

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL: SB 154

INTRODUCER: Senator Latvala

SUBJECT: Licensed Security Officers

DATE: October 4, 2011 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------|
| 1. | McCarthy | Hrdlicka | CM | Favorable |
| 2. | _____ | _____ | CJ | _____ |
| 3. | _____ | _____ | BC | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

This bill increases and specifically establishes penalties for impersonating a security officer, private investigator, or recovery agent, as licensed by the Department of Agriculture and Consumer Services (department) under ch. 493, F. S. A person who engages in any activity for which ch. 493, F.S., requires a license, but acts without having a license, commits a first degree misdemeanor. For second or subsequent offenses, the person commits a third degree felony, and the department is authorized to impose a civil penalty not to exceed \$10,000. However, penalties do not apply if the person engaged in unlicensed activity is within 90 days after the expiration date of the person’s license. The bill also provides penalties for activities relating to the impersonation of a licensed security officer, private investigator, or recovery agent.

The bill expands the authority of an armed licensed security officer and armed licensed security agency manager to allow them to detain a person on the premises of a critical infrastructure facility if the security officer has probable cause to believe that the person has committed or is committing a crime, and for the purpose of ascertaining the person’s identity and the circumstances of the activity that is the basis for the temporary detention. The bill provides procedures for notifying law enforcement and transferring of the detained person.

The bill also authorizes the security officer and security agency manager to search the person temporarily detained if they observe that the person is armed with a firearm, concealed weapon, or any destructive device that poses a threat to the safety of the security officer or security agency manager, or the detainee admits to the security officer or security agency manager that he or she is armed with a weapon.

This bill substantially amends section 493.6120, Florida Statutes.

The bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Private Security, Private Investigative, and Recovery Services

The Division of Licensing within the Department of Agriculture and Consumer Services (department) is responsible for the regulation of licensing of private security, private investigative, and recovery services.¹ Section 493.6101(19), F.S., defines a “security officer” as:

any individual who, for consideration, advertises as providing or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, chooses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof. The term also includes armored car personnel and those personnel engaged in the transportation of prisoners.

Section 493.6101(16), F.S., defines a “private investigator” as “any individual who, for consideration, advertises as providing or performs private investigation.” Private investigation is defined as an investigation to obtain information on any of the following matters:

- Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.
- The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
- The credibility of witnesses or other persons.
- The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates.
- The location or recovery of lost or stolen property.
- The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property.
- The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation therefore.²

Section 493.6101(21), F.S., defines a “recovery agent” as “any individual who, for consideration, advertises as providing or performs repossessions.” Section 493.6101(20), F.S., defines “recovery agency” as “any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions.” Section 493.6101(22), F.S., defines “repossession” as recovery of motor vehicles, motor boats, airplanes, personal watercraft, all-terrain vehicles, farm equipment, industrial equipment, and motor homes “by an individual who is authorized by the legal owner, lienholder, or lessor to recover, or to collect money payment in lieu of recovery

¹ The responsibility for regulating private investigative, private security, and recovery industries was assigned to the Department of State in 1965. In 2002, the Division of Licensing of the Department of State was transferred to the Department of Agriculture and Consumer Services, including the Concealed Weapons Permit Program. See ss. 1, 3-10, ch. 2002-295, L.O.F.

² Section 493.6101(17), F.S.

of, that which has been sold or leased under a security agreement that contains a repossession clause.”

Certain individuals are exempt from the licensing requirements for private security and private investigative services. These include local, state, and federal law enforcement officers, licensed insurance investigators, and individuals solely, exclusively, and regularly employed as unarmed investigators and security officers “in connection with the business of his or her employer, when there exists an employer-employee relationship.”³

Florida law establishes criteria for granting licenses for security, private investigative, and repossession services. Individuals seeking a license must clear a criminal background check as well as meet specific training and experience requirements, which vary by the type of license. In addition, the applicant must meet the following criteria:

