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A bill to be entitled

An act relating to consumer services; amending s. 493.6101, F.S.; expanding the definition of the term "repossession" for purposes of the regulation of repossession services; amending s. 493.6102, F.S.; revising the applicability of ch. 493, F.S., governing private investigative, private security, and repossession services; amending s. 493.6110, F.S.; revising insurance requirements for licensure under chapter 493, F.S., and providing insurance requirements with respect to Class "B" security agencies; amending s. 493.6118, F.S.; revising the grounds for discipline of persons or entities that are licensed as, or applicants for licensure as, a recovery agency, recovery agent, and recovery agent intern under such chapter; providing an effective date.

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

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

493.6101 Definitions.--

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

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30 money payment in lieu of recovery of, that which has been sold
 31 or leased under a security agreement that contains a
 32 repossession clause. As used in this subsection, the term
 33 "industrial equipment" includes, but is not limited to,
 34 tractors, road rollers, cranes, fork lifts, backhoes,
 35 bulldozers, and other vehicles that are propelled by power other
 36 than muscular power, and used in the manufacture of goods and
 37 services. A repossession is complete when a licensed recovery
 38 agent is in control, custody, and possession of such repossessed
 39 property ~~motor vehicle, mobile home, or motorboat.~~

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

42 493.6102 Inapplicability of this chapter.--This chapter
 43 shall not apply to:

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

48 Section 3. Section 493.6110, Florida Statutes, is amended
 49 to read:

50 493.6110 Licensee's insurance.--A Class "B" ~~No~~ agency
 51 license may not shall be issued unless the applicant first files
 52 with the department a certification of insurance evidencing
 53 commercial general liability coverage ~~as delineated below~~. The
 54 coverage shall provide the department as an additional insured
 55 for the purpose of receiving all notices of modification or
 56 cancellation of such insurance. Coverage shall be written by an
 57 insurance company which is lawfully engaged to provide insurance
 58 coverage in Florida. Coverage shall provide for a combined

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59 single-limit policy in the amount of at least \$300,000, ~~which~~
 60 ~~policy shall include comprehensive general liability coverage~~
 61 for death, bodily injury, property damage, and personal injury
 62 ~~coverage including false arrest, detention or imprisonment,~~
 63 ~~malicious prosecution, libel, slander, defamation of character,~~
 64 ~~and violation of the right of privacy.~~ Coverage shall insure for
 65 the liability of all employees licensed by the department while
 66 acting in the course of their employment.

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

69 (2) The licensed agency shall notify the department
 70 immediately upon cancellation of the insurance policy, whether
 71 such cancellation was initiated by the insurance company or the
 72 insured agency.

73 (3) The agency license shall be automatically suspended
 74 upon the date of cancellation unless evidence of insurance is
 75 provided to the department prior to the effective date of
 76 cancellation.

77 Section 4. Section 493.6118, Florida Statutes, is amended
 78 to read:

79 493.6118 Grounds for disciplinary action.--

80 (1) The following constitute grounds for which
 81 disciplinary action specified in subsection (2) may be taken by
 82 the department against any licensee, agency, or applicant
 83 regulated by this chapter, or any unlicensed person engaged in
 84 activities regulated under this chapter.

85 (a) Fraud or willful misrepresentation in applying for or
 86 obtaining a license.

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87 (b) Use of any fictitious or assumed name by an agency
 88 unless the agency has department approval and qualifies under s.
 89 865.09.

90 (c) Being found guilty of or entering a plea of guilty or
 91 nolo contendere to, regardless of adjudication, or being
 92 convicted of a crime that directly relates to the business for
 93 which the license is held or sought. A plea of nolo contendere
 94 shall create a rebuttable presumption of guilt to the underlying
 95 criminal charges, and the department shall allow the individual
 96 being disciplined or denied an application for a license to
 97 present any mitigating circumstances surrounding his or her
 98 plea.

