

By Senator Garcia

40-839-04

1 A bill to be entitled
 2 An act relating to consumer services; amending
 3 s. 493.6101, F.S.; expanding the definition of
 4 the term "repossession" for purposes of the
 5 regulation of repossession services; amending
 6 s. 493.6102, F.S.; revising the applicability
 7 of ch. 493, F.S., governing private
 8 investigative, private security, and
 9 repossession services; amending s. 493.6110,
 10 F.S.; revising the insurance requirements for
 11 licensure as a security agency under such
 12 chapter; amending s. 493.6118, F.S.; revising
 13 the grounds for discipline of persons or
 14 entities that are licensed as, or applicants
 15 for licensure as, a recovery agency, recovery
 16 agent, and recovery agent intern under such
 17 chapter; providing an effective date.

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 19 Be It Enacted by the Legislature of the State of Florida:

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 21 Section 1. Subsection (22) of section 493.6101,
 22 Florida Statutes, is amended to read:

23 493.6101 Definitions.--

24 (22) "Repossession" means the recovery of a motor
 25 vehicle as defined under s. 320.01(1), a ~~or~~ mobile home as
 26 defined in s. 320.01(2), a ~~or~~ motorboat as defined under s.
 27 327.02, an aircraft as defined in s. 330.27(1), a personal
 28 watercraft as defined in s. 327.02, an all-terrain vehicle as
 29 defined in s. 316.2074, farm equipment as defined under s.
 30 686.402, or industrial equipment,by an individual who is
 31 authorized by the legal owner, lienholder, or lessor to

1 recover, or to collect money payment in lieu of recovery of,
2 that which has been sold or leased under a security agreement
3 that contains a repossession clause. As used in this
4 subsection, the term "industrial equipment" includes, but is
5 not limited to, tractors, road rollers, cranes, fork lifts,
6 backhoes, bulldozers, and other vehicles that are propelled by
7 power other than muscular power, and used in the manufacture
8 of goods and services. A repossession is complete when a
9 licensed recovery agent is in control, custody, and possession
10 of such motor vehicle, mobile home, or motorboat.

11 Section 2. Subsection (3) of section 493.6102, Florida
12 Statutes, is amended to read:

13 493.6102 Inapplicability of this chapter.--This
14 chapter shall not apply to:

15 (3) Any individual solely, exclusively, and regularly
16 employed as an unarmed investigator ~~or recovery agent~~ in
17 connection with the business of her or his employer, when
18 there exists an employer-employee relationship.

19 Section 3. Section 493.6110, Florida Statutes, is
20 amended to read:

21 493.6110 Licensee's insurance.--A Class "B"~~No~~ agency
22 license may not ~~shall~~ be issued unless the applicant first
23 files with the department a certification of insurance
24 evidencing commercial general liability coverage ~~as delineated~~
25 ~~below~~. The coverage shall provide the department as an
26 additional insured for the purpose of receiving all notices of
27 modification or cancellation of such insurance. Coverage shall
28 be written by an insurance company which is lawfully engaged
29 to provide insurance coverage in Florida. Coverage shall
30 provide for a combined single-limit policy in the amount of at
31 least \$300,000, ~~which policy shall include comprehensive~~

1 ~~general liability coverage~~ for death, bodily injury, property
2 damage, and personal injury ~~coverage including false arrest,~~
3 ~~detention or imprisonment, malicious prosecution, libel,~~
4 ~~slander, defamation of character, and violation of the right~~
5 ~~of privacy.~~ Coverage shall insure for the liability of all
6 employees licensed by the department while acting in the
7 course of their employment.

8 (1) The licensed agency shall notify the department of
9 any claim against such insurance.

10 (2) The licensed agency shall notify the department
11 immediately upon cancellation of the insurance policy, whether
12 such cancellation was initiated by the insurance company or
13 the insured agency.

14 (3) The agency license shall be automatically
15 suspended upon the date of cancellation unless evidence of
16 insurance is provided to the department prior to the effective
17 date of cancellation.

18 Section 4. Section 493.6118, Florida Statutes, is
19 amended to read:

20 493.6118 Grounds for disciplinary action.--

21 (1) The following constitute grounds for which
22 disciplinary action specified in subsection (2) may be taken
23 by the department against any licensee, agency, or applicant
24 regulated by this chapter, or any unlicensed person engaged in
25 activities regulated under this chapter.

26 (a) Fraud or willful misrepresentation in applying for
27 or obtaining a license.

28 (b) Use of any fictitious or assumed name by an agency
29 unless the agency has department approval and qualifies under
30 s. 865.09.

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1 (c) Being found guilty of or entering a plea of guilty
2 or nolo contendere to, regardless of adjudication, or being
3 convicted of a crime that directly relates to the business for
4 which the license is held or sought. A plea of nolo
5 contendere shall create a rebuttable presumption of guilt to
6 the underlying criminal charges, and the department shall
7 allow the individual being disciplined or denied an
8 application for a license to present any mitigating
9 circumstances surrounding his or her plea.

