AS PASSED BY THE SENATE

April 28, 2010

**S. 1073**

Introduced by Senators Thomas and Leventis

S. Printed 4/28/10--S.

Read the first time January 21, 2010.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 18 TO TITLE 37, SO AS TO REQUIRE THOSE WHO ENGAGE IN COLLATERAL RECOVERY TO APPLY FOR LICENSURE WITH THE DEPARTMENT OF CONSUMER AFFAIRS, TO PROVIDE WHAT MUST BE INCLUDED IN AN APPLICATION, TO PROVIDE ELIGIBILITY REQUIREMENTS FOR THOSE WHO ENGAGE IN COLLATERAL RECOVERY, TO PROVIDE LICENSE FEES, TO PROVIDE FOR THE INVESTIGATION OF LICENSE APPLICANTS, TO PROVIDE FOR THE FORM, VALIDITY PERIOD, AND RENEWAL OF ISSUED LICENSES, TO PROVIDE CANCELLATION REQUIREMENTS OF ISSUED LICENSES, TO PROVIDE FOR THE TRAINING OF INTERN COLLATERAL RECOVERERS, TO PROVIDE FOR VIOLATIONS AND ASSOCIATED PENALTIES OF THE CHAPTER, TO PROVIDE FOR THE CONFIDENTIALITY OF REQUIRED INVESTIGATIONS, TO ALLOW THE DEPARTMENT ACCESS TO CERTAIN RECORDS FOR INVESTIGATIONS, TO REQUIRE THE DEPARTMENT TO MAINTAIN CERTAIN STATISTICS, TO PROVIDE INVENTORY AND TITLE REQUIREMENTS, AND TO DEFINE CERTAIN TERMS.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 37 of the 1976 Code is amended by adding:

“CHAPTER 18

Collateral Recovery

Section 37–18–100. The General Assembly recognizes that the self–help collateral recovery process contains certain inherent risks that require regulation to ensure that the health, welfare, and protection of the public adequately will be served and protected. The General Assembly recognizes that untrained persons, unlicensed persons or businesses, or persons who are not of good moral character engaged in the collateral recovery profession are a threat to the welfare of the public if placed in positions of trust.  Regulation of licensed and unlicensed persons and businesses engaged in this profession is, therefore, necessary.

Section 37–18–110. As used in this chapter:

(1) ‘Advertising’ means the submission of bids, contracting, or making known by public notice or solicitation of business, directly or indirectly, that services regulated pursuant to this chapter are available for consideration.

(2) ‘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.

(3) ‘Class ‘R’ license’ means a license issued to a person, firm, company, partnership, or corporation which engages in business as a recovery agency.

(4) ‘Class ‘RB’ license’ means a license issued to a branch office of a person, firm, company, partnership, or corporation which engages in business as a recovery agency.

(5) ‘Class ‘RA’ license’ means a license issued to an individual who performs the services of a recovery agent.

(6) ‘Class ‘RI’ license’ means a license issued to an individual who performs recovery services as an intern under the supervision of a designated, sponsoring Class ‘RA’ licensee.

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

(8) ‘Department’ means the Department of Consumer Affairs.

(9) ‘Felony’ means a criminal offense that is classified as a felony pursuant to the provisions of Section 16–1–10 or that is exempt from classification but which carries a maximum penalty of five years or more; a crime in another state or a crime against the United States which is designated as a felony; or an offense in another state, territory, or country punishable by imprisonment for a term exceeding five years.

(10) ‘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.

(11) ‘Intern’ means an individual who studies as a trainee or apprentice under the supervision of a designated sponsoring licensee.

(12) ‘Licensee’ means a person licensed pursuant to this chapter.

(13) ‘Person’ means an individual, firm, company, agency, organization, partnership, or corporation.

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

(15) ‘Recovery agency’ means a Class ‘R’ licensee who, for consideration, advertises as providing or is engaged in the business of performing collateral recovery services.

(16) ‘Recovery agent’ means an individual who, for consideration, performs collateral recovery services.