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

101 (e) A finding that the licensee or any employee is guilty
 102 of willful betrayal of a professional secret or any unauthorized
 103 release of information acquired as a result of activities
 104 regulated under this chapter.

105 (f) Proof that the applicant or licensee is guilty of
 106 fraud or deceit, or of negligence, incompetency, or misconduct,
 107 in the practice of the activities regulated under this chapter.

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

110 (h) Failure of the licensee to maintain in full force and
 111 effect the commercial general liability insurance coverage
 112 required by s. 493.6110.

113 (i) Impersonating, or permitting or aiding and abetting an
 114 employee to impersonate, a law enforcement officer or an
 115 employee of the state, the United States, or any political

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116 subdivision thereof by identifying himself or herself as a
 117 federal, state, county, or municipal law enforcement officer or
 118 official representative, by wearing a uniform or presenting or
 119 displaying a badge or credentials that would cause a reasonable
 120 person to believe that he or she is a law enforcement officer or
 121 that he or she has official authority, by displaying any
 122 flashing or warning vehicular lights other than amber colored,
 123 or by committing any act that is intended to falsely convey
 124 official status.

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

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

132 (l) Soliciting business for an attorney in return for
 133 compensation.

134 (m) Transferring or attempting to transfer a license
 135 issued pursuant to this chapter.

136 (n) Employing or contracting with any unlicensed or
 137 improperly licensed person or agency to conduct activities
 138 regulated under this chapter, or performing any act that
 139 assists, aids, or abets a person or business entity in engaging
 140 in unlicensed activity, when the licensure status was known or
 141 could have been ascertained by reasonable inquiry.

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

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

148 (q) Failure of any licensee to have his or her license in
 149 his or her possession while on duty, as specified in s.
 150 493.6111(1).

151 (r) Failure or refusal by a sponsor to certify a biannual
 152 written report on an intern or to certify completion or
 153 termination of an internship to the department within 15 working
 154 days.

155 (s) Failure to report to the department any person whom
 156 the licensee knows to be in violation of this chapter or the
 157 rules of the department.

158 (t) Violating any provision of this chapter.

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

163 1. Recovering a motor vehicle, mobile home, ~~or~~ motorboat,
 164 aircraft, personal watercraft, all-terrain vehicle, farm
 165 equipment, or industrial equipment that has been sold under a
 166 conditional sales agreement or under the terms of a chattel
 167 mortgage before authorization has been received from the legal
 168 owner or mortgagee.

169 2. Charging for expenses not actually incurred in
 170 connection with the recovery, transportation, storage, or
 171 disposal of repossessed property ~~a motor vehicle, mobile home,~~
 172 ~~motorboat,~~ or personal property obtained in a repossession.

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173 3. Using any ~~motor vehicle, mobile home, or motorboat that~~
 174 ~~has been~~ repossessed property, or ~~using~~ personal property
 175 obtained in a repossession, for the personal benefit of a
 176 licensee or an officer, director, partner, manager, or employee
 177 of a licensee.

178 4. Selling property ~~a motor vehicle, mobile home, or~~
 179 ~~motorboat~~ recovered under the provisions of this chapter, except
 180 with written authorization from the legal owner or the mortgagee
 181 thereof.

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

185 6. Failing to remit moneys, collected in lieu of recovery
 186 of a motor vehicle, mobile home, ~~or~~ motorboat, aircraft,
 187 personal watercraft, all-terrain vehicle, farm equipment, or
 188 industrial equipment to the client within 10 working days.

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

192 8. Falsifying, altering, or failing to maintain any
 193 required inventory or records regarding disposal of personal
 194 property contained in or on repossessed property ~~a recovered~~
 195 ~~motor vehicle, mobile home, or motorboat~~ pursuant to s.
 196 493.6404(1).

