

CHAMBER ACTION

1 The Agriculture Committee recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5
6 A bill to be entitled

7 An act relating to consumer services; amending s.
8 493.6101, F.S.; expanding the definition of the term
9 "repossession" for purposes of the regulation of
10 repossession services; amending s. 493.6102, F.S.;
11 revising the applicability of ch. 493, F.S., governing
12 private investigative, private security, and repossession
13 services; amending s. 493.6110, F.S.; revising insurance
14 requirements for licensure under ch. 493, F.S.; providing
15 insurance requirements with respect to Class "B" security
16 agencies; amending s. 493.6118, F.S.; revising the grounds
17 for disciplinary action against a person or entity that is
18 licensed as, or an applicant for licensure as, a recovery
19 agency, recovery agent, or recovery agent intern; amending
20 s. 493.6403, F.S.; revising licensure requirements for
21 recovery agent managers and recovery agents, to conform;
22 amending s. 493.6404, F.S.; revising provisions relating
23 to inventory of certain personal effects or property

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24 contained in or on repossessed property, to conform;
 25 amending s. 493.6405, F.S.; providing a penalty for the
 26 unauthorized sale of repossessed aircraft, personal
 27 watercraft, all-terrain vehicles, farm equipment, or
 28 industrial equipment by a recovery agent or recovery agent
 29 intern and for failure to remit the net proceeds from the
 30 sale of such repossessed property to the owner or
 31 lienholder; providing an effective date.
 32

33 Be It Enacted by the Legislature of the State of Florida:
 34

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

37 493.6101 Definitions.--

38 (22) "Repossession" means the recovery of a motor vehicle
 39 as defined under s. 320.01(1), a ~~æ~~ mobile home as defined in s.
 40 320.01(2), a ~~æ~~ motorboat as defined under s. 327.02, an
 41 aircraft as defined in s. 330.27(1), a personal watercraft as
 42 defined in s. 327.02, an all-terrain vehicle as defined in s.
 43 316.2074, farm equipment as defined under s. 686.402, or
 44 industrial equipment, by an individual who is authorized by the
 45 legal owner, lienholder, or lessor to recover, or to collect
 46 money payment in lieu of recovery of, that which has been sold
 47 or leased under a security agreement that contains a
 48 repossession clause. As used in this subsection, the term
 49 "industrial equipment" includes, but is not limited to,
 50 tractors, road rollers, cranes, fork lifts, backhoes, and
 51 bulldozers. The term "industrial equipment" also includes other

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52 | vehicles that are propelled by power other than muscular power
 53 | and that are used in the manufacture of goods or used in the
 54 | provision of services. A repossession is complete when a
 55 | licensed recovery agent is in control, custody, and possession
 56 | of such repossessed property ~~motor vehicle, mobile home, or~~
 57 | ~~motorboat.~~

58 | Section 2. Subsection (3) of section 493.6102, Florida
 59 | Statutes, is amended to read:

60 | 493.6102 Inapplicability of this chapter.--This chapter
 61 | shall not apply to:

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

66 | Section 3. Section 493.6110, Florida Statutes, is amended
 67 | to read:

68 | 493.6110 Licensee's insurance.--A Class "B" ~~No~~ agency
 69 | license may not shall be issued unless the applicant first files
 70 | with the department a certification of insurance evidencing
 71 | commercial general liability coverage ~~as delineated below~~. The
 72 | coverage shall provide the department as an additional insured
 73 | for the purpose of receiving all notices of modification or
 74 | cancellation of such insurance. Coverage shall be written by an
 75 | insurance company which is lawfully engaged to provide insurance
 76 | coverage in Florida. Coverage shall provide for a combined
 77 | single-limit policy in the amount of at least \$300,000, ~~which~~
 78 | ~~policy shall include comprehensive general liability coverage~~
 79 | for death, bodily injury, property damage, and personal injury

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80 ~~coverage including false arrest, detention or imprisonment,~~
 81 ~~malicious prosecution, libel, slander, defamation of character,~~
 82 ~~and violation of the right of privacy.~~ Coverage shall insure for
 83 the liability of all employees licensed by the department while
 84 acting in the course of their employment.

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

87 (2) The licensed agency shall notify the department
 88 immediately upon cancellation of the insurance policy, whether
 89 such cancellation was initiated by the insurance company or the
 90 insured agency.

91 (3) The agency license shall be automatically suspended
 92 upon the date of cancellation unless evidence of insurance is
 93 provided to the department prior to the effective date of
 94 cancellation.

