

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared by: Commerce Committee

BILL: PCB 7038

INTRODUCER: Committee on Commerce

SUBJECT: Department of Agriculture and Consumer Services

DATE: February 15, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinely</u>	<u>Cooper</u>	<u>CM</u>	Pre-Meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This Proposed Committee Bill (PCB) requires private investigators and interns to pass an exam before applying for licensure and requires private investigator interns to complete a course on private investigative techniques.

This PCB also revises the requirements for those who provide training courses for recovery agents.

This PCB updates the statutory reference to the organization from which Florida adopts antifreeze standards. This PCB also increases the duration required between calibrations of petroleum measuring devices for volumes of 500 gallons or more from 1 year to 3 years. Next, this PCB does the following in regards to brake fluid registration:

- Permits non-owners of brake fluid brand names to register brake fluid products with the Department of Agriculture and Consumer Services (the department).
- Reduces the amount of the brake fluid sample required for registration from 64 ounces to 24 ounces.
- Removes the requirement to affix labels to the brake fluid bottles when submitting samples to the department for registration and testing.

This PCB revises the evidentiary requirement for proof of insurance or bond for certain applicants for liquefied petroleum licenses. Finally, this PCB expands the restrictions on unauthorized handling of gas in propane gas tanks.

This PCB substantially amends sections 493.6203, 493.6401, 493.6406, 501.921, 525.07, 526.51, 527.04, and 527.07 of the Florida Statutes.

II. Present Situation:

The Department of Agriculture and Consumer Services (the department) regulates the private investigative and repossession services. Current licensing requirements under s. 493.6106, F.S., for private investigative and repossession services include that the applicant:

- Be at least 18 years of age;
- Be of good moral character;
- Not be adjudicated incapacitated;
- Not be a chronic and habitual user of alcoholic beverages to the extent normal faculties are impaired;
- Not have been committed for controlled substances or found guilty of a crime under ch. 893, F.S; and
- Be a citizen or legal resident alien of the U.S.¹

Private Investigative Services

There are 5 levels of licenses for private investigative individuals and agencies:

- Class “CC” - private investigator intern.
- Class “C” - private investigator.
- Class “MA” - manager of a private investigative agency.
- Class “M” - manager of a combined private investigative and security agency.

- Class “A” - private investigative agency.
- Class “AA” - private investigative agency branch.²

Section 493.6101(16), F.S., defines “private investigator” as “any individual who, for consideration, advertises as providing or performs private investigation.” Any person who has a business that engages in investigative activity is required to have a class “A” license and each class “A” license is valid for only one location.³ Each branch office of a class “A” office is required to have an “AA” license unless the person, company, or partnership holds both “A” and “B” licenses, then each branch office must have a class “AB” license.⁴

Applicants for a class “C” license must have 2 years of experience from one or more of the following areas: private investigative work, college course work in related fields, or work as class a “CC” intern.⁵ A class “CC” applicant must serve under the control of a designated,

¹ Section 493.6106(1), F.S.

² Department of Agriculture and Consumer Services, Division of Licensing, *available at* <http://licgweb.doacs.state.fl.us/investigations/types.html>

³ Section 493.6201(1), F.S.

⁴ Section 493.6201(2), F.S. A class “B” license is required for persons or companies who engage in the private security business, pursuant to s. 493.6301(1), F.S.

⁵ Section 493.6203(4), F.S.

licensed sponsor.⁶ Both “C” and “CC” licensees may subcontract with the government to investigate crimes, determine the location of missing persons or lost or stolen property, investigate injuries or damage to persons or property, and secure evidence for criminal or civil cases.⁷ Furthermore, both class “C” and “CC” licensees must work under the supervision of an agency or branch office.⁸

Each agency or branch office must designate at least one appropriately licensed manager to oversee the class “C” and “CC” investigators.⁹ Any person who performs the services of a manager at a class “A” agency or class “AA” branch office must have a class “MA” license unless the designated manager holds a class “C” or class “M” license. An “MA” license applicant must have 2 years of lawfully gained, verifiable training in private investigative work, licensed internship work as a private investigator; including up to one year college course work in criminology, criminal justice, law enforcement administration; successful completion of any law enforcement training, or managerial work.¹⁰ An applicant for a class “M” licensee qualifies by qualifying for both class “MA” and “MB”, manager of a security agency, licenses.¹¹

Currently, there is no requirement for a license exam or continuing education for private investigative services.¹²

Repossession Services

There are 7 types of licensing for recovery agents, agencies, and trainers:

- Class “EE” - recovery agent intern.
- Class “E” - recovery agent.
- Class “MR” - recovery agent manager.