- Be at least 18 years of age.
- Be of good moral character.
- Not have been adjudicated incapacitated, unless capacity has been judicially restored.
- Not have been involuntarily placed in a treatment facility for the mentally ill, unless competency has been judicially restored.
- Not have been diagnosed as having an incapacitating mental illness, unless a psychologist or psychiatrist licensed in this state certifies that she or he does not currently suffer from the mental illness.
- Not be a chronic and habitual user of alcoholic beverages to the extent that her or his normal faculties are impaired.
- Not have been committed under ch. 397, F.S., former ch. 396, F.S., or a similar law in any other state.
- Not have been found to be a habitual offender under s. 856.011(3), F.S., or a similar law in any other state.
- Not have had two or more convictions under s. 316.193, F.S., or a similar law in any other state within the 3-year period immediately preceding the date the application was filed, unless the individual establishes that she or he is not currently impaired and has successfully completed a rehabilitation course.
- Not have been committed for controlled substance abuse or have been found guilty of a crime under ch. 893, F.S., or a similar law relating to controlled substances in any other state within a 3-year period immediately preceding the date the application was filed, unless the individual establishes that she or he is not currently abusing any controlled substance and has successfully completed a rehabilitation course.
- Be a citizen or permanent legal resident alien of the United States or have appropriate authorization issued by the United States Citizenship and Immigration Services of the United States Department of Homeland Security.⁴

³ Section 493.6102(1)-(4), F.S.

⁴ Section 493.6106(1), F.S.

License Classifications

Chapter 493, F.S., provides for many numerous classifications of licenses within the three general categories of licenses, as follows:⁵

| | |
|--|---|
| PRIVATE INVESTIGATION | |
| Agency | Class "A" |
| Private Investigator | Class "C" |
| Armed Private Investigator | Class "C" & Class "G" |
| Branch Office | Class "AA" |
| Manager | Class "C" or Class "MA" or Class "M" |
| Intern | Class "CC" |
| PRIVATE SECURITY | |
| Agency | Class "B" |
| Security Officer | Class "D" |
| Armed Security Officer | Class "D" & Class "G" |
| Branch Office | Class "BB" |
| Manager | Class "MB" or Class "M" |
| REPOSSESSION ACTIVITY | |
| Agency | Class "R" |
| Recovery Agent | Class "E" |
| Branch Office | Class "RR" |
| Manager | Class "MR" or Class "E" |
| Intern | Class "EE" |
| COMBINED PRIVATE INVESTIGATION AND SECURITY | |
| Agency | Class "A" & Class "B" |
| Branch Office | Class "AB" |
| Manager | Class "M" |
| SCHOOLS | |
| Security Officer School or Training Facility | Class "DS" |
| Security Officer Instructor | Class "DI" |
| Recovery Agent School or Training Facility | Class "RS" |
| Recovery Agent Instructor | Class "RI" |
| FIREARMS | |
| Instructor | Class "K" |
| Statewide Firearm License | Class "G" |
| MANAGERS | |
| Private Investigative Agency or Branch | Class "C", "MA", or "M" |
| Private Security Agency or Branch | Class "MB" or "M" |
| Recovery Agency or Branch | Class "E" or "MR" |
| Armed Manager | Appropriate Manager's License and Class "G" |

D, MB, and G Licenses

Generally, an applicant for a Class "D" security officer license must complete a minimum of 40 hours of professional training at a school or training facility licensed by the department, which establishes by rule the general content and number of hours of each subject area to be taught. Class MB security officers may manage a security agency. Class G officers have special firearms training requirements and are authorized to carry their firearms on duty.

⁵ See 5N-1.116(1), F.A.C.

Detention by Certified Seaport Security Officers

Class D and Class G security officers who are employed at seaports and who are given the power to detain persons are further required to be certified under the Maritime Transportation Security Act or s. 311.121, F.S.

The statutorily-specified certification curriculum for the seaport security officer training program includes no less than 218 hours of initial certification training that conforms to or exceeds model courses approved by the Federal Maritime Act under Section 109 of the Federal Maritime Transportation Security Act of 2002 for facility personnel with specific security duties.

Pursuant to s. 311.124, F.S., these particular Class D or G security officers are given the power to detain persons for a reasonable period of time if they have “probable cause to believe that a person is trespassing . . . in a designated restricted area” pending the arrival of a law enforcement officer.⁶ In addition, this action does not “render the security officer criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.” Furthermore, the seaport security officer must, upon detaining a person for trespass, immediately call a certified law enforcement officer to the scene.

