

provided in s. 51.011. A licensee or certificateholder affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent practice for which he is licensed or certified with reasonable skill and safety to patients.

(q) Violating provisions of this chapter, or of chapter 455, or any rules adopted pursuant thereto.

(r) Performing any treatment or prescribing any therapy which, by the prevailing standards of the mental health professions in the community, would constitute experimentation on human subjects, without first obtaining full, informed, and written consent.

(s) Failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance, including the undertaking of activities for which the licensee or certificateholder is not qualified by training or experience.

(t) Delegating professional responsibilities to a person whom the licensee or certificateholder knows or has reason to know is not qualified by training or experience to perform such responsibilities.

(u) Violating a rule relating to the regulation of the profession or a lawful order of the department or the board previously entered in a disciplinary hearing.

(v) Failure of the licensee or certificateholder to maintain in confidence a communication made by a patient or client in the context of such services, except by written permission or in the face of a clear and immediate probability of bodily harm to the patient or client or to others.

(w) Making public statements which are derived from test data, client contacts, or behavioral research and which identify or damage research subjects or clients.

History.—ss. 15, 19, ch. 87-252; ss. 9, 19, 20, ch. 90-263; s. 4, ch. 91-429; s. 229, ch. 96-410.

CHAPTER 493

PRIVATE INVESTIGATIVE, PRIVATE SECURITY, AND REPOSSESSION SERVICES

PART I

GENERAL PROVISIONS

- 493.6101 Definitions.
493.6102 Inapplicability of parts I through IV of this chapter.
493.6108 Investigation of applicants by Department of State.
493.6121 Enforcement; investigation.
493.6122 Information about licensees; confidentiality.

493.6101 Definitions.—

- (1) "Department" means the Department of State.
(2) "Person" means any individual, firm, company, agency, organization, partnership, or corporation.
(3) "Licensee" means any person licensed under this chapter.

(4) The personal pronoun "he" implies the impersonal pronoun "it."

(5) "Principal officer" means an individual who holds the office of president, vice president, secretary, or treasurer in a corporation.

(6) "Advertising" means the submission of bids, contracting, or making known by any public notice or solicitation of business, directly or indirectly, that services regulated under this chapter are available for consideration.

(7) "Good moral character" means a personal history of honesty, fairness, and respect for the rights and property of others and for the laws of this state and nation.

(8) "Conviction" means an adjudication of guilt by a federal or state court resulting from plea or trial, regardless of whether imposition of sentence was suspended.

(9) "Unarmed" means that no firearm shall be carried by the licensee while providing services regulated by this chapter.

(10) "Branch office" means each additional location of an agency where business is actively conducted which advertises as performing or is engaged in the business authorized by the license.

(11) "Sponsor" means any Class "C," Class "MA," or Class "M" licensee who supervises and maintains under his direction and control a Class "CC" intern; or any Class "E" or Class "MR" licensee who supervises and maintains under his direction and control a Class "EE" intern.

(12) "Intern" means an individual who studies as a trainee or apprentice under the direction and control of a designated sponsoring licensee.

(13) "Manager" means any licensee who directs the activities of licensees at any agency or branch office. The manager shall be assigned to and shall primarily operate from the agency or branch office location for which he has been designated as manager.

(14) "Firearm instructor" means any Class "K" licensee who provides classroom or range instruction to applicants for a Class "G" license.

(15) "Private investigative agency" means any person who, for consideration, advertises as providing or is engaged in the business of furnishing private investigations.

(16) "Private investigator" means any individual who, for consideration, advertises as providing or performs private investigation. This does not include an informant who, on a one-time or limited basis, as a result of a unique expertise, ability, vocation, or special access and who, under the direction and control of a Class "C" licensee or a Class "MA" licensee, provides information or services that would otherwise be included in the definition of private investigation.

(17) "Private investigation" means bodyguard services or the investigation by a person or persons for the purpose of obtaining information with reference to any of the following matters:

- (a) Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.

(b) The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.

(c) The credibility of witnesses or other persons.

(d) The whereabouts of missing persons, owners of abandoned property or escheated property, or heirs to estates.

(e) The location or recovery of lost or stolen property.

(f) The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property.

(g) The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation therefor.

(18) "Security agency" means any person who, for consideration, advertises as providing or is engaged in the business of furnishing security services, armored car services, or transporting prisoners. This includes any person who utilizes dogs and individuals to provide security services.