(17) ‘Repossession’ means the recovery of collateral as defined in this chapter by a licensed recovery agent who is authorized by the legal owner, lienholder, or lessor to recover that which has been sold or leased pursuant to a security agreement that contains a repossession clause.  A repossession is complete when a licensed recovery agent is in control, custody, and possession of the defined collateral.

(18) ‘Sponsor’ means a Class ‘RA’ licensee who supervises and maintains under his supervision a Class ‘RI’ intern.

(19) ‘Unarmed’ means that a firearm may not be carried by the licensee while providing services regulated pursuant to this chapter.

Section 37–18–120. (A) Except for subsection (B) and (C), this chapter does not apply to:

(1) a repossession of abandoned property;

(2) a voluntary surrender of the property;

(3) a person effecting a repossession conducted pursuant to the authority of a court of competent jurisdiction;

(4) an individual solely, exclusively, and regularly employed by a lien holder or lessor;

(5) a licensed attorney in the regular practice of his profession; or

(6) a bank or bank holding company, credit union, or a collection agency not engaged in the business of repossessions.

(B) Damage to other property must be reported to law enforcement with jurisdiction and to the owner when known.

(C) Exempt persons in this section may not use an unlicensed person who is not exempt.

Section 37-18-130. The department shall promulgate regulations necessary to administer this chapter. However, a regulation may not be promulgated that unreasonably restricts competition or the availability of services requiring licensure by this chapter or that unnecessarily increases the cost of these services without a corresponding or equivalent public benefit.

Section 37–18–140. (A) Each individual, partner, or principal officer in a corporation shall file with the department a complete application accompanied by an application fee not to exceed one hundred dollars.

(1) The application submitted by an individual, partner, or corporate officer must be approved by the department prior to that individual, partner, or corporate officer assuming his duties.

(2) Individuals who invest in the ownership of a licensed agency but do not participate in, direct, or control shall register with the department but may not be required to apply for licensure.

(B) An application must be signed by the applicant under oath and must be notarized.

(C) The application must contain the following information concerning the applicant who signs it:

(1) name and aliases;

(2) age and date of birth;

(3) place of birth;

(4) social security number or alien registration number, whichever is applicable;

(5) present residence address and his residence addresses within the last five years immediately preceding the submission of the application;

(6) occupations held presently and within the last five years immediately preceding the submission of the application;

(7) a statement of all convictions;

(8) whether he has ever been adjudicated incompetent;

(9) whether he has ever been committed to a mental institution;

(10) documentation that a full set of fingerprints has been provided in a manner prescribed by the South Carolina Law Enforcement Division (SLED) for a fingerprint–based state criminal records check and by the Federal Bureau of Investigation (FBI) for a fingerprint–based national criminal records check, and payment of fees has been made to cover the costs of the criminal records checks including those as established in Section 23–3–115 for the South Carolina check and as established by the FBI for the national check.  An applicant who has, within the immediately preceding six months, submitted fingerprints and fees for licensing purposes pursuant to this chapter is not required to submit fingerprints or fees unless specifically required by the department;

(11) a personal inquiry waiver which allows the department to conduct necessary investigations to satisfy the requirements of this chapter; and

(12) further facts required by the department to show that the applicant signing the application is of good moral character and qualified by experience and training to satisfy the requirements of this chapter.

(D) In addition to the application requirements for individuals, partners, or officers provided in subsection (C), the application for an agency license must contain the following information:

(1) the proposed name under which the agency intends to operate;

(2) the street address, mailing address, and telephone numbers of the principal location at which business is to be conducted in this State;

(3) the street address, mailing address, and telephone numbers of all branch offices within this State; and

(4) the names and titles of all partners or, in the case of a corporation, the names and titles of its principal officers.