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

200 10. Soliciting from the legal owner the recovery of
 201 property subject to repossession after such property has been

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202 | seen or located on public or private property if the amount
 203 | charged or requested for such recovery is more than the amount
 204 | normally charged for such a recovery.

205 | 11. Wearing, presenting, or displaying a badge in the
 206 | course of performing a repossession regulated by this chapter
 207 | ~~repossessing a motor vehicle, mobile home, or motorboat.~~

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

210 | (a) Deny an application for the issuance or renewal of a
 211 | license.

212 | (b) Issue a reprimand.

213 | (c) Impose an administrative fine not to exceed \$1,000 for
 214 | every count or separate offense.

215 | (d) Place the licensee on probation for a period of time
 216 | and subject to such conditions as the department may specify.

217 | (e) Suspend or revoke a license.

218 | (3) The department may deny an application for licensure
 219 | citing lack of good moral character only if the finding by the
 220 | department of lack of good moral character is supported by clear
 221 | and convincing evidence. In such cases, the department shall
 222 | furnish the applicant a statement containing the findings of the
 223 | department, a complete record of the evidence upon which the
 224 | determination was based, and a notice of the rights of the
 225 | applicant to an administrative hearing and subsequent appeal.

226 | (4) Notwithstanding the provisions of paragraph (1)(c) and
 227 | subsection (2):

228 | (a) If the applicant or licensee has been convicted of a
 229 | felony, the department shall deny the application or revoke the
 230 | license unless and until civil rights have been restored by the

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231 State of Florida or by a state acceptable to Florida and a
 232 period of 10 years has expired since final release from
 233 supervision.

234 (b) A Class "G" applicant who has been convicted of a
 235 felony shall also have had the specific right to possess, carry,
 236 or use a firearm restored by the State of Florida.

237 (c) If the applicant or licensee has been found guilty of,
 238 entered a plea of guilty to, or entered a plea of nolo
 239 contendere to a felony and adjudication of guilt is withheld,
 240 the department shall deny the application or revoke the license
 241 until a period of 3 years has expired since final release from
 242 supervision.

243 (d) A plea of nolo contendere shall create a rebuttable
 244 presumption of guilt to the underlying criminal charges, and the
 245 department shall allow the person being disciplined or denied an
 246 application for a license to present any mitigating
 247 circumstances surrounding his or her plea.

248 (e) The grounds for discipline or denial cited in this
 249 subsection shall be applied to any disqualifying criminal
 250 history regardless of the date of commission of the underlying
 251 criminal charge. Such provisions shall be applied retroactively
 252 and prospectively.

253 (5) Upon revocation or suspension of a license, the
 254 licensee shall forthwith return the license which was suspended
 255 or revoked.

256 (6) The agency license and the approval or license of each
 257 officer, partner, or owner of the agency are automatically
 258 suspended upon entry of a final order imposing an administrative
 259 fine against the agency, until the fine is paid, if 30 calendar

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260 days have elapsed since the entry of the final order. All owners
 261 and corporate or agency officers or partners are jointly and
 262 severally liable for agency fines. Neither the agency license or
 263 the approval or license of any officer, partner, or owner of the
 264 agency may be renewed, nor may an application be approved if the
 265 owner, licensee, or applicant is liable for an outstanding
 266 administrative fine imposed under this chapter. An individual's
 267 approval or license becomes automatically suspended if a fine
 268 imposed against the individual or his or her agency is not paid
 269 within 30 days after the date of the final order, and remains
 270 suspended until the fine is paid. Notwithstanding the provisions
 271 of this subsection, an individual's approval or license may not
 272 be suspended nor may an application be denied when the licensee
 273 or the applicant has an appeal from a final order pending in any
 274 appellate court.

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

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

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

284 (c) The department was unable to complete the criminal
 285 background investigation due to insufficient information from
 286 the Department of Law Enforcement, the Federal Bureau of
 287 Investigation, or any other applicable law enforcement agency;
 288 or

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289 (d) Failure to submit required fees.

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