

Committee Substitute for Senate Bill No. 1438

An act relating to consumer services; amending s. 493.6101, F.S.; expanding the definition of the term “repossession” for purposes of the regulation of repossession services; amending s. 493.6102, F.S.; revising the applicability of ch. 493, F.S., governing private investigative, private security, and repossession services; amending s. 493.6110, F.S.; revising insurance requirements for licensure under ch. 493, F.S.; providing insurance requirements with respect to Class “B” security agencies; amending s. 493.6118, F.S.; revising the grounds for disciplinary action against a person or entity that is licensed as, or an applicant for licensure as, a recovery agency, recovery agent, or recovery agent intern; amending s. 493.6403, F.S.; revising licensure requirements for recovery agent managers and recovery agents, to conform; amending s. 493.6404, F.S.; revising requirements for the inventory of certain personal effects or property contained in or on repossessed property, to conform; amending s. 493.6405, F.S.; providing a penalty for the unauthorized sale of repossessed aircraft, personal watercraft, all-terrain vehicles, farm equipment, or industrial equipment by a recovery agent or recovery agent intern and for failure to remit the net proceeds from the sale of such repossessed property to the owner or lienholder; providing an effective date.

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

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

493.6101 Definitions.—

(22) “Repossession” means the recovery of a motor vehicle as defined under s. 320.01(1), ~~a~~ or mobile home as defined in s. 320.01(2), ~~a~~ or motorboat as defined under s. 327.02, an aircraft as defined in s. 330.27(1), a personal watercraft as defined in s. 327.02, an all-terrain vehicle as defined in s. 316.2074, farm equipment as defined under s. 686.402, 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. As used in this subsection, the term “industrial equipment” includes, but is not limited to, tractors, road rollers, cranes, fork lifts, backhoes, and bulldozers. The term “industrial equipment” also includes other vehicles that are propelled by power other than muscular power and that are used in the manufacture of goods or used in the provision of services. A repossession is complete when a licensed recovery agent is in control, custody, and possession of such repossessed property ~~motor vehicle, mobile home, or motorboat.~~

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

493.6102 Inapplicability of this chapter.—This chapter shall not apply to:

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

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

493.6110 Licensee's insurance.—~~A Class "B" No agency license may not~~ shall be issued unless the applicant first files with the department a certification of insurance evidencing commercial general liability coverage ~~as delineated below~~. The coverage shall provide the department as an additional insured for the purpose of receiving all notices of modification or cancellation of such insurance. Coverage shall be written by an insurance company which is lawfully engaged to provide insurance coverage in Florida. Coverage shall provide for a combined single-limit policy in the amount of at least \$300,000, ~~which policy shall include comprehensive general liability coverage for death, bodily injury, property damage, and personal injury coverage including false arrest, detention or imprisonment, malicious prosecution, libel, slander, defamation of character, and violation of the right of privacy.~~ Coverage shall insure for the liability of all employees licensed by the department while acting in the course of their employment.

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

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

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

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

493.6118 Grounds for disciplinary action.—

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

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

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

(c) Being found guilty of or entering a plea of guilty or nolo contendere to, regardless of adjudication, or being convicted of a crime that directly relates to the business for which the license is held or sought. A plea of nolo contendere shall create a rebuttable presumption of guilt to the underlying

criminal charges, and the department shall allow the individual being disciplined or denied an application for a license to present any mitigating circumstances surrounding his or her plea.

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

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

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

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

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

(i) Impersonating, or permitting or aiding and abetting an employee to impersonate, a law enforcement officer or an employee of the state, the United States, or any political subdivision thereof by identifying himself or herself as a federal, state, county, or municipal law enforcement officer or official representative, by wearing a uniform or presenting or displaying a badge or credentials that would cause a reasonable person to believe that he or she is a law enforcement officer or that he or she has official authority, by displaying any flashing or warning vehicular lights other than amber colored, or by committing any act that is intended to falsely convey official status.

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

(k) 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 this chapter.

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

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

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

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

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

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

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

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

(t) Violating any provision of this chapter.

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

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

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

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

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

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

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

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

8. Falsifying, altering, or failing to maintain any required inventory or records regarding disposal of personal property contained in or on repos-

~~essed property a recovered motor vehicle, mobile home, or motorboat pursuant to s. 493.6404(1).~~

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

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

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

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

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

(b) Issue a reprimand.

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

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

(e) Suspend or revoke a license.

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

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

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

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

(c) If the applicant or licensee has been found guilty of, entered a plea of guilty to, or entered a plea of nolo contendere to a felony and adjudication

of guilt is withheld, the department shall deny the application or revoke the license until a period of 3 years has expired since final release from supervision.

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

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

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

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

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

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

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

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

(d) Failure to submit required fees.

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

493.6403 License requirements.—

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

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

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

1. Repossession of motor vehicles as defined in s. 320.01(1), mobile homes as defined in s. 320.01(2), ~~or~~ motorboats as defined in s. 327.02, aircraft as defined in s. 330.27(1), personal watercraft as defined in s. 327.02, all-terrain vehicles as defined in s. 316.2074, farm equipment as defined under s. 686.402, or industrial equipment as defined in s. 493.6101(22).

2. Work as a Class “EE” licensed intern.

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

493.6404 Property inventory; vehicle license identification numbers.—

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

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

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

(1) A Class “E” or Class “EE” licensee shall obtain, prior to sale, written authorization and a negotiable title from the owner or lienholder to sell any repossessed motor vehicle, mobile home, ~~or~~ motorboat, aircraft, personal watercraft, all-terrain vehicles, farm equipment, or industrial equipment.

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

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

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

Approved by the Governor June 3, 2005.

Filed in Office Secretary of State June 3, 2005.