

By the Committee on Criminal Justice; and Senator Wise

591-2009-05

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. 493.6102, 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 insurance requirements for
 11 licensure under ch. 493, F.S.; providing
 12 insurance requirements with respect to Class
 13 "B" security agencies; amending s. 493.6118,
 14 F.S.; revising the grounds for disciplinary
 15 action against a person or entity that is
 16 licensed as, or an applicant for licensure as,
 17 a recovery agency, recovery agent, or recovery
 18 agent intern; amending s. 493.6403, F.S.;
 19 revising licensure requirements for recovery
 20 agent managers and recovery agents, to conform;
 21 amending s. 493.6404, F.S.; revising
 22 requirements for the inventory of certain
 23 personal effects or property contained in or on
 24 repossessed property, to conform; amending s.
 25 493.6405, F.S.; providing a penalty for the
 26 unauthorized sale of repossessed aircraft,
 27 personal watercraft, all-terrain vehicles, farm
 28 equipment, or industrial equipment by a
 29 recovery agent or recovery agent intern and for
 30 failure to remit the net proceeds from the sale
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1 of such repossessed property to the owner or
2 lienholder; providing an effective date.

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

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

8 493.6101 Definitions.--

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

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

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1 493.6102 Inapplicability of this chapter.--This
2 chapter shall not apply to:

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

7 Section 3. Section 493.6110, Florida Statutes, is
8 amended to read:

9 493.6110 Licensee's insurance.--~~A Class "B" No~~ agency
10 license may not ~~shall~~ be issued unless the applicant first
11 files with the department a certification of insurance
12 evidencing commercial general liability coverage ~~as delineated~~
13 ~~below~~. The coverage shall provide the department as an
14 additional insured for the purpose of receiving all notices of
15 modification or cancellation of such insurance. Coverage shall
16 be written by an insurance company which is lawfully engaged
17 to provide insurance coverage in Florida. Coverage shall
18 provide for a combined single-limit policy in the amount of at
19 least \$300,000, ~~which policy shall include comprehensive~~
20 ~~general liability coverage~~ for death, bodily injury, property
21 damage, and personal injury ~~coverage including false arrest,~~
22 ~~detention or imprisonment, malicious prosecution, libel,~~
23 ~~slander, defamation of character, and violation of the right~~
24 ~~of privacy~~. Coverage shall insure for the liability of all
25 employees licensed by the department while acting in the
26 course of their employment.

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

29 (2) The licensed agency shall notify the department
30 immediately upon cancellation of the insurance policy, whether
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1 such cancellation was initiated by the insurance company or
2 the insured agency.

3 (3) The agency license shall be automatically
4 suspended upon the date of cancellation unless evidence of
5 insurance is provided to the department prior to the effective
6 date of cancellation.

7 Section 4. Section 493.6118, Florida Statutes, is
8 amended to read:

9 493.6118 Grounds for disciplinary action.--

10 (1) The following constitute grounds for which
11 disciplinary action specified in subsection (2) may be taken
12 by the department against any licensee, agency, or applicant
13 regulated by this chapter, or any unlicensed person engaged in
14 activities regulated under this chapter.

15 (a) Fraud or willful misrepresentation in applying for
16 or obtaining a license.

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

20 (c) Being found guilty of or entering a plea of guilty
21 or nolo contendere to, regardless of adjudication, or being
22 convicted of a crime that directly relates to the business for
23 which the license is held or sought. A plea of nolo
24 contendere shall create a rebuttable presumption of guilt to
25 the underlying criminal charges, and the department shall
26 allow the individual being disciplined or denied an
27 application for a license to present any mitigating
28 circumstances surrounding his or her plea.

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

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1 (e) A finding that the licensee or any employee is
2 guilty of willful betrayal of a professional secret or any
3 unauthorized release of information acquired as a result of
4 activities regulated under this chapter.

5 (f) Proof that the applicant or licensee is guilty of
6 fraud or deceit, or of negligence, incompetency, or
7 misconduct, in the practice of the activities regulated under
8 this chapter.

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

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

14 (i) Impersonating, or permitting or aiding and
15 abetting an employee to impersonate, a law enforcement officer
16 or an employee of the state, the United States, or any
17 political subdivision thereof by identifying himself or
18 herself as a federal, state, county, or municipal law
19 enforcement officer or official representative, by wearing a
20 uniform or presenting or displaying a badge or credentials
21 that would cause a reasonable person to believe that he or she
22 is a law enforcement officer or that he or she has official
23 authority, by displaying any flashing or warning vehicular
24 lights other than amber colored, or by committing any act that
25 is intended to falsely convey official status.