(19) "Security officer" means any individual who, for consideration, advertises as providing or performs body-guard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof. The term also includes armored car personnel and those personnel engaged in the transportation of prisoners.

(20) "Recovery agency" means any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions.

(21) "Recovery agent" means any individual who, for consideration, advertises as providing or performs repossessions.

(22) "Repossession" means the recovery of a motor vehicle as defined under s. 320.01(1), or mobile home as defined in s. 320.01(2), or motorboat as defined under s. 327.02, 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. A repossession is complete when a licensed recovery agent is in control, custody, and possession of such motor vehicle, mobile home, or motorboat.

History.—ss. 2, 11, ch. 90-364; s. 4, ch. 91-429; s. 10, ch. 94-241; s. 5, ch. 96-407.

493.6102 Inapplicability of parts I through IV of this chapter.—This chapter shall not apply to:

(1) Any individual who is an "officer" as defined in s. 943.10(14) or is a law enforcement officer of the United States Government, while such local, state, or federal officer is engaged in his official duties or when performing off-duty activities, not including repossession services, approved by his superiors.

(2) Any insurance investigator or adjuster licensed by a state or federal licensing authority when such person is providing services or expert advice within the scope of his license.

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

(4) Any unarmed individual engaged in security services who is employed exclusively to work on the premises of his employer, or in connection with the business of his employer, when there exists an employer-employee relationship.

(5) Any person or bureau whose business is exclusively the furnishing of information concerning the business and financial standing and credit responsibility of persons or the financial habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit.

(6) Any attorney in the regular practice of his profession.

(7) Any bank or bank holding company, credit union, or small loan company operating pursuant to chapters 516 and 520; any consumer credit reporting agency regulated under 15 U.S.C. ss. 1681 et seq.; or any collection agency not engaged in repossessions or to any permanent employee thereof.

(8) Any person who holds a professional license under the laws of this state when such person is providing services or expert advice in the profession or occupation in which that person is so licensed.

(9) Any security agency or private investigative agency, and employees thereof, performing contractual security or investigative services solely and exclusively for any agency of the United States.

(10) Any person duly authorized by the laws of this state to operate a central burglar or fire alarm business. However, such persons are not exempt to the extent they perform services requiring licensure or registration under this chapter.

(11) Any person or company retained by a food service establishment to independently evaluate the food service establishment including quality of food, service, and facility. However, such persons are not exempt to the extent they investigate or are retained to investigate criminal or suspected criminal behavior on the part of the food service establishment employees.

(12) Any person who is a school crossing guard employed by a third party hired by a city or county and trained in accordance with s. 234.302.

(13) Any individual employed as a security officer by a religious institution as defined in s. 199.183(2)(a) to provide security on the institution property, and who does not carry a firearm in the course of his duties.

History.—ss. 2, 11, ch. 90-364; s. 16, ch. 91-248; s. 4, ch. 91-429; s. 2, ch. 94-172; s. 6, ch. 96-407.

493.6108 Investigation of applicants by Department of State.—

(1) Except as otherwise provided, prior to the issuance of a license under this chapter, the department shall make an investigation of the applicant for a license. The investigation shall include:

(a)1. An examination of fingerprint records and police records. When a criminal history analysis of any applicant under this chapter is performed by means of fingerprint card identification, the time limitations prescribed by s. 120.60(1) shall be tolled during the time the applicant's fingerprint card is under review by the Department of Law Enforcement or the United States Department of Justice, Federal Bureau of Investigation.

2. If a legible set of fingerprints, as determined by the Department of Law Enforcement or the Federal Bureau of Investigation, cannot be obtained after two attempts, the Department of State may determine the applicant's eligibility based upon a criminal history record check under the applicant's name conducted by the Department of Law Enforcement and the Federal Bureau of Investigation. A set of fingerprints taken by a law enforcement agency and a written statement signed by the fingerprint technician or a licensed physician stating that there is a physical condition that precludes obtaining a legible set of fingerprints or that the fingerprints taken are the best that can be obtained is sufficient to meet this requirement.

(b) An inquiry to determine if the applicant has been adjudicated incompetent under chapter 744 or has been committed to a mental institution under chapter 394.

(c) Such other investigation of the individual as the department may deem necessary.

