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DATE: February 22, 2002

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FISCAL POLICY & RESOURCES
ANALYSIS**

BILL #: HB 455

RELATING TO: Investigative & Security Services

SPONSOR(S): Representative(s) Kallinger

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMITTEE ON BUSINESS REGULATION YEAS 12 NAYS 0
- (2) FISCAL POLICY & RESOURCES YEAS 14 NAYS 0
- (3) SMARTER GOVERNMENT COUNCIL
- (4)
- (5)

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

The Division of Licensing within the Florida Department of State is authorized to license and regulate private investigative services, private security services, and repossession services and provide for the issuance of firearm licenses. The bill addresses several provisions of this regulatory program.

The bill requires that applicants for firearms licenses within the private investigative and security professions, if they are not U.S. citizens, must submit proof to the Department of State that they have been granted permanent legal resident alien status by the U.S. Immigration and Naturalization Service (INS). Federal law prohibits aliens who do not have such status from possessing firearms pursuant to 18 U.S.C. 922. The bill requires that licensees, if they are not U.S. citizens, must provide proof of current employment authorized by INS.

The bill substitutes the term "recovery" services for the term "repossession" services and provides that applicants for recovery agent licenses may obtain required education through correspondence courses and distance education programs in addition to current means of training.

The bill also revises application and licensure requirements, revises the Department of State's applicant examination requirements, increases the amount for administrative fines issued by the department, and makes several conforming and technical changes.

The bill is not anticipated to have a significant fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

General provisions regarding private investigative services, security services, and repossession services are specified in part I of chapter 493, F.S. Additional specific requirements regarding the regulation of these professionals are included in parts II, III, and IV of this chapter. A private investigative agency conducts private investigations. A security agency provides security services. A recovery agency performs repossessions.

The Florida Department of State (department) provides regulation through its Division of Licensing. Each of these professions are divided into various licensure classes including: agency, branch office, manager, school, instructor and intern. Each of the professions also requires licensure for the individual private investigator, security officer, and recovery agent. Part III of chapter 493, F.S., does not provide for security officer intern licenses.

Section 493.6105, F.S., sets forth requirements for initial licensure application for investigative, security, and repossession services. In addition to basic background information such as name, age, date of birth, and social security or alien registration number, the applicant is required to provide a statement of any criminal convictions, and one or two passport-type color photos, depending upon the license sought. The statute also requires 28 hours of firearms training for those applying to carry firearms (Class "G" license). Firearms instructor applicants (Class "K" license) are required to provide a firearms instructor certificate from one of the following: the Florida Criminal Justice Standards and Training Commission; the National Rifle Association; or a federal, state, county, or municipal police academy in the United States. Section 493.6115, F.S., provides that only licensees in the private investigative and security professions are authorized to obtain Class G licenses for firearms.

Section 493.6106, F.S., requires that all licensees be U.S. citizens or have been granted authorization to seek employment by the U.S. Immigration and Naturalization Services (INS). The statute also requires that each agency maintain at least one physical location in Florida from which business is conducted. Agencies are required to provide notices of address change to the department. Additionally, agency, branch office, and school licensees are required to conspicuously post their license along with notice of being regulated by the department.

Section 493.6108, F.S., authorizes the department to investigate all applicants by examination of fingerprint and police records. If a set of legible fingerprints cannot be obtained because of a physical condition, as attested to by a fingerprint technician or physician, the department may rely

upon a criminal-history record check under the applicant's name conducted by the Florida department of Law Enforcement (FDLE) and the FBI.

Section 493.6118, F.S., authorizes the department to take disciplinary action against all licensees and applicants for violations set forth in ch. 493, F.S. The department may deny applications and renewals, issue reprimands, impose administrative fines up to \$1,000, place licensees on probation, and suspend or revoke licenses.

Section 493.6201, F.S., authorizes private investigators and interns (Class "C" and "CC") to perform bodyguard services without obtaining private security officer licenses (Class "D").

Part IV of chapter 493, F.S., governs regulation of repossession services, including agency and branch offices, individual agents and interns, and schools and training facilities, by the department. Individuals who perform repossession services are licensed as "recovery agents." This part sets forth licensure classification, fee and licensure requirements, and specifies training requirements. Section 493.6401, F.S., requires a Class "RS" license for any person operating a repossession school or training facility. Section 493.6403, F.S., provides that all applicants for a recovery agent or intern license (Class "E" and "EE") who have applied after October 1, 1994, must receive 40 hours of professional training from an "RS"-licensed school or training facility.

Currently the terms "distance learning," "distance education courses," "correspondence courses" or "course of correspondence" do not appear to be defined by statute. Rules of the Florida Real Estate Commission, 61J2-3.009, F.A.C., define "distance education" for purposes of the real estate statutes as "education that takes place when the learner is separated from the source of instruction by time and/or distance." "Distance learning" is commonly associated with the provision of instruction or education via telecommunications. "Correspondence courses" are commonly thought of as hard copy instruction material provided through the mail.

