

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: HB 875

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Workman and others

116 Y's

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**COMPANION (SB 1330)
BILLS:**

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 875 passed the House on April 17, 2013, and subsequently passed the Senate on April 26, 2013.

The bill amends ch. 493, F.S., which establishes licensure requirements for the fields of private security, private investigations, and recovery services, to make it a first degree misdemeanor for an unlicensed person to engage in any activity for which ch. 493, F.S., requires a license. The bill also makes it a third degree felony for 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 force another person to assist the impersonator in an activity within the scope of duty of a person licensed under ch. 493, F.S. The penalties are increased for second or subsequent violations, or when violations occur while committing a felony.

The bill authorizes licensed security officers (class D license) and licensed security agency managers (class MB license) who also possess a valid class "G" license (firearm license), to temporarily detain a person, so long as the security officer or manager:

- Is on duty and in a uniform with at least one patch or emblem visible at all times clearly identifying the agency employing the security officer or security agency manager;
- Is on the premises of a critical infrastructure facility; and
- Has probable cause to believe that the person has committed or is committing a crime against the client operating the premises or the client's patron.

The detention must be performed to ascertain the person's identity and circumstances of the person's activity.

The security officer must notify the appropriate law enforcement agency as soon as possible, and may only detain the person until a law enforcement officer (LEO) arrives and is in the presence of the detainee. A security officer or security agency manager may search a detained person and his or her belongings if the detainee admits to having a weapon, or the officer or manager observes that the person is armed with a firearm, or other weapon that poses a threat. Such search may only be conducted to the extent necessary to disclose the presence of a weapon, which must be seized and transferred to the responding LEO.

The bill specifies that a LEO, security officer, or security agency manager is not criminally or civilly liable for false arrest, false imprisonment, or unlawful detention due to his or her custody and detention of a person if done in compliance with the provisions outlined above.

The Criminal Justice Impact Conference met on March 21, 2013, and determined the bill will have an insignificant impact on state prison beds. The bill may also have a negative jail bed impact on local governments.

The bill was approved by the Governor on June 25, 2013, ch. 2013-221, L.O.F., and will become effective on July 1, 2013.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0875z1.CRJS

DATE: July 10, 2013

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Impersonating Security Officers, Private Investigators, and Recovery Agents

The Division of Licensing (Division) within the Department of Agriculture and Consumer Services (DACCS) is responsible for licensure in the fields of private security, private investigations, and recovery services.¹ As reflected in the following chart,² the Division issues a variety of licenses within these three fields.³

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

Section 493.6101, F.S., defines terms relating to the private security, private investigations, and recovery services fields as follows:

Private Security Services

- "Security officer" means 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, choses 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.⁴
- "Security agency" means any person⁵ who, for consideration, advertises as providing or is engaged in the business of furnishing security services, armored car services, or transporting prisoners.⁶

Private Investigative Services

¹ Chapter 493, F.S.

² Rule 5N-1.116(1), F.A.C.

³ A variety of individuals are exempt from the licensing requirements of ch. 493, F.S. These include local, state, and federal law enforcement officers engaged in official duties or when performing superior-approved off-duty security activities, attorneys engaged in the regular practice of her or his profession, and any person duly authorized by the laws of this state to operate a central burglar or fire alarm business..." Section 493.6102, F.S.

⁴ Section 493.6101(19), F.S.

⁵ Section 493.6101(2), F.S., defines "person" as any individual, firm, company, agency, organization, partnership, or corporation.

⁶ Section 493.6101(18), F.S. This includes any person who utilizes dogs and individuals to provide security services.