10 (d) A false statement by the licensee that any
11 individual is or has been in his or her employ.

12 (e) A finding that the licensee or any employee is
13 guilty of willful betrayal of a professional secret or any
14 unauthorized release of information acquired as a result of
15 activities regulated under this chapter.

16 (f) Proof that the applicant or licensee is guilty of
17 fraud or deceit, or of negligence, incompetency, or
18 misconduct, in the practice of the activities regulated under
19 this chapter.

20 (g) Conducting activities regulated under this chapter
21 without a license or with a revoked or suspended license.

22 (h) Failure of the licensee to maintain in full force
23 and effect the general liability insurance coverage required
24 by s. 493.6110.

25 (i) Impersonating, or permitting or aiding and
26 abetting an employee to impersonate, a law enforcement officer
27 or an employee of the state, the United States, or any
28 political subdivision thereof by identifying himself or
29 herself as a federal, state, county, or municipal law
30 enforcement officer or official representative, by wearing a
31 uniform or presenting or displaying a badge or credentials

1 that would cause a reasonable person to believe that he or she
2 is a law enforcement officer or that he or she has official
3 authority, by displaying any flashing or warning vehicular
4 lights other than amber colored, or by committing any act that
5 is intended to falsely convey official status.

6 (j) Commission of an act of violence or the use of
7 force on any person except in the lawful protection of one's
8 self or another from physical harm.

9 (k) Knowingly violating, advising, encouraging, or
10 assisting the violation of any statute, court order, *capias*,
11 warrant, injunction, or cease and desist order, in the course
12 of business regulated under this chapter.

13 (l) Soliciting business for an attorney in return for
14 compensation.

15 (m) Transferring or attempting to transfer a license
16 issued pursuant to this chapter.

17 (n) Employing or contracting with any unlicensed or
18 improperly licensed person or agency to conduct activities
19 regulated under this chapter, or performing any act that
20 assists, aids, or abets a person or business entity in
21 engaging in unlicensed activity, when the licensure status was
22 known or could have been ascertained by reasonable inquiry.

23 (o) Failure or refusal to cooperate with or refusal of
24 access to an authorized representative of the department
25 engaged in an official investigation pursuant to this chapter.

26 (p) Failure of any partner, principal corporate
27 officer, or licensee to have his or her identification card in
28 his or her possession while on duty.

29 (q) Failure of any licensee to have his or her license
30 in his or her possession while on duty, as specified in s.
31 493.6111(1).

1 (r) Failure or refusal by a sponsor to certify a
2 biannual written report on an intern or to certify completion
3 or termination of an internship to the department within 15
4 working days.

5 (s) Failure to report to the department any person
6 whom the licensee knows to be in violation of this chapter or
7 the rules of the department.

8 (t) Violating any provision of this chapter.

9 (u) In addition to the grounds for disciplinary action
10 prescribed in paragraphs (a)-(t), Class "R" recovery agencies,
11 Class "E" recovery agents, and Class "EE" recovery agent
12 interns are prohibited from committing the following acts:

13 1. Recovering a motor vehicle, mobile home, ~~or~~
14 motorboat, aircraft, personal watercraft, all-terrain vehicle,
15 farm equipment, or industrial equipment that has been sold
16 under a conditional sales agreement or under the terms of a
17 chattel mortgage before authorization has been received from
18 the legal owner or mortgagee.

19 2. Charging for expenses not actually incurred in
20 connection with the recovery, transportation, storage, or
21 disposal of repossessed property ~~a motor vehicle, mobile home,~~
22 ~~motorboat,~~ or personal property obtained in a repossession.

23 3. Using any ~~motor vehicle, mobile home, or motorboat~~
24 ~~that has been~~ repossessed property, ~~or using~~ personal property
25 obtained in a repossession, for the personal benefit of a
26 licensee or an officer, director, partner, manager, or
27 employee of a licensee.

28 4. Selling property ~~a motor vehicle, mobile home, or~~
29 ~~motorboat~~ recovered under the provisions of this chapter,
30 except with written authorization from the legal owner or the
31 mortgagee thereof.

1 5. Failing to notify the police or sheriff's
2 department of the jurisdiction in which the repossessed
3 property is recovered within 2 hours after recovery.

4 6. Failing to remit moneys~~;~~ collected in lieu of
5 recovery of a motor vehicle, mobile home, ~~or~~ motorboat,
6 aircraft, personal watercraft, all-terrain vehicle, farm
7 equipment, or industrial equipment to the client within 10
8 working days.

9 7. Failing to deliver to the client a negotiable
10 instrument that is payable to the client, within 10 working
11 days after receipt of such instrument.

12 8. Falsifying, altering, or failing to maintain any
13 required inventory or records regarding disposal of personal
14 property contained in or on repossessed property ~~a recovered~~
15 ~~motor vehicle, mobile home, or motorboat~~ pursuant to s.
16 493.6404(1).