- Class “R” - recovery agency.
- Class “RR” - recovery agency branch office.

- Class “RI” - reposessor school instructor.
- Class “RS” - reposessor school.¹³

“Recovery agent” is defined as “any individual who, for consideration, advertises as providing or performs repossessions.”¹⁴ “Recovery agency” is defined as “any person who, for consideration,

⁶ Section 493.6203(5), F.S.

⁷ Florida Department of Agriculture and Consumer Services, Division of Licensing, “About the Private Investigative Industry” available at <http://licgweb.doacs.state.fl.us/investigations/about.html>.

⁸ Section 493.6203(1), F.S.

⁹ Section 493.6106(2)(d), F.S.

¹⁰ Section 493.6203(2), F.S.

¹¹ *Id.*

¹² However, private investigators who are also class “G” license holders (those with a statewide firearms license such as armed security officers) must show proof that they have completed 4 hours of firearms recertification training during each year of the license period, pursuant to s. 493.6113(3)(b), F.S.

¹³ Florida Department of Agriculture and Consumer Services, Division of Licensing, Recovery “Types of Licenses”, available at <http://licgweb.doacs.state.fl.us/recovery/types.html>.

¹⁴ Section 493.6101(21), F.S.

advertises as providing or is engaged in the business of performing repossessions.”¹⁵
 “Repossession” means recovery of motor vehicles, motor boats, airplanes, personal watercraft, all-terrain vehicles, farm equipment, industrial equipment, and motor homes “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.”¹⁶

Certain individuals are exempt from the recovery licensing requirements of ch. 493, F.S. These include local, state, and federal law enforcement officers, licensed insurance investigators, and individuals solely, exclusively, and regularly employed as unarmed investigators or recovery agents “in connection with the business of his or her employer, when there exists an employer-employee relationship.”¹⁷

There are 3 levels of licensing for individuals: recovery intern (“EE”), recovery agent (“E”), and recovery agency manager (“MR”).¹⁸ Applicants for class “EE” and “E” licenses must complete a 40-hour training course at a facility licensed by the department.¹⁹ Applicants for a class “E” license must additionally have one year of training as a licensed “EE” intern or repossession experience.²⁰ Applicants for a class “MR” license must have at least one year of repossession experience as a class “E” licensee.²¹

Currently, recovery agent training must be done in person by a licensed instructor or facility. Any person who operates a repossession school or training facility must have a Class ‘RS’ license.²² Any individual who teaches or instructs at a Class ‘RS’ repossession school or training facility must have a Class ‘RI’ license.²³ Persons or facilities that offer recovery agent training must submit to the department a notarized application including proposed curriculum and final examination.²⁴

To qualify as an instructor (“RI” license), applicants must be 18 years of age, have a high school diploma or GED certificate, a bachelor’s degree or greater in certain subjects. In addition, applicants must be licensed as a Class “E” recovery agent for not less than 3 years within the 5 year period immediately preceding application or be licensed as a Class “MR” recovery agent manager for at least 1 year.²⁵

To receive “E” and “EE” licenses, applicants must train at a “RS” licensed facility or with an “RS” licensed trainer.²⁶ “RS” licensees must keep students under constant supervision.²⁷ “RS”

¹⁵ Section 493.6101(20), F.S.

¹⁶ Section 493.6101(22), F.S.

¹⁷ Section 493.6102(1)-(3), F.S.

¹⁸ Florida Department of Agriculture and Consumer Services, Division of Licensing, Recovery “Types of Licenses”, available at <http://licgweb.doacs.state.fl.us/recovery/types.html>.

¹⁹ Section 493.6403(2), F.S.