- “Private investigator” means any individual who, for consideration, advertises as providing or performs private investigation.⁷
- “Private investigative agency” means any person who, for consideration, advertises as providing or is engaged in the business of furnishing private investigations.⁸
- “Private investigation” means the investigation by a person or persons for the purpose of obtaining information with reference to 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 therefor.⁹

Recovery Services

- “Recovery agent” means any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions.¹⁰
- “Recovery agency” means any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions.¹¹
- “Repossession” is defined as the recovery of a motor vehicle, mobile home, motorboat, aircraft, personal watercraft, all-terrain vehicle, farm equipment, or industrial equipment, by an individual who is authorized by the legal owner, lienholder, or lessor to recover, or to collect money payment in lieu of recovery of, that which has been sold or leased under a security agreement that contains a repossession clause.¹²

Section 493.6121, F.S., gives DACS the power to enforce the provisions of ch. 493, F.S., irrespective of the place or location in which the violation occurred and, upon the complaint of any person or on its own initiative, to investigate any suspected violation thereof or to cause to be investigated the business and business methods of an unlicensed person. DACS also has the authority to investigate an unlicensed person when such person is advertising as providing or is engaged in performing services which require licensure.¹³ In such instances, DACS has the authority to issue an order to cease and desist the further conduct of such activities, seek an injunction, deny an application, or impose an administrative fine.¹⁴

Currently, ch. 493, F.S., does not contain any provisions specifically making it a crime to impersonate a licensee.

Effect of the Bill

The bill amends s. 493.6120, F.S., to create two criminal offenses relating to impersonating a licensee. The bill makes it a first degree misdemeanor¹⁵ for an unlicensed person to engage in any activity for

⁷ Section 493.6101(16), F.S.

⁸ Section 493.6101(15), F.S.

⁹ Section 493.6101(17), F.S.

¹⁰ Section 493.6101(21), F.S.

¹¹ Section 493.6101(20), F.S.

¹² Section 493.6101(22), F.S.

¹³ Section 493.6121, F.S.

¹⁴ *Id.*

¹⁵ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

which ch. 493, F.S., requires a license. A second or subsequent violation of this provision is a third degree felony,¹⁶ and DACS is authorized to seek a civil penalty of up to \$10,000. However, these penalties do not apply if the person engaged in unlicensed activity within 90 days after the expiration date of his or her license.

The bill also makes it a third degree felony for 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 the scope of duty of a professional licensed under ch. 493, F.S. The penalty is increased to:

- A second degree felony¹⁷ if the offense occurred during the course of committing a felony; and
- A first degree felony¹⁸ if the offense occurred during the course of committing a felony that resulted in death or serious bodily injury.

Private Security Officers - The Power to Detain

Generally, only law enforcement officers have the power to detain an individual relating to criminal activity.¹⁹ However, there are some exceptions to this general rule. For example, s. 812.015(3)(a), F.S., authorizes law enforcement officers, merchants, farmers, and transit agency²⁰ employees or agents who have probable cause to believe that a retail theft,²¹ farm theft,²² a transit fare evasion,²³ or trespass,²⁴ or unlawful use or attempted use of any antishoplifting or inventory control device countermeasure,²⁵ has been committed to take the offender into custody and detain the offender in a reasonable manner for a reasonable length of time for the purpose of attempting to effect recovery or for prosecution.²⁶ In the event a merchant, farmer, or a transit agency's employee takes the person into custody, a law enforcement officer must be immediately called to the scene.

Public lodging establishment and food service establishment operators have similar statutory authority to "take a person into custody and detain a person" if there is probable cause to believe the person is engaging in disorderly conduct and that such conduct was creating a threat to the life or safety of the person or others.²⁷ In these situations, it is also required that law enforcement be called immediately.

¹⁶ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

¹⁷ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁸ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁹ See s. 901.151, F.S., which authorizes a law enforcement officer to temporarily detain a person if the officer encounters such person under circumstances that reasonably indicate that such person has committed, is committing, or is about to commit a crime. Such detention must be for the purpose of ascertaining the identity of the person temporarily detained and the circumstances surrounding the person's presence which led the officer to believe that the person had committed, was committing, or was about to commit a crime.

²⁰ Section 812.015(1), F.S., defines the terms "merchant," "farmer," and "transit agency."

²¹ Section 812.015(1), F.S., defines "retail theft" as the taking possession of or carrying away of merchandise, property, money, or negotiable documents; altering or removing a label, universal product code, or price tag; transferring merchandise from one container to another; or removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.

²² Section 812.015(1), F.S., defines "farm theft" as the unlawful taking possession of any items that are grown or produced on land owned, rented, or leased by another person.