95 Section 4. Section 493.6118, Florida Statutes, is amended
 96 to read:

97 493.6118 Grounds for disciplinary action.--

98 (1) The following constitute grounds for which
 99 disciplinary action specified in subsection (2) may be taken by
 100 the department against any licensee, agency, or applicant
 101 regulated by this chapter, or any unlicensed person engaged in
 102 activities regulated under this chapter.

103 (a) Fraud or willful misrepresentation in applying for or
 104 obtaining a license.

105 (b) Use of any fictitious or assumed name by an agency
 106 unless the agency has department approval and qualifies under s.
 107 865.09.

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108 (c) Being found guilty of or entering a plea of guilty or
109 nolo contendere to, regardless of adjudication, or being
110 convicted of a crime that directly relates to the business for
111 which the license is held or sought. A plea of nolo contendere
112 shall create a rebuttable presumption of guilt to the underlying
113 criminal charges, and the department shall allow the individual
114 being disciplined or denied an application for a license to
115 present any mitigating circumstances surrounding his or her
116 plea.

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

119 (e) A finding that the licensee or any employee is guilty
120 of willful betrayal of a professional secret or any unauthorized
121 release of information acquired as a result of activities
122 regulated under this chapter.

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

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

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

131 (i) Impersonating, or permitting or aiding and abetting an
132 employee to impersonate, a law enforcement officer or an
133 employee of the state, the United States, or any political
134 subdivision thereof by identifying himself or herself as a
135 federal, state, county, or municipal law enforcement officer or

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136 | official representative, by wearing a uniform or presenting or
137 | displaying a badge or credentials that would cause a reasonable
138 | person to believe that he or she is a law enforcement officer or
139 | that he or she has official authority, by displaying any
140 | flashing or warning vehicular lights other than amber colored,
141 | or by committing any act that is intended to falsely convey
142 | official status.

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

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

150 | (l) Soliciting business for an attorney in return for
151 | compensation.

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

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

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

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

166 (q) Failure of any licensee to have his or her license in
167 his or her possession while on duty, as specified in s.
168 493.6111(1).

169 (r) Failure or refusal by a sponsor to certify a biannual
170 written report on an intern or to certify completion or
171 termination of an internship to the department within 15 working
172 days.

173 (s) Failure to report to the department any person whom
174 the licensee knows to be in violation of this chapter or the
175 rules of the department.

176 (t) Violating any provision of this chapter.

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

181 1. Recovering a motor vehicle, mobile home, ~~or~~ motorboat,
182 aircraft, personal watercraft, all-terrain vehicle, farm
183 equipment, or industrial equipment that has been sold under a
184 conditional sales agreement or under the terms of a chattel
185 mortgage before authorization has been received from the legal
186 owner or mortgagee.

187 2. Charging for expenses not actually incurred in
188 connection with the recovery, transportation, storage, or
189 disposal of repossessed property ~~a motor vehicle, mobile home,~~
190 ~~motorboat,~~ or personal property obtained in a repossession.

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191 3. Using any ~~motor vehicle, mobile home, or motorboat that~~
192 ~~has been~~ repossessed property, or ~~using~~ personal property
193 obtained in a repossession, for the personal benefit of a
194 licensee or an officer, director, partner, manager, or employee
195 of a licensee.

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

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

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

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

210 8. Falsifying, altering, or failing to maintain any
211 required inventory or records regarding disposal of personal
212 property contained in or on repossessed property a ~~recovered~~
213 ~~motor vehicle, mobile home, or motorboat~~ pursuant to s.
214 493.6404(1).

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

218 10. Soliciting from the legal owner the recovery of
219 property subject to repossession after such property has been
220 seen or located on public or private property if the amount
221 charged or requested for such recovery is more than the amount
222 normally charged for such a recovery.

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

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

228 (a) Deny an application for the issuance or renewal of a
229 license.

230 (b) Issue a reprimand.

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

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

235 (e) Suspend or revoke a license.

236 (3) The department may deny an application for licensure
237 citing lack of good moral character only if the finding by the
238 department of lack of good moral character is supported by clear
239 and convincing evidence. In such cases, the department shall
240 furnish the applicant a statement containing the findings of the
241 department, a complete record of the evidence upon which the
242 determination was based, and a notice of the rights of the
243 applicant to an administrative hearing and subsequent appeal.

244 (4) Notwithstanding the provisions of paragraph (1)(c) and
245 subsection (2):

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246 (a) If the applicant or licensee has been convicted of a
 247 felony, the department shall deny the application or revoke the
 248 license unless and until civil rights have been restored by the
 249 State of Florida or by a state acceptable to Florida and a
 250 period of 10 years has expired since final release from
 251 supervision.