Section 37–18–150. (A) An individual licensed by the department must:

(1) be at least eighteen years of age;

(2) be of good moral character;

(3) not have been adjudicated incapacitated in this or another state, unless his capacity has been judicially restored; not have been involuntarily placed in a treatment facility for the mentally ill in this or another state, unless his competency has been judicially restored; and not have been diagnosed as having an incapacitating mental illness, unless a psychologist or psychiatrist licensed in this State certifies that he does not currently suffer from the mental illness;

(4) not be a chronic or habitual user of alcoholic beverages to the extent that his normal faculties are impaired; not have been committed for substance abuse reasons in this or another state; not have been found to be a habitual offender of drunkenness, loitering, prowling, or desertion in this or another state;

(5) not have been committed for controlled substance abuse or have been found guilty of a drug crime relating to controlled substances in this or another state within the three–year period immediately preceding the date the application is filed, unless the individual establishes that he is not currently abusing a controlled substance and has successfully completed a rehabilitation course;

(6) must have a valid South Carolina driver’s license; and

(7) be a citizen or legal resident alien of the United States or have been granted authorization to seek employment in this country by the United States Immigration and Naturalization Service.

(B) Each agency shall have a minimum of one physical location within this State from which the normal business of the agency is conducted, and this location must be considered the primary office for that agency in this State.

(1) If an agency desires to change the physical location of the business as it appears on the agency license the department must be notified within ten days of the change.

(2) The Class ‘R’ license and a branch office license at all times must be posted in a conspicuous place at the licensed physical location in this State where the business is being conducted.

(3) Each class of license for an office or branch office must display, in a place that is in clear and unobstructed public view, a notice on a form prescribed by the department that states that the business operating at this location is licensed and regulated by the department and that questions or complaints should be directed to the department.

(4) A minimum of one properly licensed manager must be designated for each agency and branch office location.

(5) Each Class ‘R’, Class ‘RA’, or Class ‘RI’ licensee shall notify the department in writing within ten days of a change in his residence or mailing address.

Section 37–18–160. Except as otherwise provided, prior to the issuance of a license, the department shall investigate the applicant for a license.  The investigation must include:

(1) an examination of fingerprint records and police records.  When a criminal history analysis of an applicant is performed by means of fingerprint card identification, the time limitations must be tolled during the time the applicant’s fingerprint card is under review by SLED for a fingerprint–based state criminal records check or the United States Department of Justice, FBI for a fingerprint–based national criminal records check;

(2) an inquiry to determine if the applicant has been adjudicated incompetent or has been committed to a mental institution; and

(3) other investigation of the applicant the department deems necessary.

Section 37–18–170. (A) The department may promulgate regulations for:

(1) entering into reciprocal agreements with other states or territories of the United States for the purpose of licensing people to perform activities regulated pursuant to this chapter who are currently licensed to perform similar services in other states or territories; and

(2) allowing a person who is licensed in another state or territory to perform similar services in this State, on a temporary and limited basis, without the need for licensure in this State.

(B) The regulations authorized in subsection (A) may be promulgated only if:

(1) the other state or territory has requirements that are substantially similar to or greater than those established in this chapter;

(2) the applicant has engaged in licensed activities for at least one year in the other state or territory with no disciplinary action against him; or

(3) the appropriate authority of the other state or territory agrees to accept service of process for those licensees who are operating in this State on a temporary basis.

Section 37–18–180. (A) A license issued pursuant to this chapter must be on a form prescribed by the department and must include the licensee’s name, license number, expiration date of the license, name of the agency employing the licensee, and other information the department requires. A license must be in the possession of the individual licensee while on duty.

(B) A license granted pursuant to the provisions of this chapter must be renewed annually by the department.

(C) The department, upon complete application and payment of the appropriate fees, shall issue a separate license to each branch office for which application is made.