²³ Section 812.015(1), F.S., defines "transit fare evasion" as the unlawful refusal to pay the appropriate fare for transportation upon a mass transit vehicle, or to evade the payment of such fare, or to enter any mass transit vehicle or facility by any door, passageway, or gate, except as provided for the entry of fare-paying passengers.

²⁴ Section 812.015(1), F.S., defines "trespass" in accordance with s. 810.08, F.S., which specifies that whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance.

²⁵ Section 812.015(1), F.S., defines "antishoplifting or inventory control device countermeasure" as any item or device which is designed, manufactured, modified, or altered to defeat any antishoplifting or inventory control device.

²⁶ In the case of a farmer, the taking into custody can only be effectuated on property owned or leased by the farmer. In the case of retail or farm theft, the law enforcement officer, merchant, farmer, or transit agency employee must also have probable cause to believe that the property can be recovered by taking the offender into custody. Section 812.015(3)(a), F.S.

²⁷ Section 509.143, F.S.

Additionally, s. 311.124, F.S., specifies that a Class D or Class G seaport security officer certified under the federal Maritime Transportation Security Act of 2002 guidelines or any employee of the seaport security force certified under the federal Maritime Transportation Security Act of 2002 guidelines has the power to detain persons in a reasonable manner for a reasonable period of time pending arrival of a law enforcement officer if they have “probable cause to believe that a person is trespassing ... in a designated restricted area....”²⁸ The seaport security officer must, upon detaining a person for trespass, immediately call a certified law enforcement officer to the scene.²⁹ This action does not “render the security officer criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.”³⁰

Currently, ch. 493, F.S., does not specifically authorize security officers to detain individuals.

Effect of the Bill

The bill authorizes licensed security officers (class D license) and licensed security agency managers (class MB license) who also possess a valid class “G” license (firearm license), to temporarily detain a person, so long as the security officer or security agency manager:

- Is on duty and in a uniform with at least one patch or emblem visible at all times clearly identifying the agency employing the security officer or security agency manager;
- Is on the premises of a critical infrastructure facility; and
- Has probable cause to believe that the person has committed or is committing a crime against the client operating the premises or the client's patron.

The temporary detention must be for the purpose of ascertaining the person's identity and the circumstances of the person's activity.

After temporarily detaining a person, a security officer or security agency manager must notify the appropriate law enforcement agency as soon as reasonably possible, and may detain the person until a responding law enforcement officer arrives on the premises and is in the presence of the detainee. The custody of any person temporarily detained must be immediately transferred to the responding law enforcement officer unless the officer requests the security officer to assist in detaining the person. The security officer's authority to continue to detain the person pursuant to such request does not extend beyond the place where the person was first detained or in the immediate vicinity of that place.

A security officer or security agency manager may search a detained person and his or her belongings if the security officer or manager observes that the person is armed with a firearm, concealed weapon, or destructive device that poses a threat to the safety of the security officer, security agency manager, or any person for whom the officer or manager is responsible for providing protection; or if the detainee admits to having a weapon. Such search may only be conducted to the extent necessary to disclose the presence of a weapon. The security officer or security agency manager is required to seize any weapon discovered and transfer it to the responding law enforcement officer.

The bill specifies that a law enforcement officer, security officer, or security agency manager is not criminally or civilly liable for false arrest, false imprisonment, or unlawful detention due to his or her custody and detention of a person if done in compliance with the provisions outlined above.

The bill defines the term “critical infrastructure facility” as any of the following, *if* it employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized personnel:

- 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 electrical transmission or distribution facility;

²⁸ “Restricted area” is defined by 33 C.F.R. part 105. *Also see* s. 311.12, F.S.

²⁹ Section 311.124, F.S.

³⁰ *Id.*

- 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; or
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference met on March 21, 2013, and determined the bill will have an insignificant impact on state prison beds. The bill creates first, second, and third degree felony offenses, but they are likely low volume offenses.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

Because the bill creates a new first degree misdemeanor offense, it may have a negative jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.