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

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

3 (l) Soliciting business for an attorney in return for
4 compensation.

5 (m) Transferring or attempting to transfer a license
6 issued pursuant to this chapter.

7 (n) Employing or contracting with any unlicensed or
8 improperly licensed person or agency to conduct activities
9 regulated under this chapter, or performing any act that
10 assists, aids, or abets a person or business entity in
11 engaging in unlicensed activity, when the licensure status was
12 known or could have been ascertained by reasonable inquiry.

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

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

19 (q) Failure of any licensee to have his or her license
20 in his or her possession while on duty, as specified in s.
21 493.6111(1).

22 (r) Failure or refusal by a sponsor to certify a
23 biannual written report on an intern or to certify completion
24 or termination of an internship to the department within 15
25 working days.

26 (s) Failure to report to the department any person
27 whom the licensee knows to be in violation of this chapter or
28 the rules of the department.

29 (t) Violating any provision of this chapter.

30 (u) In addition to the grounds for disciplinary action
31 prescribed in paragraphs (a)-(t), Class "R" recovery agencies,

1 Class "E" recovery agents, and Class "EE" recovery agent
2 interns are prohibited from committing the following acts:

3 1. Recovering a motor vehicle, mobile home, ~~or~~
4 motorboat, aircraft, personal watercraft, all-terrain vehicle,
5 farm equipment, or industrial equipment that has been sold
6 under a conditional sales agreement or under the terms of a
7 chattel mortgage before authorization has been received from
8 the legal owner or mortgagee.

9 2. Charging for expenses not actually incurred in
10 connection with the recovery, transportation, storage, or
11 disposal of repossessed property ~~a motor vehicle, mobile home,~~
12 ~~motorboat,~~ or personal property obtained in a repossession.

13 3. Using any ~~motor vehicle, mobile home, or motorboat~~
14 ~~that has been~~ repossessed property, or ~~using~~ personal property
15 obtained in a repossession, for the personal benefit of a
16 licensee or an officer, director, partner, manager, or
17 employee of a licensee.

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

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

25 6. Failing to remit moneys, collected in lieu of
26 recovery of a motor vehicle, mobile home, ~~or~~ motorboat,
27 aircraft, personal watercraft, all-terrain vehicle, farm
28 equipment, or industrial equipment to the client within 10
29 working days.

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

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

9 9. Carrying any weapon or firearm when he or she is on
10 private property and performing duties under his or her
11 license whether or not he or she is licensed pursuant to s.
12 790.06.

13 10. Soliciting from the legal owner the recovery of
14 property subject to repossession after such property has been
15 seen or located on public or private property if the amount
16 charged or requested for such recovery is more than the amount
17 normally charged for such a recovery.

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

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

23 (a) Deny an application for the issuance or renewal of
24 a license.

25 (b) Issue a reprimand.

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

28 (d) Place the licensee on probation for a period of
29 time and subject to such conditions as the department may
30 specify.

31 (e) Suspend or revoke a license.

1 (3) The department may deny an application for
2 licensure citing lack of good moral character only if the
3 finding by the department of lack of good moral character is
4 supported by clear and convincing evidence. In such cases,
5 the department shall furnish the applicant a statement
6 containing the findings of the department, a complete record
7 of the evidence upon which the determination was based, and a
8 notice of the rights of the applicant to an administrative
9 hearing and subsequent appeal.

10 (4) Notwithstanding the provisions of paragraph (1)(c)
11 and subsection (2):

12 (a) If the applicant or licensee has been convicted of
13 a felony, the department shall deny the application or revoke
14 the license unless and until civil rights have been restored
15 by the State of Florida or by a state acceptable to Florida
16 and a period of 10 years has expired since final release from
17 supervision.

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

21 (c) If the applicant or licensee has been found guilty
22 of, entered a plea of guilty to, or entered a plea of nolo
23 contendere to a felony and adjudication of guilt is withheld,
24 the department shall deny the application or revoke the
25 license until a period of 3 years has expired since final
26 release from supervision.

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

1 (e) The grounds for discipline or denial cited in this
2 subsection shall be applied to any disqualifying criminal
3 history regardless of the date of commission of the underlying
4 criminal charge. Such provisions shall be applied
5 retroactively and prospectively.

6 (5) Upon revocation or suspension of a license, the
7 licensee shall forthwith return the license which was
8 suspended or revoked.