(D) Notwithstanding the existence of a valid South Carolina corporate registration, an agency licensee may not conduct activities regulated pursuant to this chapter under a fictitious name without prior written authorization from the department to use that name in the conduct of activities regulated by this chapter.  The department may not authorize the use of a name which is so similar to that of a public officer or agency, or that used by another licensee, that the public may be confused or misled.  The authorization for the use of a fictitious name must require, as a condition precedent to the use of the name, the filing of a certificate of engaging in business under a fictitious name.  A licensee is not permitted to conduct business under more than one name except as separately licensed, nor is the license valid to protect a licensee who is engaged in the business under any name other than that specified in the license.  An agency that desires to change its licensed name shall notify the department and, except upon renewal, pay a fee not to exceed one hundred dollars, for each license requiring revision including those of all licensed employees.  Upon the return of the licenses to the department, revised licenses must be provided.

(E) A licensed agency must include its agency license number in an advertisement in a print medium or directory and must include its agency license number in a written bid or offer to provide services.

Section 37–18–190. (A) After filing the application, unless the department declines to issue the license or revokes it after issuance, an agency, within five working days of the withdrawal or removal of a partner or officer shall notify the department and the agency shall notify and file with the department applications for  replacement or addition of a partner or officer within five working days.  The agency’s good standing pursuant to this chapter is contingent upon the department’s approval of a new partner or officer.

(B) An agency, upon the employment or termination of employment of a Class ‘RA or Class ‘RI’ licensee, shall report the employment or termination immediately to the department and, in the case of termination, report the reason or reasons for the termination.  The report must be on a form prescribed by the department.

Section 37–18–200. (A) A license granted pursuant to the provisions of this chapter must be renewed annually by the department.

(B) No less than ninety days prior to the expiration date of the license, the department shall mail a written notice to the last known residence address for individual licensees and to the last known agency address for agencies.

(C) Each licensee is responsible for renewing his license on or before its expiration by filing with the department an application for renewal accompanied by payment of the prescribed license fee.

(D) A licensee who fails to file a renewal application on or before its expiration shall renew his license by fulfilling the applicable requirements of subsection (C) and by paying a late fee of one hundred dollars.

(E) A license may not be renewed three months or more after its expiration date.  The applicant shall submit a new, complete application and the respective fees.

(F) A renewal applicant may not perform an activity regulated by this chapter between the date of expiration and the date of renewal of his license.

Section 37–18–210. (A) In the event a licensee desires to cancel his license, he shall notify the department in writing and return the license to the department within ten days of the date of cancellation.

(B) The department, at the written request of the licensee, may place his license in inactive status.  A license may remain inactive for a period of three years, at the end of which time, if the license has not been renewed, it is automatically canceled.  If the license expires during the inactive period, the licensee shall pay license fees before the license can be made active.  Late fees do not apply when a license is in inactive status.

Section 37–18–220. (A) Only Class ‘RA’ licensees may sponsor interns.  An internship may not commence until the sponsor has submitted the notice of intent to sponsor to the department.  This notice must be on a form provided by the department.

(B) Upon submission of a completed application and approval by the department a Class ‘RI’ licenseemay commence employment for a licensed agency or branch office under the supervision of a sponsoring ‘RA’ licensee.

(C) A sponsor shall assume a training status by providing supervision of interns.  Sponsors may not allow interns to operate independently of their supervision or require interns to perform activities which do not enhance the intern’s qualification for licensure.  A sponsor may not sponsor more than four interns at the same time.

(D) A sponsor shall certify a biannual progress report on each intern and shall certify completion or termination of an internship to the department within fifteen days after completion or termination.  The report must be made on a form provided by the department and must include at a minimum:

(1) the inclusive dates of the internship;

(2) a narrative explaining the primary duties, types of experiences gained, and the scope of training received; and

(3) an evaluation of the performance of the intern and a recommendation regarding future licensure.

(E) an internship is for a period of one year before the intern can submit an application for a Class ‘RA’ license.

