

By Senator Wise

5-298B-05

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. 493.6110, F.S.; revising insurance

7 requirements for licensure under ch. 493, F.S.;

8 providing insurance requirements with respect

9 to Class "B" security agencies; amending s.

10 493.6118, F.S.; revising the grounds for

11 disciplinary action against a person or entity

12 that is licensed as, or an applicant for

13 licensure as, a recovery agency, recovery

14 agent, or recovery agent intern; amending s.

15 493.6403, F.S.; revising licensure requirements

16 for recovery agent managers and recovery

17 agents, to conform; amending s. 493.6404, F.S.;

18 revising requirements for the inventory of

19 certain personal effects or property contained

20 in or on repossessed property, to conform;

21 amending s. 493.6405, F.S.; providing a penalty

22 for the unauthorized sale of repossessed

23 aircraft, personal watercraft, all-terrain

24 vehicles, farm equipment, or industrial

25 equipment by a recovery agent or recovery agent

26 intern and for failure to remit the net

27 proceeds from the sale of such repossessed

28 property to the owner or lienholder; providing

29 an effective date.

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

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

3 493.6101 Definitions.--

4 (22) "Repossession" means the recovery of a motor
5 vehicle as defined under s. 320.01(1), a ~~or~~ mobile home as
6 defined in s. 320.01(2), a ~~or~~ motorboat as defined under s.
7 327.02, an aircraft as defined in s. 330.27(1), a personal
8 watercraft as defined in s. 327.02, an all-terrain vehicle as
9 defined in s. 316.2074, farm equipment as defined under s.
10 686.402, or industrial equipment, by an individual who is
11 authorized by the legal owner, lienholder, or lessor to
12 recover, or to collect money payment in lieu of recovery of,
13 that which has been sold or leased under a security agreement
14 that contains a repossession clause. As used in this
15 subsection, the term "industrial equipment" includes, but is
16 not limited to, tractors, road rollers, cranes, fork lifts,
17 backhoes, and bulldozers. The term "industrial equipment" also
18 includes other vehicles that are propelled by power other than
19 muscular power and that are used in the manufacture of goods
20 or used in the provision of services. A repossession is
21 complete when a licensed recovery agent is in control,
22 custody, and possession of such repossessed property ~~motor~~
23 ~~vehicle, mobile home, or motorboat.~~

24 Section 2. Section 493.6110, Florida Statutes, is
25 amended to read:

26 493.6110 Licensee's insurance.--A Class "B" ~~No~~ agency
27 license may not ~~shall~~ be issued unless the applicant first
28 files with the department a certification of insurance
29 evidencing commercial general liability coverage ~~as delineated~~
30 ~~below~~. The coverage shall provide the department as an
31 additional insured for the purpose of receiving all notices of

1 modification or cancellation of such insurance. Coverage shall
2 be written by an insurance company which is lawfully engaged
3 to provide insurance coverage in Florida. Coverage shall
4 provide for a combined single-limit policy in the amount of at
5 least \$300,000, ~~which policy shall include comprehensive~~
6 ~~general liability coverage~~ for death, bodily injury, property
7 damage, and personal injury ~~coverage including false arrest,~~
8 ~~detention or imprisonment, malicious prosecution, libel,~~
9 ~~slander, defamation of character, and violation of the right~~
10 ~~of privacy~~. Coverage shall insure for the liability of all
11 employees licensed by the department while acting in the
12 course of their employment.

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

15 (2) The licensed agency shall notify the department
16 immediately upon cancellation of the insurance policy, whether
17 such cancellation was initiated by the insurance company or
18 the insured agency.

19 (3) The agency license shall be automatically
20 suspended upon the date of cancellation unless evidence of
21 insurance is provided to the department prior to the effective
22 date of cancellation.

23 Section 3. Section 493.6118, Florida Statutes, is
24 amended to read:

25 493.6118 Grounds for disciplinary action.--

26 (1) The following constitute grounds for which
27 disciplinary action specified in subsection (2) may be taken
28 by the department against any licensee, agency, or applicant
29 regulated by this chapter, or any unlicensed person engaged in
30 activities regulated under this chapter.

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1 (a) Fraud or willful misrepresentation in applying for
2 or obtaining a license.

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

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

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

17 (e) A finding that the licensee or any employee is
18 guilty of willful betrayal of a professional secret or any
19 unauthorized release of information acquired as a result of
20 activities regulated under this chapter.

21 (f) Proof that the applicant or licensee is guilty of
22 fraud or deceit, or of negligence, incompetency, or
23 misconduct, in the practice of the activities regulated under
24 this chapter.

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

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

30 (i) Impersonating, or permitting or aiding and
31 abetting an employee to impersonate, a law enforcement officer

1 | or an employee of the state, the United States, or any
2 | political subdivision thereof by identifying himself or
3 | herself as a federal, state, county, or municipal law
4 | enforcement officer or official representative, by wearing a
5 | uniform or presenting or displaying a badge or credentials
6 | that would cause a reasonable person to believe that he or she
7 | is a law enforcement officer or that he or she has official
8 | authority, by displaying any flashing or warning vehicular
9 | lights other than amber colored, or by committing any act that
10 | is intended to falsely convey official status.