C. EFFECT OF PROPOSED CHANGES:

The bill requires that firearms and firearms instructor applicants (Class "G" and Class "K") who are not citizens of the United States must submit documentation from the U.S. Immigration and Naturalization Service proving permanent legal resident alien status, including proof of residing in the U.S. for at least 90 consecutive days prior to the date of submitting an application. This change is designed to conform to federal requirements set forth in 18 U.S.C. 922.

The bill amends s. 493.6105, F.S., to require that in addition to providing a statement of convictions, an initial applicant must provide a list of arrests resulting in conviction or for which adjudication was withheld, and a certified copy of the final disposition. The bill also limits the photo requirement to one photo per applicant. The bill requires additional proof of certification for Class "K" certification. A certificate from the Florida Criminal Justice Standards and Training Commission must be accompanied by confirmation that the applicant is authorized to provide firearms instruction. The bill also limits acceptable law enforcement instruction certificates to federal law enforcement agencies and the U.S. Armed Forces.

The bill amends s. 493.6106, F.S., to require that non-U.S. citizen licensees be permanent legal resident aliens or have proof of current employment authorization from INS. Class "G" and "K" (firearms and firearms instructor) licensees, however, are limited to permanent legal resident alien status. The bill amends s. 493.6401, F.S., to include correspondence courses and distance learning programs within the type of training that may be provided by licensed schools and training facilities, and to make conforming changes. The statute is also amended to provide that recovery agent and intern applicants who are denied licensure are not required to retake the required 40 hours of training if denial was not based upon insufficient training. Those persons whose licenses have been

expired for over 90 days are also not required to retake the training. Persons whose licenses are revoked, however, must retake the training.

The bill substitutes the term “recovery” services for the term “repossession” services. The bill amends 493.6403, F.S., to provide that recovery agent and recovery agent intern applicants may complete their training by correspondence courses and distance learning programs, and makes conforming changes. The bills also amends s. 493.6106, F.S., to extend licensee posting requirements to providers of correspondence schools, distance education programs, and training facilities.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 493.6105, F.S., to require that firearms and firearms instructor applicants (Class “G” and Class “K”) who are not citizens of the United States must submit documentation from the U.S. Immigration and Naturalization Service proving permanent legal resident alien status, including proof of residing in the U.S. for at least 90 consecutive days prior to the date of submitting an application; to require that in addition to providing a statement of convictions, an initial applicant must provide a list of arrests resulting in conviction or for which adjudication was withheld, and a certified copy of the final disposition; to limit the photo requirement to one photo per applicant; to require additional proof of certification for Class “K” certification; and to limit acceptable law enforcement instruction certificates to federal law enforcement agencies and the U.S. Armed Forces.

Section 2. Amends s. 493.6106, F.S., to require that non-U.S.-citizen licensees be permanent legal resident aliens or have proof of current employment authorization from INS. Class “G” and “K” (firearms and firearms instructor) licensees, however, are limited to permanent legal resident alien status.

Section 3. Amends s. 493.6108, F.S., to limit the department’s reliance on criminal-history record checks of applicants to those performed by the FDLE.

Sections 4-6. Makes technical and conforming changes to ss. 493.6111, 493.6113, and 493.6115, F.S.

Section 7. Amends s. 493.6118, F.S., to increase administrative fines from \$1,000 to \$5,000 for violations.

Section 8. Amends s. 493.6201, F.S. to provide that bodyguard services performed by private investigators and interns (Class “C” and “CC”) do not count toward experience required to be a private investigative agency manager or a private investigator.

Sections 9. Amends s. 493.6401, F.S., to include correspondence courses and distance learning programs within the type of training that may be provided by licensed schools and training facilities, and to make conforming changes; provides that recovery agent and intern applicants who are denied licensure are not required to retake the required 40 hours of training if denial was not based upon insufficient training. Those persons whose licenses have been expired for over 90 days are also not required to retake the training. Persons whose licenses are revoked must retake the training.

Section 10. Amends s. 493.6402, F.S., to make conforming changes.

Section 11. Amends 493.6403, F.S., to provide that Class “E”, recovery agent, and “EE”, recovery agent intern, applicants may complete their training by correspondence courses and distance learning programs, and makes conforming changes.

Sections 12-14. Makes conforming changes to ss. 493.6404, 493.6405, and 493.6406, F.S.

Section 15. Reenacts s. 493.6121, F.S., to incorporate the amendment to s. 493.6118, F.S., regarding the department's authorization to seek administrative fines up to \$5,000 for violations of chapter 493. F.S.

Section 16. Reenacts s. 790.25, F.S., to incorporate the amendment to s. 493.6108, F.S., regarding the department's authorization to investigate applicants.

Section 17. Effective date - upon becoming a law.

III. 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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not anticipated to be significant. Licensees who violate the regulatory provisions of chapter 493, F.S., are subject to a fine of up to \$5,000 for each offense rather than the current fine of up to \$1,000.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON BUSINESS REGULATION:

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