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

255 (c) If the applicant or licensee has been found guilty of,
 256 entered a plea of guilty to, or entered a plea of nolo
 257 contendere to a felony and adjudication of guilt is withheld,
 258 the department shall deny the application or revoke the license
 259 until a period of 3 years has expired since final release from
 260 supervision.

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

266 (e) The grounds for discipline or denial cited in this
 267 subsection shall be applied to any disqualifying criminal
 268 history regardless of the date of commission of the underlying
 269 criminal charge. Such provisions shall be applied retroactively
 270 and prospectively.

271 (5) Upon revocation or suspension of a license, the
 272 licensee shall forthwith return the license which was suspended
 273 or revoked.

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274 (6) The agency license and the approval or license of each
275 officer, partner, or owner of the agency are automatically
276 suspended upon entry of a final order imposing an administrative
277 fine against the agency, until the fine is paid, if 30 calendar
278 days have elapsed since the entry of the final order. All owners
279 and corporate or agency officers or partners are jointly and
280 severally liable for agency fines. Neither the agency license or
281 the approval or license of any officer, partner, or owner of the
282 agency may be renewed, nor may an application be approved if the
283 owner, licensee, or applicant is liable for an outstanding
284 administrative fine imposed under this chapter. An individual's
285 approval or license becomes automatically suspended if a fine
286 imposed against the individual or his or her agency is not paid
287 within 30 days after the date of the final order, and remains
288 suspended until the fine is paid. Notwithstanding the provisions
289 of this subsection, an individual's approval or license may not
290 be suspended nor may an application be denied when the licensee
291 or the applicant has an appeal from a final order pending in any
292 appellate court.

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

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

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

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302 (c) The department was unable to complete the criminal
 303 background investigation due to insufficient information from
 304 the Department of Law Enforcement, the Federal Bureau of
 305 Investigation, or any other applicable law enforcement agency;
 306 or

307 (d) Failure to submit required fees.

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

310 493.6403 License requirements.--

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

314 (b) An applicant for Class "MR" license shall have at
 315 least 1 year of lawfully gained, verifiable, full-time
 316 experience as a Class "E" licensee performing repossessions of
 317 motor vehicles, mobile homes, ~~or~~ motorboats, aircraft, personal
 318 watercraft, all-terrain vehicles, farm equipment, or industrial
 319 equipment.

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

324 1. Repossession of motor vehicles as defined in s.
 325 320.01(1), mobile homes as defined in s. 320.01(2), ~~or~~
 326 motorboats as defined in s. 327.02, aircraft as defined in s.
 327 330.27(1), personal watercraft as defined in s. 327.02, all-
 328 terrain vehicles as defined in s. 316.2074, farm equipment as

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329 defined under s. 686.402, or industrial equipment as defined in
330 493.6101(22).

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

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

334 493.6404 Property inventory; vehicle license
335 identification numbers.--

336 (1) If personal effects or other property not covered by a
337 security agreement are contained in or on a recovered vehicle,
338 mobile home, ~~or~~ motorboat, aircraft, personal watercraft, all-
339 terrain vehicle, farm equipment, or industrial equipment at the
340 time it is recovered, a complete and accurate inventory shall be
341 made of such personal effects or property. The date and time the
342 inventory is made shall be indicated, and it shall be signed by
343 the Class "E" or Class "EE" licensee who obtained the personal
344 property. The inventory of the personal property and the records
345 regarding any disposal of personal property shall be maintained
346 for a period of 2 years in the permanent records of the licensed
347 agency and shall be made available, upon demand, to an
348 authorized representative of the department engaged in an
349 official investigation.

350 Section 7. Section 493.6405, Florida Statutes, is amended
351 to read:

352 493.6405 Sale of motor vehicle, mobile home, ~~or~~ motorboat,
353 aircraft, personal watercraft, all-terrain vehicle, farm
354 equipment, or industrial equipment by a licensee; penalty.--

355 (1) A Class "E" or Class "EE" licensee shall obtain, prior
356 to sale, written authorization and a negotiable title from the

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357 | owner or lienholder to sell any repossessed motor vehicle,
358 | mobile home, ~~or~~ motorboat, aircraft, personal watercraft, all-
359 | terrain vehicle, farm equipment, or industrial equipment.

360 | (2) A Class "E" or Class "EE" licensee shall send the net
361 | proceeds from the sale of such repossessed motor vehicle, mobile
362 | home, ~~or~~ motorboat, aircraft, personal watercraft, all-terrain
363 | vehicle, farm equipment, or industrial equipment to the owner or
364 | lienholder, within 20 working days after the licensee executes
365 | the documents which permit the transfer of legal ownership to
366 | the purchaser.

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

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