(2) In addition to subsection (1), the department shall make an investigation of the general physical fitness of the Class "G" applicant to bear a weapon or firearm. Determination of physical fitness shall be certified by a physician currently licensed pursuant to chapter 458 or chapter 459 or authorized to act as a licensed physician by a federal agency or department. Such certification shall be submitted on a form provided by the department.

(3) The department shall also investigate the mental history and current mental and emotional fitness of any Class "G" applicant, and shall deny a Class "G" license to anyone who has a history of mental illness or drug or alcohol abuse.

History.—ss. 2, 11, ch. 90-364; s. 4, ch. 91-429; s. 3, ch. 93-49; s. 6, ch. 94-172; s. 230, ch. 96-410.

493.6121 Enforcement; investigation.—

(1) The department shall have the power to enforce the provisions of this chapter, irrespective of the place or location in which the violation occurred, and, upon the complaint of any person or on its own initiative, to cause to be investigated any suspected violation thereof or to cause to be investigated the business and business methods of any licensed or unlicensed person, agency or employee thereof, or applicant for licensure under this chapter.

(2) In any investigation undertaken by the department, each licensed or unlicensed person, applicant, agency, or employee shall, upon request of the department provide records and shall truthfully respond to questions concerning activities regulated under this chapter. Such records shall be maintained in this state for a period of 2 years at the principal place of business of the licensee, or at any other location within the state for a person whose license has been terminated, can-

celed, or revoked. Upon request by the department the records must be made available immediately to the department unless the department determines that an extension may be granted.

(3) The department shall have the authority to investigate any licensed or unlicensed person, firm, company, partnership, or corporation when such person, firm, company, partnership, or corporation is advertising as providing or is engaged in performing services which require licensure under this chapter or when a licensee is engaged in activities which do not comply with or are prohibited by this chapter; and the department shall have the authority to issue an order to cease and desist the further conduct of such activities, or seek an injunction, or take other appropriate action pursuant to s. 493.6118(2)(a) or (c).

(4) In the exercise of its enforcement responsibility and in the conduct of any investigation authorized by this chapter, the department shall have the power to subpoena and bring before it any person in the state, require the production of any papers it deems necessary, administer oaths, and take depositions of any persons so subpoenaed. Failure or refusal of any person properly subpoenaed to be examined or to answer any question about his qualifications or the business methods or business practices under investigation or to refuse access to agency records in accordance with s. 493.6119 shall be grounds for revocation, suspension, or other disciplinary action. The testimony of witnesses in any such proceeding shall be under oath before the department or its agents.

(5) In order to carry out the duties of the department prescribed in this chapter, designated employees of the Division of Licensing of the Department of State may obtain access to the information in criminal justice information systems and to criminal justice information as defined in s. 943.045, on such terms and conditions as are reasonably calculated to provide necessary information and protect the confidentiality of the information. Such criminal justice information submitted to the division is confidential and exempt from the provisions of s. 119.07(1).

(6) The department shall be provided access to the program that is operated by the Department of Law Enforcement, pursuant to s. 790.065, for providing criminal history record information to licensed gun dealers, manufacturers, and exporters. The department may make inquiries, and shall receive responses in the same fashion as provided under s. 790.065. The department shall be responsible for payment to the Department of Law Enforcement of the same fees as charged to others afforded access to the program.

(7) The Department of Legal Affairs shall represent the Department of State in judicial proceedings seeking enforcement of this chapter, or upon an action by any party seeking redress against the department, and shall coordinate with the department in the conduct of any investigations incident to its legal responsibility.

(8) Any investigation conducted by the department pursuant to this chapter is exempt from s. 119.07(1) until:

(a) The investigation of the complaint has been concluded and determination has been made by the department as to whether probable cause exists;

(b) The case is closed prior to a determination by the department as to whether probable cause exists; or

(c) The subject of the investigation waives his privilege of confidentiality.

History.—ss. 2, 11, ch. 90-364; s. 17, ch. 91-248; s. 4, ch. 91-429; s. 5, ch. 92-183; s. 2, ch. 93-197; s. 10, ch. 94-172; s. 69, ch. 95-144; s. 326, ch. 96-406.