To date, the department has not issued any revised licenses to a Class “D” security officer stating that the person is certified as a seaport security officer.

Impersonating a Licensee

Section 493.6118(1), F.S., authorizes the department to “take disciplinary action” against “any unlicensed person engaged in activities regulated” in ch. 493, F.S., related to private security, private investigative, and recovery services. Grounds for such disciplinary action include:

- Conducting activities regulated under ch. 493, F.S., this chapter without a license or with a revoked or suspended license.
- Impersonating, or permitting or aiding and abetting an employee to impersonate, a law enforcement officer.
- Knowingly violating, advising, encouraging, or assisting the violation of any statute, court order, capias, warrant, injunction, or cease and desist order, in the course of business regulated under ch. 493, F.S.
- Violating any provision of ch. 493, F.S.

When the Department finds any of the above violations it may impose an administrative fine not to exceed \$1,000.00 for every count or separate offense.⁷ Section 493.6120, F.S., provides that any person who violates any provision of ch. 493, F.S., with one exception,⁸ commits a first

⁶ “Restricted area” is defined by 33 C.F.R. part 105. See also s. 311.12, F.S.

⁷ Section 493.6118(2) (c), F.S.

⁸ The exception is in s. 493.6405, F.S. This section deals with the sale of motor vehicles, mobile homes, motorboats, aircraft, personal watercraft, all-terrain vehicles, farm equipment, or industrial equipment by a recovery agent or intern, and provides that a violation is a third degree felony.

degree misdemeanor.⁹ The department is authorized to institute judicial proceedings in the appropriate circuit court seeking enforcement of ch. 493, F.S., or any rule or order of the department.¹⁰

The Power to Detain

Section 812.015(3)(a), F.S., authorizes a law enforcement officer, a merchant, a farmer, or a transit agency's employee or agent, who has probable cause to believe that a retail theft, farm theft, or trespass, has been committed by a person and, in the case of retail or farm theft, that the property can be recovered by taking the offender into custody may, for the purpose of attempting to effect such recovery or for prosecution, take the offender into custody and detain the offender in a reasonable manner for a reasonable length of time. In the event the merchant, merchant's employee, farmer, or a transit agency's employee or agent takes the person into custody, a law enforcement officer shall be called to the scene immediately after the person has been taken into custody. Detention provisions are also applicable to transit fare evasion.

Section 509.143, F.S., authorizes innkeepers and food service establishment operators to "take a person into custody and detain that person" if there is probable cause to believe the person is engaging in disorderly conduct that threatens the safety of the person or others. In these situations, a law enforcement agency must be immediately contacted.

"Citizen's Arrest"

A citizen has a common law right to make a "citizen's arrest" for a felony or a breach of the peace committed in his presence. The citizen may make such an arrest and justify his failure to obtain a warrant by proving the person's guilt.¹¹

III. Effect of Proposed Changes:

Section 1 amends s. 493.6120, F.S., to increase and specifically establish penalties for impersonating a security officer, private investigator, or recovery agent, as licensed by the Department of Agriculture and Consumer Services (department) under ch. 493, F.S. Specifically, a person who engages in any activity for which ch. 493, F.S., requires a license, but acts without having a license, commits a first degree misdemeanor. For a second or subsequent offense, the person commits a third degree felony,¹² and the department is authorized to impose a civil penalty not to exceed \$10,000. However, penalties do not apply if the person engaged in unlicensed activity is within 90 days after the expiration date of the person's license.

The bill also provides that a person who, while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under ch. 493, F.S., knowingly and intentionally forces another person to assist the impersonator in an activity within

⁹ A first degree misdemeanor is punishable by up to 1 year in a county jail and a fine of up to \$1,000 may also be imposed. See ss. 775.082 and 775.083, F.S.

¹⁰ Section 493.6121(6), F.S.

¹¹ *Phoenix v. State*, 455 So.2d 1024 (Fla.1984).