Section 37–18–230. (A) The following constitute grounds for which disciplinary action specified in subsection (B) may be taken by the department against a licensee or applicant regulated by this chapter, or an unlicensed person engaged in activities regulated by this chapter:

(1) fraud or wilful misrepresentation in applying for or obtaining a license;

(2) using a fictitious or assumed name by an agency unless the agency has department approval;

(3) 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 creates 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 mitigating circumstances surrounding his plea;

(4) a false statement by the licensee that an individual is or has been in his employ;

(5) a finding that the licensee or an employee is guilty of wilful betrayal of a professional secret or an unauthorized release of information acquired as a result of activities regulated by this chapter;

(6) proof that the applicant or licensee is guilty of fraud or deceit, or of negligence, incompetence, or misconduct, in the practice of the activities regulated by this chapter;

(7) conducting activities regulated by this chapter without a license or with a revoked or suspended license;

(8) impersonating, or permitting or aiding and abetting an employee to impersonate, a law enforcement officer or an employee of this State, the United States, or a political subdivision by identifying himself 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 is a law enforcement officer or that he has official authority, by displaying flashing or warning vehicular lights other than amber colored, or by committing an act that is intended to falsely convey official status;

(9) committing an act of violence or the use of force on a person except in the lawful protection of one’s self or another from physical harm;

(10) knowingly violating, advising, encouraging, or assisting the violation of a statute, court order, capias, warrant, injunction, or cease and desist order, in the course of business regulated by this chapter;

(11) soliciting business for an attorney in return for compensation;

(12) transferring or attempting to transfer a license issued pursuant to this chapter;

(13) employing or contracting with an unlicensed or improperly licensed person or agency to conduct activities regulated by this chapter, or performing an 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;

(14) failing or refusing to cooperate with or refusing access to an authorized representative of the department engaged in an official investigation pursuant to this chapter;

(15) failure of a licensee to have his license in his possession while on duty;

(16) 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 fifteen working days;

(17) failure to report to the department a person whom the licensee knows to be in violation of this chapter or the regulations of the department;

(18) violating a provision of this chapter;

(19) recovering defaulted collateral 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;

(20) charging for expenses not actually incurred in connection with the recovery, transportation, storage, or disposal of a motor vehicle, mobile home, motorboat, or personal property;

(21) using a motor vehicle, mobile home, or motorboat that has been repossessed, 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;

(22) selling a motor vehicle, mobile home, or motorboat recovered pursuant to the provisions of this chapter, except with written authorization from the legal owner or the mortgagee;

(23) failing to notify the police or sheriff’s department of the jurisdiction in which the repossessed property is recovered within two hours after recovery;

(24) failing to remit monies collected in lieu of recovery of a motor vehicle, mobile home, or motorboat to the client within ten working days;

(25) failing to deliver to the client a negotiable instrument that is payable to the client within ten working days after receipt of the instrument;

(26) falsifying, altering, or failing to maintain required inventory or records regarding disposal of personal property contained in or on recovered collateral;

(27) carrying a weapon or firearm when he is performing duties pursuant to his license;

(28) soliciting from the legal owner the recovery of property subject to repossession after the property has been seen or located on public or private property if the amount charged or requested for the recovery is more than the amount normally charged for the recovery;

(29) wearing, presenting, or displaying a badge in the course of repossessing a motor vehicle, mobile home, or motorboat; or

(30) failing to maintain continuous insurance coverage as required by Section 37–18–300(A)(3) and (4).

(B) A person who engages in, or attempts to engage in repossession activities, and who is not licensed pursuant to this chapter is guilty of the offense of obtaining property by false pretenses pursuant to Section 16–13–240.  A law enforcement officer may seize and impound the tow vehicle engaged in the unlicensed repossession activity and the vehicle must be seized and forfeited.

(C) If a tow vehicle is towing a vehicle at the time of seizure by law enforcement, the vehicle being towed must be impounded.  The lien holder of this towed vehicle must take possession of the impounded vehicle upon payment of storage and other appropriate charges required by the impounding law enforcement agency.

(D) When the department finds a violation of subsection (A), it may:

(1) deny an application for the issuance or renewal of a license;

(2) issue a reprimand;

(3) impose an administrative fine not to exceed two thousand five hundred dollars for every count or separate offense;

(4) place the licensee on probation for a period of time and subject to conditions of the department; or

(5) suspend or revoke a license.

