or is convicted of a crime directly related to the business for which the license is held or sought.

Section 7: Provides that the Division may proceed to the circuit court to enforce an investigative subpoena.

Section 8: Allows private investigators to perform bodyguard services without obtaining a Class "D" Security Officer license.

Section 9: Allows a Class "D" Security Officer licensee with 2 years experience to manage a Class "B" or "BB" security agency.

Section 10: Provides that resigning or terminated employees must immediately return employer-issued equipment to the employer.

Section 11: Allows recovery agents to send written notification to debtors of the whereabouts of personal property by either United States postal or proof mailing or certified mail.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

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2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

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 take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

This bill does not reduce the percentage of a tax shared with counties or municipalities.

V. COMMENTS:

None.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

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