²⁰ Section 493.6403(1)(c), F.S.

²¹ Section 493.6403(1)(b), F.S.

²² Section 493.6401(7), F.S.

²³ Section 493.6401(8), F.S.

²⁴ Section 493.6406(1)-(3), F.S.

²⁵ 5N-1.138(1)(c), (h), F.A.C.

²⁶ Section 493.6403(2), F.S.

licensed schools must employ “RI” licensed instructors who are at least 18 years old, have either a GED or high school diploma, and have at least a bachelor’s degree in certain related fields of study.²⁸ Instructors may also qualify for licensure in specific subject areas if they are a licensed nurse, certified firefighter, or instructor certified by a national health organization.²⁹ The department has established subjects that schools are required to teach as well as the contents of a subsequent exam of at least 1 hour in length.³⁰ Also, schools are required to maintain records for 2 years and make such records available for inspection at the department’s request.³¹

Antifreeze Standards

Section 501.921, F.S., states that the department’s rules for standards, definitions, and test procedures for antifreeze may encompass those specified by the American Society for Testing and Materials. The American Society for Testing and Materials has changed its name to ASTM International. In addition, the department may adopt any other specification it considers appropriate to protect consumers from questionable formulations of antifreeze.³²

Petroleum Measuring Devices

Section 525.07, F.S., requires the department to inspect all petroleum measuring devices used in wholesale and retail sales. These devices are part of the petroleum dispenser, such as the “pump” at a service station. The owners or operators are responsible for ensuring the accuracy of these devices, as specified within the tolerance standards of the department. In addition, the owners or the department routinely inspect the measuring devices for accuracy, using a special apparatus or vessel, formally referred to as a “test measure,” which is specifically calibrated to measure the volume of liquid released from the petroleum dispenser.

The size of these vessels ranges from one gallon to over 500 gallons. The smaller vessels are used, for example, at retail services stations. Larger vessels are used, for example, at port facilities, where dispensers deliver high volumes of fuel in relatively short periods of time. While all of these large vessels are portable, the large vessels are typically not taken off port property, unless they are transported to be annually calibrated.

Subsection (9) requires that these vessels or “test measures” be calibrated once a year. For large vessels, this requires that the department either transport their large test measure to the facility, or vice-versa. The department reports such transportation and movement could damage the vessels, thereby affecting their accuracy.

²⁷ 5N-1.138(4), F.A.C.

²⁸ Section 493.6401, F.S.; 5N-1.138(1)(h), F.A.C.

²⁹ 5N-1.138(2), F.A.C.

³⁰ 5N-1.140(2)(a)-(b), F.A.C.

³¹ 5N-1.140(3), F.A.C.

³² Section 501.921, F.S.

Brake Fluid Registration

The department is required to sample, inspect, analyze, or test any brake fluid manufactured, packed, or sold within Florida.³³ An applicant applying for registration of a brand of brake fluid must provide the department with the following:

- The name and address of owner;
- The name and address of registered agent;
- The brand name of the brake fluid;
- A statement that he or she owns the brand of brake fluid;
- A statement that he or she has complete control over the product in Florida; and
- A certified report of an independent testing laboratory.³⁴

In addition, an applicant must provide the department with one-half gallon sample of the brake fluid in a container labeled exactly as the brake fluid will be labeled when sold.³⁵ Upon approval of the application, the department must register the brand name of the brake fluid and issue a permit authorizing the sale of the brake fluid.³⁶

Proof of Insurance for Liquefied Petroleum Businesses

Currently, except for dealers and category III operators, applicants for licensure must deliver a surety bond of \$1 million to the department or show evidence of a \$1 million dollar injury and property liability insurance policy including evidence that the premiums have been paid.³⁷ If the insurance policy is cancelled or terminated, the insurer must notify the department within 30 days.³⁸

Regulation of Sale of Liquefied Petroleum

Currently, section 527, F.S., governs the commercial sale of liquefied petroleum. The sensitive nature of the gas has resulted in restrictions on the handling of commercial and retail liquefied petroleum gas containers. Any person other than the owner or someone authorized by the owner is prohibited from selling, filling, refilling, delivering, or permitting to be delivered any liquefied petroleum gas container for any purpose.³⁹ However, there is no explicit restriction on the unauthorized removal of gas from containers.