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

14 | (k) Knowingly violating, advising, encouraging, or
15 | assisting the violation of any statute, court order, *capias*,
16 | warrant, injunction, or cease and desist order, in the course
17 | of business regulated under this chapter.

18 | (l) Soliciting business for an attorney in return for
19 | compensation.

20 | (m) Transferring or attempting to transfer a license
21 | issued pursuant to this chapter.

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

28 | (o) Failure or refusal to cooperate with or refusal of
29 | access to an authorized representative of the department
30 | engaged in an official investigation pursuant to this chapter.

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

4 (q) Failure of any licensee to have his or her license
5 in his or her possession while on duty, as specified in s.
6 493.6111(1).

7 (r) Failure or refusal by a sponsor to certify a
8 biannual written report on an intern or to certify completion
9 or termination of an internship to the department within 15
10 working days.

11 (s) Failure to report to the department any person
12 whom the licensee knows to be in violation of this chapter or
13 the rules of the department.

14 (t) Violating any provision of this chapter.

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

19 1. Recovering a motor vehicle, mobile home, ~~or~~
20 motorboat, aircraft, personal watercraft, all-terrain vehicle,
21 farm equipment, or industrial equipment that has been sold
22 under a conditional sales agreement or under the terms of a
23 chattel mortgage before authorization has been received from
24 the legal owner or mortgagee.

25 2. Charging for expenses not actually incurred in
26 connection with the recovery, transportation, storage, or
27 disposal of repossessed property ~~a motor vehicle, mobile home,~~
28 ~~motorboat,~~ or personal property obtained in a repossession.

29 3. Using any ~~motor vehicle, mobile home, or motorboat~~
30 ~~that has been~~ repossessed property, or ~~using~~ personal property
31 obtained in a repossession, for the personal benefit of a

1 licensee or an officer, director, partner, manager, or
2 employee of a licensee.

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

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

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

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

18 8. Falsifying, altering, or failing to maintain any
19 required inventory or records regarding disposal of personal
20 property contained in or on repossessed property ~~a recovered~~
21 ~~motor vehicle, mobile home, or motorboat~~ pursuant to s.
22 493.6404(1).

23 9. Carrying any weapon or firearm when he or she is on
24 private property and performing duties under his or her
25 license whether or not he or she is licensed pursuant to s.
26 790.06.

27 10. Soliciting from the legal owner the recovery of
28 property subject to repossession after such property has been
29 seen or located on public or private property if the amount
30 charged or requested for such recovery is more than the amount
31 normally charged for such a recovery.

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

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

6 (a) Deny an application for the issuance or renewal of
7 a license.

8 (b) Issue a reprimand.

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

11 (d) Place the licensee on probation for a period of
12 time and subject to such conditions as the department may
13 specify.

14 (e) Suspend or revoke a license.

15 (3) The department may deny an application for
16 licensure citing lack of good moral character only if the
17 finding by the department of lack of good moral character is
18 supported by clear and convincing evidence. In such cases,
19 the department shall furnish the applicant a statement
20 containing the findings of the department, a complete record
21 of the evidence upon which the determination was based, and a
22 notice of the rights of the applicant to an administrative
23 hearing and subsequent appeal.

24 (4) Notwithstanding the provisions of paragraph (1)(c)
25 and subsection (2):

26 (a) If the applicant or licensee has been convicted of
27 a felony, the department shall deny the application or revoke
28 the license unless and until civil rights have been restored
29 by the State of Florida or by a state acceptable to Florida
30 and a period of 10 years has expired since final release from
31 supervision.

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

4 (c) If the applicant or licensee has been found guilty
5 of, entered a plea of guilty to, or entered a plea of nolo
6 contendere to a felony and adjudication of guilt is withheld,
7 the department shall deny the application or revoke the
8 license until a period of 3 years has expired since final
9 release from supervision.

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

15 (e) The grounds for discipline or denial cited in this
16 subsection shall be applied to any disqualifying criminal
17 history regardless of the date of commission of the underlying
18 criminal charge. Such provisions shall be applied
19 retroactively and prospectively.

20 (5) Upon revocation or suspension of a license, the
21 licensee shall forthwith return the license which was
22 suspended or revoked.