(E) 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 these 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 a contested case hearing before the Administrative Law Court.

(F) Notwithstanding the provisions of subsection (D):

(1) 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 this State and a period of ten years has expired since final release from supervision.

(2) 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 three years has expired since final release from supervision.      A plea of nolo contendere creates 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 mitigating circumstances surrounding his plea.

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

(4) Upon revocation or suspension of a license, the licensee shall return the suspended or revoked license.

(5) The agency license and the approval or license of each officer, partner, or owner of the agency are automatically denied or suspended upon entry of a final order imposing an administrative fine against the agency, until the fine is paid, if thirty calendar days have elapsed since the entry of the final order.  Owners and corporate or agency officers or partners are jointly and severally liable for agency fines.  The agency license and the approval or license of an officer, partner, or owner of the agency may not be renewed, nor may an application be approved, if the owner, licensee, or applicant is liable for an outstanding administrative fine imposed pursuant to this chapter. An individual’s approval or license becomes automatically suspended if a fine imposed against the individual or his agency is not paid within thirty 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 an appellate court.

(G) An applicant or licensee is ineligible to reapply for the same class of license for a period of one year following final agency action resulting in the denial or revocation of a license applied for or issued pursuant to this chapter.  This time restriction does not apply to administrative denials in which the basis for denial was:

(1) an inadvertent error or omission on the application;

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

(3) the department was unable to complete the criminal background investigation due to insufficient information from the South Carolina Law Enforcement Division, the Federal Bureau of Investigation, or another applicable law enforcement agency; or

(4) failure to submit required fees.

Section 37–18–235. A licensee is subject to the provisions of Sections 37–5–108 and 37–5–112, except the limitation in Section 37–5–108(5)(b)(i) that prohibits contacts after 9:00 p.m. and 8:00 a.m. does not apply to repossessions.

Section 37–18–240. (A) Except as otherwise provided by this chapter or another law, a licensee or an employee of a licensee or licensed agency may not divulge or release to anyone other than his client or employer the contents of an investigative file acquired in the course of licensed repossession activity. However, the prohibition of this section does not apply when the client for whom the information was acquired, or the client’s lawful representative, has alleged a violation of this chapter by the licensee, licensed agency, or an employee, or when the prior written consent of the client to divulge or release this information has been obtained.

(B) This section may not be construed to deny access to business or operational records, except as specified in subsection (A), by an authorized representative of the department engaged in an official investigation, inspection, or inquiry pursuant to the regulatory duty and investigative authority of this chapter.

(C) A licensee or employee of a licensee or licensed agency who, in reliance on subsection (A), denies access to an investigative file to an authorized representative of the department shall state the denial in writing within two working days of the request for access.  The statement of denial must include the following:

(1) the client has been advised of the request and has denied permission to grant access;

(2) that the present whereabouts of the client are unknown, or attempts to contact the client have been unsuccessful, but, in the opinion of the person denying access, review of the investigative file under conditions specified by the department would be contrary to the interests of the client; or

(3) that the requested investigative file will be provided pursuant to a subpoena issued by the department.

(D) A licensee or an employer or employee of a licensee or licensed agency may not wilfully make a false statement or report to his client or employer or an authorized representative of the department concerning information acquired in the course of activities regulated by this chapter.

Section 37–18–250. (A) A person who violates a provision of this chapter is guilty of a misdemeanor and, upon conviction, may be imprisoned not more than thirty days.

(B) A person who is convicted of a violation of this chapter is not eligible for licensure for a period of five years.

(C) A person who violates or disregards a cease and desist order issued by the department is guilty of a misdemeanor and, upon conviction, may be imprisoned not more than thirty days.  In addition, the department may seek the imposition of an administrative fine not to exceed five thousand dollars.

(D) A person who was an owner, officer, partner, or manager of a licensed agency at the time of activity that is the basis for revocation of the agency or branch office license and who knew or should have known of the activity, shall have his personal license or approval suspended for three years and may not have any financial interest in or be employed in any capacity by a licensed agency during the period of suspension.