III. Effect of Proposed Changes:

Section 1 amends s. 493.6203, F.S., to require a private investigator applicant (Class “C” licensee) to pass an exam prior to the application process and must submit the results with the

³³ Section 526.53(1), F.S.

³⁴ Section 526.51(1)(a), F.S.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Section 527.04(1), F.S.

³⁸ *Id.*

³⁹ Section 527.07, F.S.

application. Applicants prior to January 1, 2008, do not have to meet the exam requirements. An individual whose license has been invalid for any reason for more than 1 year must pass the exam even if the exam was previously taken. The department must establish the exam criteria by rule and an exam fee not to exceed \$100.

Within 12 months before applying, an applicant for a private investigator intern (Class "CC" licensee) must complete 24 hours of a 40 hour course that pertains to general investigative techniques from a school, college or university regulated by the Department of Education, and pass an exam. The remaining 16 hours and an exam related to those subsequent course hours must be completed within 180 days of licensure. The training may be provided by live presentation, on-line, or by home study. The department may establish by rule the general content of the training and exam criteria. An individual whose license has been invalid for any reason for more than 1 year must complete the training, even if previously taken.

Sections 2 and 3 amend s. 493.6401(7), F.S., and s. 493.6406, F.S., respectively, to permit internet based and correspondence course training for recovery agents and to require any person who conducts internet based training course or a correspondence training course for a recovery agent to have a license provided by the department. The department interprets s. 493.6403(2), F.S., to effectively preclude internet based or correspondence training courses.

Section 3 also requires all final exam records to be maintained in Florida. Further, this section requires an application for a recovery agent intern to include the street address where the training is conducted.

Section 4 amends s. 501.921, F.S., to update the statutory reference to the organization from which Florida adopts antifreeze standards. The organization has changed its name from "American Society for Testing and Materials" to "ASTM International."

Section 5 amends s. 525.07(9), F.S., to increase the duration required between calibrations of petroleum measuring devices for volumes of 500 gallons or more from 1 year to 3 years.

Section 6 amends s. 526.51(1), F.S., to permit non-owners of brake fluid brand names to register brake fluid products with the department. This section also reduces the amount of the brake fluid sample required for registration from 64 ounces to 24 ounces. The department reports that 24 ounces is sufficient for testing purposes and that reducing the sample amount would reduce the amount of chemical waste the department has to dispose of after testing.

This section also removes the requirement to affix labels to the brake fluid bottles when submitting samples to the department for registration and testing. However, the label representing how the containers of will be labeled when sold must accompany the brake fluid sample.

Section 7 amends s. 527.04, F.S., to clarify the requirement that the insurance policy for liquefied petroleum gas businesses be continued for the duration of the license and to permit the department to request proof of insurance if policy is cancelled or terminated, as well as stating what constitutes satisfactory proof of insurance.

Section 8 amends s. 527.07, F.S., to add “removing gas from” a liquefied petroleum gas container to the list of prohibited actions by a person other than the owner or authorized by the owner in reference to a liquefied petroleum gas container. The department reports that an unauthorized individual removing propane gas is a significant safety concern.

Section 9 provides an effective date of July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This PCB requires the department to assess an exam fee not to exceed \$100 for private investigator applicants.

B. Private Sector Impact:

This PCB creates new requirements for training and examination for private investigators and private investigative intern (class “C” and “CC” licensees) and as such, no training facilities exist. Comparative training programs for security officer class “D” applicants cost between \$83-\$101 for Florida residents and \$325 for out of state residents.⁴⁰ Additionally, applicants would be required to pay up to \$100 for the examination.

A sample correspondence based recovery agent training costs \$325.⁴¹

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

⁴⁰ S2 Institute: \$45 for Part A, \$38 for Part B; Miami-Dade College: \$57 for Part A, \$44 for Part B, \$325 for out of state residents; Hillsborough Community College: \$93 for both parts.

⁴¹ C.A.R.S. program *available at* <http://www.repospecialist.us/order.htm>.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