23 (6) The agency license and the approval or license of
24 each officer, partner, or owner of the agency are
25 automatically suspended upon entry of a final order imposing
26 an administrative fine against the agency, until the fine is
27 paid, if 30 calendar days have elapsed since the entry of the
28 final order. All owners and corporate or agency officers or
29 partners are jointly and severally liable for agency fines.
30 Neither the agency license or the approval or license of any
31 officer, partner, or owner of the agency may be renewed, nor

1 | may an application be approved if the owner, licensee, or
2 | applicant is liable for an outstanding administrative fine
3 | imposed under this chapter. An individual's approval or
4 | license becomes automatically suspended if a fine imposed
5 | against the individual or his or her agency is not paid within
6 | 30 days after the date of the final order, and remains
7 | suspended until the fine is paid. Notwithstanding the
8 | provisions of this subsection, an individual's approval or
9 | license may not be suspended nor may an application be denied
10 | when the licensee or the applicant has an appeal from a final
11 | order pending in any appellate court.

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

18 | (a) An inadvertent error or omission on the
19 | application;

20 | (b) The experience documented by the department was
21 | insufficient at the time of application;

22 | (c) The department was unable to complete the criminal
23 | background investigation due to insufficient information from
24 | the Department of Law Enforcement, the Federal Bureau of
25 | Investigation, or any other applicable law enforcement agency;
26 | or

27 | (d) Failure to submit required fees.

28 | Section 4. Paragraphs (b) and (c) of subsection (1) of
29 | section 493.6403, Florida Statutes, are amended to read:

30 | 493.6403 License requirements.--
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1 (1) In addition to the license requirements set forth
2 in this chapter, each individual or agency shall comply with
3 the following additional requirements:

4 (b) An applicant for Class "MR" license shall have at
5 least 1 year of lawfully gained, verifiable, full-time
6 experience as a Class "E" licensee performing repossessions of
7 motor vehicles, mobile homes, ~~or~~ motorboats, aircraft,
8 personal watercraft, all-terrain vehicles, farm equipment, or
9 industrial equipment.

10 (c) An applicant for a Class "E" license shall have at
11 least 1 year of lawfully gained, verifiable, full-time
12 experience in one, or a combination of more than one, of the
13 following:

14 1. Repossession of motor vehicles as defined in s.
15 320.01(1), mobile homes as defined in s. 320.01(2), ~~or~~
16 motorboats as defined in s. 327.02, aircraft as defined in s.
17 330.27(1), personal watercraft as defined in s. 327.02,
18 all-terrain vehicles as defined in s. 316.2074, farm equipment
19 as defined under s. 686.402, or industrial equipment as
20 defined in s. 493.6101(22).

21 2. Work as a Class "EE" licensed intern.

22 Section 5. Subsection (1) of section 493.6404, Florida
23 Statutes, is amended to read:

24 493.6404 Property inventory; vehicle license
25 identification numbers.--

26 (1) If personal effects or other property not covered
27 by a security agreement are contained in or on a recovered
28 vehicle, mobile home, ~~or~~ motorboat, aircraft, personal
29 watercraft, all-terrain vehicles, farm equipment, or
30 industrial equipment at the time it is recovered, a complete
31 and accurate inventory shall be made of such personal effects

1 or property. The date and time the inventory is made shall be
2 indicated, and it shall be signed by the Class "E" or Class
3 "EE" licensee who obtained the personal property. The
4 inventory of the personal property and the records regarding
5 any disposal of personal property shall be maintained for a
6 period of 2 years in the permanent records of the licensed
7 agency and shall be made available, upon demand, to an
8 authorized representative of the department engaged in an
9 official investigation.

10 Section 6. Section 493.6405, Florida Statutes, is
11 amended to read:

12 493.6405 Sale of motor vehicle, mobile home, ~~or~~
13 motorboat, aircraft, personal watercraft, all-terrain
14 vehicles, farm equipment, or industrial equipment by a
15 licensee; penalty.--

16 (1) A Class "E" or Class "EE" licensee shall obtain,
17 prior to sale, written authorization and a negotiable title
18 from the owner or lienholder to sell any repossessed motor
19 vehicle, mobile home, ~~or~~ motorboat, aircraft, personal
20 watercraft, all-terrain vehicles, farm equipment, or
21 industrial equipment.

22 (2) A Class "E" or Class "EE" licensee shall send the
23 net proceeds from the sale of such repossessed motor vehicle,
24 mobile home, ~~or~~ motorboat, aircraft, personal watercraft,
25 all-terrain vehicles, farm equipment, or industrial equipment
26 to the owner or lienholder, within 20 working days after the
27 licensee executes the documents which permit the transfer of
28 legal ownership to the purchaser.

29 (3) A person who violates a provision of this section
30 commits a felony of the third degree, punishable as provided
31 in s. 775.082, s. 775.083, or s. 775.084.

1 Section 7. This act shall take effect October 1, 2005.

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SENATE SUMMARY

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Expands the definition of the term "repossession" for purposes of regulating recovery agents and agencies. Revises requirements for commercial general liability insurance as a condition of licensure. Provides additional grounds for disciplining recovery agencies, recovery agents, and recovery agent interns. Provides that it is a third-degree felony for a recovery agent to sell repossessed aircraft, personal watercraft, all-terrain vehicles, farm equipment, or industrial equipment without authorization or to fail to remit the proceeds of such sale.