(E) An unlicensed individual or agency that engages in repossession activities or hires an unlicensed repossession provider is guilty of obtaining property by false pretenses pursuant to Section 16–13–240.

Section 37–18–260. (A) The department may enforce the provisions of this chapter, irrespective of the place or location in which the violation occurred, and, upon the complaint of a person or on its own initiative, cause to be investigated a suspected violation or to cause to be investigated the business and business methods of a licensed or unlicensed person, agency, employee, or applicant for licensure pursuant to this chapter.

(B) In an investigation undertaken by the department, each licensed or unlicensed person, applicant, agency, or employee shall, upon request of the department, provide records and truthfully respond to questions concerning activities regulated pursuant to this chapter.  These records must be maintained in this State for a period of two years at the principal place of business of the licensee, or at another location within the State for a person whose license has been terminated, canceled, or revoked. Upon request by the department the records must be made available immediately to the department unless the department grants an extension.

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

(D) In the exercise of its enforcement responsibility and in the conduct of any investigation authorized by this chapter, the department may subpoena and bring before it any person in the State, require the production of any papers, administer oaths, and take depositions of any subpoenaed persons. If a person fails or refuses to comply with a proper subpoena to be examined or fails or refuses to answer a question about his qualifications or the business methods or business practices under investigation or refuses access to agency records, the circuit court of the county in which the person resides may issue an order on the application of the department requiring the person to comply with the subpoena and to testify.  Failure or refusal to do so is grounds for revocation, suspension, or other disciplinary action. The testimony of witnesses in the proceeding must be under oath before the department or its agents.

(E) In order to carry out the duties of the department prescribed in this chapter, designated employees of the Department of Consumer Affairs may receive and review state and national fingerprint–based criminal record check information and must protect the confidentiality of the information.  The fingerprint–based criminal record check information submitted to the department is confidential.

Section 37–18–270. The department shall maintain statistics and relevant information for recovery agents which details:

(1) the number of complaints received and investigated;

(2) the number of complaints initiated and investigated by the department;

(3) the disposition of each complaint;

(4) the number of administrative complaints filed by the department;

(5) the disposition of all administrative complaints; and

(6) a description of all disciplinary actions taken by profession.

Section 37–18–280. (A) A person, firm, company, partnership, or corporation which engages in business as a recovery agency shall have a Class ‘R’ license.  A Class ‘R’ license is valid for only one location.

(B) Each branch office of a Class ‘R’ agency shall have a Class ‘RB’ license.

(C) An individual who performs the services of a recovery agent shall have a Class ‘RA’ license.

(D) An individual who performs recovery services as an intern under the supervision of a designated, sponsoring Class ‘RA’ licensee shall have a Class ‘RI’ license.

Section 37–18–290. (A) The department shall promulgate by regulation annual license fees of:

(1) Class ‘R’ license recovery agency:  five hundred dollars.

(2) Class ‘RB’ license branch office:  three hundred dollars.

(3) Class ‘RA’ license recovery agent:  three hundred dollars.

(4) Class ‘RI’ license recovery agent intern: one hundred fifty dollars.

(B) The department may promulgate by regulation a fee for the replacement or revision of a license, which may not exceed one hundred dollars.

(C) The fees provided in this section must be paid by certified check or money order, or, at the direction of the department, by agency check at the time the application is approved, except that the applicant for a Class ‘RA’ or Class ‘RI’ license must pay the license fee at the time the application is made.  If a license is revoked or denied, or if an application is withdrawn, the license fee may not be refunded.

(D) The department may prorate license fees.

(E) Payment of a license fee required by this chapter and approval of the application by the department authorizes the licensee to practice his profession in this State without obtaining an additional license, permit, registration, or identification card, notwithstanding a contrary municipal or county ordinance or resolution.  However, an agency may be required to obtain a city and county occupational license in each city and county in which the agency maintains a physical office.