¹² A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000 may also be imposed. See ss. 775.082 and 775.083, F.S.

the scope of duty of a professional licensed under ch. 493, F.S., commits a third degree felony. A person who impersonates a security officer or other designated officer during the commission of a felony commits a second degree felony¹³ and a person who impersonates a security officer or other designated officer during the commission of a felony that results in death or serious bodily injury to another human being commits a first degree felony.¹⁴

Section 2 creates an undesignated section of the Florida Statutes to provide that an on duty, uniformed armed licensed security officer or armed licensed security agency manager, may temporarily detain a person on the premises of a critical infrastructure facility if the security officer or security agency manager has probable cause to believe that the person has committed or is committing a crime. The person may be temporarily detained for the purpose of ascertaining the person's identity and the circumstances of the activity that is the basis for the temporary detention. The security officer or security agency manager must notify the law enforcement agency as soon as possible, and the person may be detained until a responding law enforcement officer arrives at the critical infrastructure facility. The custody of any person temporarily detained must be immediately transferred to the responding law enforcement officer unless the law enforcement officer requests the security officer to assist in detaining the person.

The security officer or security agency manager may search the person detained if the security officer or security agency manager observes that the person is armed with a firearm, concealed weapon, or any destructive device that poses a threat to the safety of the security officer or security agency manager, or the detainee admits to the security officer or security agency manager that he or she is armed with a weapon. The security officer or security agency manager is required to seize any weapon discovered and transfer the weapon to the responding law enforcement officer.

This section defines the term "critical infrastructure facility" to mean any one of the following, *if* it employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized personnel *and* is determined by a state or federal authority to be so vital to the state that the incapacity or destruction of the facility would have a debilitating impact on security, state economic stability, state public health or safety, or any combination of those matters:

- A chemical manufacturing facility.
- A refinery.
- An electrical power plant as defined in s. 403.031, F.S., including a substation, switching station, electrical control center, or electric transmission or distribution facility.
- A water intake structure, water treatment facility, wastewater treatment plant, or pump station.
- A natural gas transmission compressor station.
- A liquid natural gas terminal or storage facility.
- A telecommunications central switching office.
- A deep water port or railroad switching yard.

¹³ A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000 may also be imposed. See ss. 775.082 and 775.083, F.S.

¹⁴ A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000 may also be imposed. See ss. 775.082 and 775.083, F.S.

- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- A public transportation facility as defined in s. 343.62, F.S.

In addition, a security officer or manager must perform duties required under this new section in a uniform that bears at least one patch or emblem visible at all times clearly identifying the employing agency.

Section 3 provides that the bill would take effect on July 1, 2012.

Other Potential Implications:

While a person may know that physical barriers and signage indicate that trespassing may be unlawful, they may be unaware that they are in a “critical infrastructure facility” where security personnel would have the lawful authority to detain and search them, if otherwise warranted. The designation of “critical infrastructure facility” is not necessarily public information.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

It is possible that a person who is detained under this bill could raise Fourth Amendment search and seizure issues. The bill statutorily authorizes one citizen, arguably “under color of law,” to detain and search another citizen virtually *on behalf of* law enforcement. For that reason, security officers who undertake a detention and subsequent search under the parameters authorized in the bill should be aware that any evidence they seize may be later used as evidence in a criminal case and it should be handled accordingly.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates misdemeanor and felony offenses for specific unlicensed activity violations of ch. 493, F.S., as it relates to private investigations, private security, and repossession services. The bill authorizes the Department of Agriculture and Consumer Services to impose a civil penalty when a person commits a second or subsequent offense not to exceed \$10,000. All fines collected are to be deposited into the Fine and Forfeiture Fund by the clerk of the court in the county where the offense occurred, pursuant to s. 775.083, F.S. All revenues received by the clerk in the Fine and Forfeiture fund from court-related fees, fines, costs, and service charges are considered state funds and shall be remitted monthly to the Department of Revenue for deposit into the Clerks of the Court Trust Fund within the Justice Administrative Commission. The amount of fines to be potentially generated by the provisions of this bill are unknown at this time.

Although the Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not reviewed this bill, it did determine that a very similar bill, SB1588, during last year's session was estimated to have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.