17 9. Carrying any weapon or firearm when he or she is on
18 private property and performing duties under his or her
19 license whether or not he or she is licensed pursuant to s.
20 790.06.

21 10. Soliciting from the legal owner the recovery of
22 property subject to repossession after such property has been
23 seen or located on public or private property if the amount
24 charged or requested for such recovery is more than the amount
25 normally charged for such a recovery.

26 11. Wearing, presenting, or displaying a badge in the
27 course of performing a repossession regulated by this chapter
28 ~~repossessing a motor vehicle, mobile home, or motorboat~~.

29 (2) When the department finds any violation of
30 subsection (1), it may do one or more of the following:

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- 1 (a) Deny an application for the issuance or renewal of
2 a license.
- 3 (b) Issue a reprimand.
- 4 (c) Impose an administrative fine not to exceed \$1,000
5 for every count or separate offense.
- 6 (d) Place the licensee on probation for a period of
7 time and subject to such conditions as the department may
8 specify.
- 9 (e) Suspend or revoke a license.
- 10 (3) The department may deny an application for
11 licensure citing lack of good moral character only if the
12 finding by the department of lack of good moral character is
13 supported by clear and convincing evidence. In such cases,
14 the department shall furnish the applicant a statement
15 containing the findings of the department, a complete record
16 of the evidence upon which the determination was based, and a
17 notice of the rights of the applicant to an administrative
18 hearing and subsequent appeal.
- 19 (4) Notwithstanding the provisions of paragraph (1)(c)
20 and subsection (2):
- 21 (a) If the applicant or licensee has been convicted of
22 a felony, the department shall deny the application or revoke
23 the license unless and until civil rights have been restored
24 by the State of Florida or by a state acceptable to Florida
25 and a period of 10 years has expired since final release from
26 supervision.
- 27 (b) A Class "G" applicant who has been convicted of a
28 felony shall also have had the specific right to possess,
29 carry, or use a firearm restored by the State of Florida.
- 30 (c) If the applicant or licensee has been found guilty
31 of, entered a plea of guilty to, or entered a plea of nolo

1 | contendere to a felony and adjudication of guilt is withheld,
2 | the department shall deny the application or revoke the
3 | license until a period of 3 years has expired since final
4 | release from supervision.

5 | (d) A plea of nolo contendere shall create a
6 | rebuttable presumption of guilt to the underlying criminal
7 | charges, and the department shall allow the person being
8 | disciplined or denied an application for a license to present
9 | any mitigating circumstances surrounding his or her plea.

10 | (e) The grounds for discipline or denial cited in this
11 | subsection shall be applied to any disqualifying criminal
12 | history regardless of the date of commission of the underlying
13 | criminal charge. Such provisions shall be applied
14 | retroactively and prospectively.

15 | (5) Upon revocation or suspension of a license, the
16 | licensee shall forthwith return the license which was
17 | suspended or revoked.

18 | (6) The agency license and the approval or license of
19 | each officer, partner, or owner of the agency are
20 | automatically suspended upon entry of a final order imposing
21 | an administrative fine against the agency, until the fine is
22 | paid, if 30 calendar days have elapsed since the entry of the
23 | final order. All owners and corporate or agency officers or
24 | partners are jointly and severally liable for agency fines.
25 | Neither the agency license or the approval or license of any
26 | officer, partner, or owner of the agency may be renewed, nor
27 | may an application be approved if the owner, licensee, or
28 | applicant is liable for an outstanding administrative fine
29 | imposed under this chapter. An individual's approval or
30 | license becomes automatically suspended if a fine imposed
31 | against the individual or his or her agency is not paid within

1 30 days after the date of the final order, and remains
2 suspended until the fine is paid. Notwithstanding the
3 provisions of this subsection, an individual's approval or
4 license may not be suspended nor may an application be denied
5 when the licensee or the applicant has an appeal from a final
6 order pending in any appellate court.

7 (7) An applicant or licensee shall be ineligible to
8 reapply for the same class of license for a period of 1 year
9 following final agency action resulting in the denial or
10 revocation of a license applied for or issued under this
11 chapter. This time restriction shall not apply to
12 administrative denials wherein the basis for denial was:

13 (a) An inadvertent error or omission on the
14 application;

15 (b) The experience documented by the department was
16 insufficient at the time of application;

17 (c) The department was unable to complete the criminal
18 background investigation due to insufficient information from
19 the Department of Law Enforcement, the Federal Bureau of
20 Investigation, or any other applicable law enforcement agency;
21 or

22 (d) Failure to submit required fees.

23 Section 5. This act shall take effect October 1, 2004.

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26 SENATE SUMMARY

27 Expands the definition of the term "repossession" for
28 purposes of regulating recovery agents and agencies.
29 Provides that chapter 493, Florida Statutes, relating to
30 private investigative, private security, and repossession
31 agencies applies to recovery agents. Clarifies that
provisions relating to proof of commercial general
liability insurance as a condition of licensure apply
only to security agencies. Provides additional grounds
for disciplining recovery agencies, recovery agents, and
recovery agent interns.