9 (6) The agency license and the approval or license of
10 each officer, partner, or owner of the agency are
11 automatically suspended upon entry of a final order imposing
12 an administrative fine against the agency, until the fine is
13 paid, if 30 calendar days have elapsed since the entry of the
14 final order. All owners and corporate or agency officers or
15 partners are jointly and severally liable for agency fines.
16 Neither the agency license or the approval or license of any
17 officer, partner, or owner of the agency may be renewed, nor
18 may an application be approved if the owner, licensee, or
19 applicant is liable for an outstanding administrative fine
20 imposed under this chapter. An individual's approval or
21 license becomes automatically suspended if a fine imposed
22 against the individual or his or her agency is not paid within
23 30 days after the date of the final order, and remains
24 suspended until the fine is paid. Notwithstanding the
25 provisions of this subsection, an individual's approval or
26 license may not be suspended nor may an application be denied
27 when the licensee or the applicant has an appeal from a final
28 order pending in any appellate court.

29 (7) An applicant or licensee shall be ineligible to
30 reapply for the same class of license for a period of 1 year
31 following final agency action resulting in the denial or

1 revocation of a license applied for or issued under this
2 chapter. This time restriction shall not apply to
3 administrative denials wherein the basis for denial was:

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

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

8 (c) The department was unable to complete the criminal
9 background investigation due to insufficient information from
10 the Department of Law Enforcement, the Federal Bureau of
11 Investigation, or any other applicable law enforcement agency;
12 or

13 (d) Failure to submit required fees.

14 Section 5. Paragraphs (b) and (c) of subsection (1) of
15 section 493.6403, Florida Statutes, are amended to read:

16 493.6403 License requirements.--

17 (1) In addition to the license requirements set forth
18 in this chapter, each individual or agency shall comply with
19 the following additional requirements:

20 (b) An applicant for Class "MR" license shall have at
21 least 1 year of lawfully gained, verifiable, full-time
22 experience as a Class "E" licensee performing repossessions of
23 motor vehicles, mobile homes, ~~or~~ motorboats, aircraft,
24 personal watercraft, all-terrain vehicles, farm equipment, or
25 industrial equipment.

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

30 1. Repossession of motor vehicles as defined in s.
31 320.01(1), mobile homes as defined in s. 320.01(2), ~~or~~

1 motorboats as defined in s. 327.02, aircraft as defined in s.
2 330.27(1), personal watercraft as defined in s. 327.02,
3 all-terrain vehicles as defined in s. 316.2074, farm equipment
4 as defined under s. 686.402, or industrial equipment as
5 defined in s. 493.6101(22).

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

7 Section 6. Subsection (1) of section 493.6404, Florida
8 Statutes, is amended to read:

9 493.6404 Property inventory; vehicle license
10 identification numbers.--

11 (1) If personal effects or other property not covered
12 by a security agreement are contained in or on a recovered
13 vehicle, mobile home, ~~or~~ motorboat, aircraft, personal
14 watercraft, all-terrain vehicles, farm equipment, or
15 industrial equipment at the time it is recovered, a complete
16 and accurate inventory shall be made of such personal effects
17 or property. The date and time the inventory is made shall be
18 indicated, and it shall be signed by the Class "E" or Class
19 "EE" licensee who obtained the personal property. The
20 inventory of the personal property and the records regarding
21 any disposal of personal property shall be maintained for a
22 period of 2 years in the permanent records of the licensed
23 agency and shall be made available, upon demand, to an
24 authorized representative of the department engaged in an
25 official investigation.

26 Section 7. Section 493.6405, Florida Statutes, is
27 amended to read:

28 493.6405 Sale of motor vehicle, mobile home, ~~or~~
29 motorboat, aircraft, personal watercraft, all-terrain
30 vehicles, farm equipment, or industrial equipment by a
31 licensee; penalty.--

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

7 (2) A Class "E" or Class "EE" licensee shall send the
8 net proceeds from the sale of such repossessed motor vehicle,
9 mobile home, ~~or~~ motorboat, aircraft, personal watercraft,
10 all-terrain vehicles, farm equipment, or industrial equipment
11 to the owner or lienholder, within 20 working days after the
12 licensee executes the documents which permit the transfer of
13 legal ownership to the purchaser.

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

17 Section 8. This act shall take effect October 1, 2005.

18
19 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
20 COMMITTEE SUBSTITUTE FOR
21 Senate Bill 1438

22 Section 493.6102(3) is amended to remove the group of recovery
23 agents from the list of people not covered by this chapter.
24 Accordingly, this removal now has the effect of requiring
25 recovery agents to be licensed and regulated.
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