

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Criminal Justice Committee

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BILL: CS/SB 1438

SPONSOR: Criminal Justice Committee and Senator Wise

SUBJECT: Repossession Services

DATE: April 13, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siebert	Cooper	CM	<b>Fav/1 amendment</b>
2.	Knudson	Deffenbaugh	BI	<b>Favorable</b>
3.	Davis	Cannon	CJ	<b>Fav/CS</b>
4.				
5.				
6.				

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## I. Summary:

The Committee Substitute for SB 1438 accomplishes the following:

- Expands state regulation of recovery agents and agencies, to require agents who repossess aircraft, personal watercraft, all-terrain vehicles, farm equipment, or industrial equipment be licensed;
- Limits the insurance requirements for licensure by the Department of Agriculture and Consumer Services by only applying them to a Class “B” license as a security agent, thus eliminating the requirement for private investigators not licensed as security agents and all recovery agents;
- Revises the insurance requirements for a Class “B” licensed security agent by removing the requirement for comprehensive general liability coverage for false arrest, detention or imprisonment, malicious prosecution, libel, slander, defamation of character, and violation to the right of privacy;
- Provides additional grounds for disciplining recovery agencies, agents, and interns; and
- Provides a third degree felony for these newly defined recovery agents who violate certain terms of the existing statutes.
- Removes recovery agents from the group of people exempted from s. 493.6102, F.S., thereby requiring them to be licensed and regulated under ch. 493, F.S.

This bill substantially amends the following sections of the Florida Statutes: 493.6101, 493.6102, 493.6103, 493.6104, 493.6405, 493.6110, and 493.6118.

## II. Present Situation:

Under ch. 493, F.S., the Department of Agriculture and Consumer Services regulates repossession, private security, and private investigative services. The definition of “repossession” includes the recovery of a motor vehicle, mobile home, or motorboat. A repossession may be made by an authorized individual who may recover, or collect money in lieu of recovering, a motor vehicle, mobile home, or motorboat that has been sold or leased under a security agreement that contains a repossession clause. When a licensed recovery agent is in control, custody, and possession of a motor vehicle, mobile home, or motorboat, repossession is complete.<sup>1</sup> However, repossession involves more than regaining control of a vehicle for a lienholder.<sup>2</sup> Courts have found that the definition of repossession is broad enough to include locating or conducting surveillance to find the vehicle.<sup>3</sup> Preparing an inventory of the personal property in the repossessed vehicle and notifying, by certified mail, the debtor of the intent to dispose of the personal property are also part of the repossession process.<sup>4</sup>

A recovery agent is defined as “any individual who, for consideration, advertises as providing or performs repossessions.”<sup>5</sup> Anyone who performs the services of a recovery agent must have a Class “E” license.<sup>6</sup> A recovery agent intern under the direction and control of a sponsoring Class “E” licensee must have a Class “EE” license.<sup>7</sup> A recovery agency means “any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions.”<sup>8</sup> Anyone who operates a recovery agency must have a Class “R” license, which is only valid for one location.<sup>9</sup>

A security agency means “any person who, for consideration, advertises as providing or is engaged in the business of furnishing security services, armored car services, or transporting prisoners.” The definition includes any person who uses dogs and individuals to provide security services.<sup>10</sup> In order to operate a security agency, a person, firm, company, partnership, or corporation must obtain a Class “B” license, which is only valid for one location.<sup>11</sup>

### Exemptions

Certain individuals are exempt from the provisions of ch. 493, F.S., such as local, state, and federal law enforcement officers, licensed insurance investigators, and individuals solely, exclusively, and regularly employed as unarmed investigators or recovery agents “in connection

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<sup>1</sup> Section 493.6101(22), F.S.

<sup>2</sup> Department of Agriculture and Consumer Services, Div. of Licensing, Legal Opinion 96-29 (revised 2/6/97), available at <http://licgweb.doacs.state.fl.us/opinions/96-29.html> (last visited March 10, 2005).

<sup>3</sup> *Rod’s Recovery Agency v. Dep’t of State*, Div. of Licensing, 606 So.2d 458, 459 (Fla. 1st DCA 1992).

<sup>4</sup> Section 493.6404(1) & (2), F.S.

<sup>5</sup> Section 493.6101(21), F.S.

<sup>6</sup> Section 493.6401(4), F.S.

<sup>7</sup> *Id.* at (5).

<sup>8</sup> Section 493.6101(20), F.S.

<sup>9</sup> Section 493.6401(1), F.S.

<sup>10</sup> Section 493.6101(18), F.S.

<sup>11</sup> Section 493.6301(1), F.S.

with the business of his or her employer, when there exists an employer-employee relationship.”<sup>12</sup>

### **Insurance Requirements and Discipline**

Any license described in ch. 493, F.S., may not be issued unless the applicant files with the Department of Agriculture and Consumer Services a certificate of insurance showing certain information and coverages. The insurance must have a provision showing the department as a named additional insured for the purpose of receiving all notices of modification or cancellation of the insurance and must include coverage in the amount of at least \$300,000. The insurance must also include comprehensive general liability coverage for death, bodily injury, property damage, and personal injury. Additionally, the insurance must also include coverage for false arrest, detention or imprisonment, malicious prosecution, libel, slander, defamation of character, and violation of the right of privacy.<sup>13</sup>

The department may discipline licensees under ch. 493, F.S. Some of the grounds for disciplinary action include:

- fraud or willful misrepresentation in applying for or obtaining a license;
- a finding that the licensee or any employee is guilty of willful betrayal of a professional secret or any unauthorized release of information acquired as a result of activities regulated under this chapter;
- proof that the applicant or licensee is guilty of fraud or deceit, or of negligence, incompetency, or misconduct, in the practice of the activities regulated under this chapter; and
- conducting activities regulated under this chapter without a license or with a revoked or suspended license.<sup>14</sup>