493.6122 Information about licensees; confidentiality.—The residence telephone number and residence address of any Class "C," Class "CC," Class "E," or Class "EE" licensee maintained by the department is confidential and exempt from the provisions of s. 119.07(1), except that the department may provide this information to local, state, or federal law enforcement agencies. When the residence telephone number or residence address of such licensee is, or appears to be, the business telephone number or business address, this information shall be public record.

History.—ss. 2, 11, ch. 90-364; s. 18, ch. 91-248; s. 4, ch. 91-429; s. 327, ch. 96-406.

PART III

PRIVATE SECURITY SERVICES

493.6301 Classes of licenses.

493.6306 Proprietary security officers.

493.6301 Classes of licenses.—

(1) Any person, firm, company, partnership, or corporation which engages in business as a security agency shall have a Class "B" license. A Class "B" license is valid for only one location.

(2) Each branch office of a Class "B" agency shall have a Class "BB" license. Where a person, firm, company, partnership, or corporation holds both a Class "A" and Class "B" license, each branch office shall have a Class "AB" license.

(3) Any individual who performs the services of a manager for a:

(a) Class "B" security agency or Class "BB" branch office shall have a Class "MB" license. A Class "M" licensee may be designated as the manager, in which case the Class "MB" license is not required.

(b) Class "A" and Class "B" agency or a Class "AB" branch office shall have a Class "M" license.

(4) A Class "D" licensee shall own or be an employee of a Class "B" security agency or branch office. This does not include those individuals who are exempt under s. 493.6102(4) but who possess a Class "D" license solely for the purpose of holding a Class "G" license.

(5) Any individual who performs the services of a security officer shall have a Class "D" license.

(6) Only Class "M," Class "MB," or Class "D" licensees are permitted to bear a firearm, and any such licensee who bears a firearm shall also have a Class "G" license.

(7) Any person who operates a security officer school or training facility must have a Class "DS" license.

(8) Any individual who teaches or instructs at a Class "DS" security officer school or training facility must have a Class "DI" license.

History.—ss. 4, 11, ch. 90-364; s. 10, ch. 91-248; s. 4, ch. 91-429; s. 13, ch. 94-172; s. 71, ch. 95-144; s. 7, ch. 96-407.

493.6306 Proprietary security officers.—[Repealed by s. 8, ch. 96-407.]

PART I

GENERAL PROVISIONS

494.00125 Confidentiality of information relating to investigations and examinations.

494.0021 Public records.

494.00125 Confidentiality of information relating to investigations and examinations.—

(1)(a) Except as otherwise provided by this section, information relative to an investigation or examination by the department pursuant to this chapter, including any consumer complaint, is confidential and exempt from s. 119.07(1) until the investigation or examination is completed or ceases to be active. The information compiled by the department in such an investigation or examination shall remain confidential and exempt from s. 119.07(1) after the department's investigation or examination is completed or ceases to be active if the department submits the information to any law enforcement or administrative agency for further investigation. Such information shall remain confidential and exempt from s. 119.07(1) until that agency's investigation is completed or ceases to be active. For purposes of this section, an investigation or examination shall be considered "active" so long as the department or any law enforcement or administrative agency is proceeding with reasonable dispatch and has a reasonable good faith belief that the investigation or examination may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of a license, registration, or permit. This section shall not be construed to prohibit disclosure of information which is required by law to be filed with the department and which, but for the investigation or examination, would be subject to s. 119.07(1).

(b) Except as necessary for the department to enforce the provisions of this chapter, a consumer complaint and other information relative to an investigation or examination shall remain confidential and exempt from s. 119.07(1) after the investigation or examination is completed or ceases to be active to the extent disclosure would:

1. Jeopardize the integrity of another active investigation or examination.
2. Reveal the name, address, telephone number, social security number, or any other identifying number or information of any complainant, customer, or account holder.
3. Disclose the identity of a confidential source.
4. Disclose investigative techniques or procedures.
5. Reveal a trade secret as defined in s. 688.002.

(c) In the event that department personnel are or have been involved in an investigation or examination of such nature as to endanger their lives or physical safety or that of their families, then the home addresses, telephone numbers, places of employment, and photographs of such personnel, together with the home addresses, telephone numbers, photographs, and places of employment of spouses and children of such personnel and the names and locations of schools and day care facilities attended by the children of such personnel are confidential and exempt from s. 119.07(1).

CHAPTER 494

MORTGAGE BROKERAGE AND MORTGAGE LENDING