(F) Fees collected pursuant to this section must be used to implement the provisions of this chapter.

Section 37–18–300. (A) In addition to the license requirements provided in this chapter:

(1) Each agency or branch office must designate a minimum of one appropriately licensed individual to act as manager, directing the activities of the Class ‘RI’ employees.  A Class ‘RA’ licensee may be designated to act as manager of a Class ‘R’ agency or branch office.

(2) An applicant for Class ‘RA’ license shall have at least one year of lawfully gained, verifiable, full–time experience performing repossessions for a Class ‘R’ agency and under the supervision of a Class ‘RA’ licensee as defined by this chapter, except for a person who has been engaged as a collateral recovery agent for a collateral recovery agency for one year prior to the enactment of this chapter and are able to show proof of experience to the department.  Experience requirements that have been obtained by a person in a state that has a reciprocal agreement with the department satisfies the experience requirements of this subsection, provided the agent applying for licensure is able to show acceptable proof of experience to the department.

(3) A Class ‘R’ agency owner must provide proof of insurance for the Class ‘R’ agency that also applies to any Class ‘RB’ branch office for a minimum of three hundred thousand dollars that must include coverage for a wrongful repossession and insurance coverage in the minimum amount of two thousand dollars for personal property.

(4) A Class ‘R’ agency owner with four or more employees must provide proof of either occupational hazard insurance coverage or worker’s compensation insurance coverage.

(B) An applicant for a Class ‘R’, Class ‘RA’, or Class ‘RI’ license must have completed a certification program approved by the department.

(C) Licensees must complete continuing education courses set by the department.

Section 37–18–310. (A) Personal effects or other property not covered by a security agreement are contained in or on a recovered vehicle, mobile home, or motorboat at the time it is recovered, a complete and accurate inventory must be made of these personal effects or property. The date and time the inventory is made must be indicated, and it must be signed by the Class ‘RA’ or Class ‘RI’ licensee who obtained the personal property.  The inventory of the personal property and the records regarding disposal of personal property must be maintained for a period of two years in the permanent records of the licensed agency and must be made available, upon demand, to an authorized representative of the department engaged in an official investigation.

(B) The personal property being held must be made reasonably available to the debtor, or his lawful designee, and for purposes of this section, reasonably available means within one hundred miles of the place of the recovery. Should the debtor, or his lawful designee, appear to retrieve the personal property prior to the date on which the Class ‘RA’ licensee is permitted to dispose of the property, the licensee shall surrender the personal property to that individual upon payment of reasonably incurred expenses for inventory and storage. If personal property is not claimed within forty–five days of the notice of intent to dispose, the licensee may dispose of the personal property as provided in Section 29–15–10, except that illegal items or contraband must be surrendered to a law enforcement agency, and the licensee shall retain a receipt or other proof of surrender as part of the inventory and disposal records he maintains.

(C) Vehicles used for the purpose of repossessions by a licensee must be identified during repossession by the Class ‘R’ license number of the agency only, local ordinances to the contrary notwithstanding. The license number must be displayed on both sides of the vehicle and must appear in lettering no less than 4 inches tall and in a color contrasting from that of the background.

Section 37–18–320. (A) A Class ‘R’ licensee shall obtain, prior to sale, written authorization and a negotiable title from the owner or lien holder to sell repossessed collateral.

(B) A Class ‘R’ licensee shall send the net proceeds from the sale of the repossessed collateral to the owner or lien holder within twenty working days after the licensee executes the documents which permit the transfer of legal ownership to the purchaser.

(C) A person who violates a provision of this section is guilty of a misdemeanor and, upon conviction, may be imprisoned not more than thirty days.

Section 37–18–330. A person who engages in repossession of collateral as defined in this chapter must be licensed by the department, except for exempt persons as defined in Section 37–18–120.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide.  After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. This act takes effect upon approval by the Governor. The department shall create forms and procedures for licensure by October 1, 2010, with full licensure required for those who undertake collateral recovery beginning on January 1, 2011.

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