

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1131 Recovery Agencies
SPONSOR(S): Regulatory Affairs Committee; Renner
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1266

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	11 Y, 0 N	Butler	Anstead
2) Regulatory Affairs Committee	13 Y, 1 N, As CS	Butler	Hamon

SUMMARY ANALYSIS

Several businesses advertise a practice known as “forwarding” or “forwarder” services, to lien holders, lessors, and legal owners of secured goods. Forwarders assist in repossessions by locating the secured asset, but do not actually perform the repossessions themselves. Instead, the forwarder contracts with licensed recovery agencies to perform the actual repossessions, should repossession be necessary.

Currently, the Department of Agriculture and Consumer Services (Department), who licenses and regulates recovery agencies, does not require a person or business offering forwarder services to register as a recovery agency, so long as the person or business states in their advertisements that the forwarder does not perform repossessions.

The bill similarly provides that a “recovery agency” does not include a person not directly performing repossessions, so long as all advertisements contain a disclaimer that states the person does not directly perform any repossession.

The bill shall be effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Division of Licensing within the Department is responsible for protecting the public from unethical business practices of the private security, private investigative and repossession industries through licensure and regulation of those industries pursuant to ch. 493, F.S. The Department ensures that the legal authority, rights, and obligations of licensed recovery agencies are directed to serving the needs of the people of Florida.

A “recovery agency” is defined by s. 493.6101, F.S., to mean “any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions.”

“Repossession” is defined by s. 493.6101, F.S., and includes the recovery of a motor vehicle, mobile home, motorboat, aircraft, personal watercraft, or several other items, performed by an individual who is authorized by the legal owner, lien holder, or lessor to recover, or collect payment in lieu of recovery, an item that was sold or leased under a security agreement that contains a repossession clause.

In order to perform repossession in Florida, the recovery agency must be licensed through the Department.¹ A repossession is complete when a licensed recovery agent is in control, custody, and possession of such repossessed property.

Property that is being repossessed is considered in the control, custody, and possession of a recovery agent when the property being repossessed is secured in preparation for transport from the site of the recovery by means of being attached to or placed on the towing or other transport vehicle or if the property being repossessed is being operated or about to be operated by an employee of the recovery agency.

Forwarder Services

Currently, several businesses advertise a practice known as “forwarding” and offer “forwarder” services, to lien holders, lessors, and legal owners of secured goods. Forwarders do not directly repossess secured goods, but provide services to indirectly assist creditors and lien holders to recover secured goods. These services may include obtaining and forwarding of debtor information such as phone numbers, skip tracing, remarketing, and coordinating repossessions with licensed recovery agencies.

In Florida, forwarders do not actually perform repossessions and instead, contract with licensed recovery agencies to perform the actual repossessions, should repossession be necessary.

The Department does not currently take administrative action against forwarders or businesses offering forwarder services, and does not require them to register as a recovery agency, so long as the person or business makes clear in their advertisements that the forwarder does not actually perform the repossessions.² At least one other state has found that forwarders must be licensed under the state’s repossession laws.³

¹ s. 493.6401, F.S.

² Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 1131, p. 2 (Jan. 13, 2016).

³ *Badeen v. PAR, Inc.*, 496 Mich. 75, 79, 853 N.W.2d 303, 305 (2014).

Federal Fair Debt Collection Practices Act

The Fair Debt Collection Practices Act (FDCPA) was enacted to “eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.”⁴ FDCPA’s ultimate purpose “is to limit harassing, misleading, and fraudulent contacts and communications with or about consumer debtors.”⁵

The FDCPA defines a “debt collector” as “any person who [uses interstate commerce in] the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another” and “includes any person [who uses interstate commerce in] the enforcement of security interests.”⁶ It is unclear if a recovery agency that has no interest in a debt and has no contact with a debtor may be considered debt collectors under the FDCPA; however, a recovery agency who regularly engages in attempts to indirectly collect debts may be subject to the requirements of the FDCPA.⁷

Effect of the Bill

The bill redefines “recovery agency” to mean “a person who does not directly perform repossessions and who, pursuant to a contract with a licensed bank, bank holding company, credit union, or small loan company, contracts with a licensed recovery agency for the performance of repossessions by such agency, if the person includes a disclaimer in all advertisements appearing in this state which discloses that the person does not directly perform any repossessions but contracts with licensed recovery agencies.”

The bill excludes forwarders and forwarder services who advertise as a forwarder, or for forwarder services, from the licensure requirements of recovery agencies.

B. SECTION DIRECTORY:

Section 1 amends s. 493.6101, F.S., amending the definition of “recovery agency.”

Section 2 provides that the bill shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

⁴ 15 U.S.C. §§ 1601, et seq. (2012); 15 U.S.C. § 1692 (2012).

⁵ *Romine v. Diversified Collection Servs., Inc.*, 155 F.3d 1142, 1149 (9th Cir. 1998).

⁶ 15 U.S.C. § 1692a (2012)

⁷ *Seibel v. Soc’y Lease, Inc.*, 969 F. Supp. 713, 717 (M.D. Fla. 1997); *Shannon v. Windsor Equity Grp., Inc.*, No. 12-CV-1124-W JMA, 2014 WL 977899, at *6 (S.D. Cal. Mar. 12, 2014).

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 25, 2016, the Regulatory Affairs Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed "licensed recovery agents" from the modified definition, leaving only "licensed recovery agencies."

This analysis is drafted to the committee substitute as passed by the Regulatory Affairs Committee.