In addition to the grounds for disciplinary action listed above, Class “R” recovery agencies, Class “E” recovery agents, and Class “EE” recovery agent interns are prohibited from committing certain acts, such as:

- recovering a motor vehicle, mobile home, or motorboat that has been sold under a conditional sales agreement or under the terms of a chattel mortgage before authorization has been received from the legal owner or mortgagee;
- charging for expenses not actually incurred in connection with the recovery, transportation, storage, or disposal of a motor vehicle, mobile home, motorboat, or personal property; and
- using any motor vehicle, mobile home, or motorboat that has been repossessed, or using personal property obtained in a repossession, for the personal benefit of a licensee or an officer, director, partner, manager, or employee of a licensee.<sup>15</sup>

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<sup>12</sup> Section 493.6102(1)-(3), F.S.

<sup>13</sup> Section 493.6110, F.S.

<sup>14</sup> Section 493.6118(1)(a) & (e)-(g), F.S.

<sup>15</sup> Id. at (1)(u)1.-3., F.S.

### III. Effect of Proposed Changes:

**Section 1** expands the definition of “repossession” in s. 493.6101(22), F.S., to add recovery of an aircraft as defined in s. 330.27(1), F.S., a personal watercraft as defined in s. 327.02, F.S., an all-terrain vehicle as defined in s. 316.2074, F.S., farm equipment as defined in s. 686.402, F.S., or industrial equipment. Industrial equipment is defined to include, but is not limited to, tractors, road rollers, cranes, fork lifts, backhoes, bulldozers, and other vehicles that are propelled by power other than muscular power, and used in the manufacture of goods and services. This change in the definition of repossession will require unlicensed individuals who legally repossess the items listed above to obtain a license from the Department of Agriculture and Consumer Services.

**Section 2** amends s. 493.6102(3), F.S., to remove the reference to recovery agents from the class of people exempted under that statute. The result is to now require recovery agents to be licensed and regulated under ch. 493, F.S.

**Section 3** limits the scope of s. 493.6110, F.S., regarding required licensee insurance, to a Class “B” license holder, which is a security agency. A Class “B” license holder must provide the department a certificate of insurance showing commercial general liability coverage, rather than comprehensive general liability coverage.

The section eliminates the requirement that “all agents” obtain insurance as a prerequisite for licensure. Currently, any license described in ch. 493, F.S., may not be issued unless the applicant files with the Department of Agriculture and Consumer Services a certificate of insurance showing that the prospective licensee has obtained comprehensive general liability coverage of at least \$300,000 for death, bodily injury, property damage, personal injury, false arrest, detention or imprisonment, malicious prosecution, libel, slander, defamation, or violation of the right to privacy. Under the bill, all recovery agents (a person who advertises as providing or performs repossessions) and private investigators not licensed as security agents will no longer have to meet the insurance requirements of s. 493.6110, F.S. Representatives from the Department of Agriculture have indicated to staff that they are unaware of a single claim against a recovery agent or private investigator that has been paid out of such insurance.

This section modifies the requirements for comprehensive general liability coverage that a security agency must meet by removing several specific coverage areas that are currently required, such as false arrest, detention or imprisonment, malicious prosecution, libel, slander, and defamation of character, which the comprehensive general liability insurance is required to cover under the current statute.

**Section 4** amends s. 493.6118(1)(h), F.S., to reflect that a failure to obtain commercial liability insurance coverage for Class “B” licenses is grounds for discipline. This change is consistent with the insurance requirement imposed in Section 2. This section also amends s. 493.6118(1)(u), F.S., regarding grounds for discipline of Class “R” recovery agencies, Class “E” recovery agents, and Class “EE” recovery agent interns to include the newly expanded definition of repossession created in Section 1.

**Section 5** amends s. 493.6403, F.S., to include the newly expanded definition of repossession created by this bill.

**Section 6** amends s. 493.6404, F.S., to include the newly expanded definition of repossession created in this bill.

**Section 7** amends s. 493.6405, F.S., to include the newly expanded definition of repossession created in this bill. Accordingly, people who are licensed to repossess aircraft, personal watercraft, all-terrain vehicles, farm equipment, or industrial equipment will commit a third degree felony if they:

- (1) sell the repossessed items without first obtaining written authorization and a negotiable title from the owner or lienholder of the repossessed goods; or
- (2) fail to send the net proceeds from the sale of the repossessed items to the owner or lienholder within 20 working days after executing the documents permitting the transfer of legal ownership to the purchaser.

**Section 8** provides an effective date of October 1, 2005.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Unlicensed individuals who repossess aircraft, personal watercraft, all-terrain vehicles, farm equipment, and industrial equipment and individuals who act exclusively as recovery agents for auto dealerships and other businesses would have to obtain a license from the Department of Agriculture and Consumer Services under this bill. The current

fees are as follows: \$75-recovery agent license; \$60-recovery agent intern license; and \$450-recovery agency license.<sup>16</sup>

Additionally, there may be reduced insurance costs because the bill limits the insurance requirements of s. 493.6110, F.S., to security agents and removes the requirement for comprehensive general liability coverage and removes several specific areas, such as false arrest, detention or imprisonment, malicious prosecution, libel, slander, and defamation of character. To the extent that such insurance was used to compensate persons injured by a recovery agent or private investigator, the means used to provide such compensation will no longer be available upon passage of the bill.

**C. Government Sector Impact:**

The department would incur the expense of processing additional applications for licenses.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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<sup>16</sup> Section 493.6402(1)(a),(d), & (e), F.S.

## **VIII. Summary of Amendments:**

None.

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