

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 Committee on Commerce and Tourism

BILL: CS/SB 1266

INTRODUCER: Commerce and Tourism Committee and Senator Simpson

SUBJECT: Recovery Agencies

DATE: February 22, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Little	McKay	CM	Fav/CS
2.			AGG	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1266 amends the definition of “recovery agency” to exclude a person who does not directly perform repossession services, but who contracts with a licensed recovery agency for repossession services on behalf of a licensed bank, bank holding company, credit union, or small loan company. Consequently, any forwarder who operates as a middleman in the repossession industry will not be required to obtain a recovery agency license from the Department of Agriculture and Consumer Services.

The bill takes effect upon becoming law.

II. Present Situation:

Repossession is the legal process by which a lender takes back property or assets when a borrower is in default.¹ The Division of Licensing, within the Department of Agriculture and Consumer Services (DACS), regulates and licenses persons providing repossession services, among other services, in order to ensure public protection from unethical business practices.²

An individual who is authorized by the legal owner, lienholder, or lessor may recover an item, or collect money payment in lieu of recovery, if the item has been sold or leased under a security

¹ *Repossession*, *Black’s Law Dictionary*, available at <http://thelawdictionary.org/repossession/> (last visited Feb. 17, 2016).

² Chapter 493, F.S.

agreement containing a repossession clause.³ Repossession is considered complete when a licensed recovery agent is in the control, custody, and possession of the property.⁴ Examples of items that can be repossessed include a motor vehicle, mobile home, motorboat, aircraft, watercraft, all-terrain vehicle, farm equipment, and industrial equipment.⁵

Pursuant to part IV of ch. 493, F.S., recovery agencies and recovery agents are required to be licensed in order to perform repossession services. A recovery agency is any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions.⁶ A recovery agent is any individual who, for consideration, advertises as providing or performs repossession services.⁷ Advertising refers to, “the submission of bids, contracting, or making known by any public notice or solicitation of business, directly or indirectly, that services regulated under [ch. 493, F.S.] are available for consideration.”⁸

Banks, bank holding companies, credit unions, or small loan companies that operate pursuant to chs. 516 and 520, F.S.; any consumer credit reporting agency regulated by 15 USC 1681; or any collection agency not engaged in repossessions are specifically excluded from the regulations of ch. 493, F.S.⁹ As of January 31, 2016, there were 893 licensed recovery agents and 335 licensed recovery agencies in Florida.¹⁰

Forwarder Services

Traditionally, a lender directly hired an individual or company to assist in the collection of debts owed.¹¹ However, in recent years middlemen, known as forwarders, began to operate as intermediaries.¹² In terms of repossession services, lenders are now able to contract with forwarders to locate and recover a secured interest. Forwarders do not directly perform repossessions, but instead contract with a licensed recovery agency if repossession is necessary to recover the secured interest.¹³ Under current practices, forwarder services are not administratively regulated by DACS.¹⁴

III. Effect of Proposed Changes:

The bill amends s. 493.6101(20), F.S., to exclude a person who contracts with a licensed recovery agency for repossession services on behalf of a licensed bank, bank holding company,

³ Section 493.6101(22), F.S.

⁴ *Id.*

⁵ *Id.*

⁶ Section 493.6101(20), F.S.

⁷ Section 493.6101(21), F.S.

⁸ Section 493.6101(6), F.S.

⁹ Section 493.6102(7), F.S.; Florida DACS, Recovery Agent Handbook at 4, *available at* https://licensing.freshfromflorida.com/forms/P-00094_RecoveryAgentHandbook.pdf. (last accessed Feb. 17, 2016).

¹⁰ Florida Department of Agriculture and Consumer Services, Division of Licensing, *Number of Licensees by Type*, (Jan. 31, 2015). Available at http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last accessed Feb. 17, 2016).

¹¹ *Badeed v. Par, Inc.*, 853 N.W.2d 303, 304 (Mich. 2014).

¹² *Id.* (describing how forwarders’ business practices changed the traditional process of debt collection).

¹³ Department of Agriculture and Consumer Services, *SB 1266 Agency Analysis*, (Jan. 15, 2016), on file with the Committee on Commerce and Tourism.

¹⁴ *Id.*

credit union, or small loan company from the definition of “recovery agency.” To be excluded from the definition, the person cannot directly perform the repossession and the person must include a disclaimer in all advertisements that appear in Florida that states the person does not directly perform any repossessions but contracts with licensed recovery agencies.

As a result of the amendment of the definition, forwarders will not be subject to the licensure requirements of part IV of ch. 493, F.S., which is consistent with DACS’ current administrative regulation of forwarder services.¹⁵

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁵ *Id.*

VIII. Statutes Affected:

This bill substantially amends section 493.6101 of the Florida Statutes.

IX. Additional Information:

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

CS by Commerce and Tourism on February 22, 2016:

The bill is amended to clarify the term “recovery agency” does not include a person who contracts with a recovery agency for repossession services pursuant to a contract with a licensed bank, bank holding company, credit union, or small loan company. The bill takes effect upon becoming law.

- B. **Amendments:**

None.