

By: Harris

S.B. No. 351

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of persons who repossess motor vehicles;  
providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 5, Occupations Code, is amended by adding Chapter 902 to read as follows:

CHAPTER 902. REPOSSESSION SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 902.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Department" means the Texas Department of Licensing and Regulation.

(3) "Executive director" means the executive director of the department.

(4) "Lender" means:

(A) a state or national bank;

(B) a state or federal savings and loan association or savings bank;

(C) a credit union; or

(D) a person that holds a license issued under Chapter 348, Finance Code.

(5) "Motor vehicle" has the meaning assigned by Section 501.002, Transportation Code.

1           (6) "Repossession" means the recovery of a motor  
2 vehicle that has been sold or leased under a security agreement that  
3 contains a repossession clause by an individual authorized by the  
4 legal owner, lienholder, or lessor to recover the motor vehicle or  
5 to collect payment in lieu of recovery.

6           (7) "Repossession agent" means an individual who  
7 engages in a repossession for consideration.

8           (8) "Repossession company" means a business entity  
9 that primarily engages in the business of performing, or advertises  
10 that the business entity performs, repossessions for  
11 consideration.

12           Sec. 902.002. APPLICABILITY OF OTHER LAW. Chapter 51  
13 applies to this chapter, including the power to impose an  
14 administrative sanction, assess an administrative penalty, or seek  
15 a civil penalty for a violation of this chapter or a rule or order  
16 adopted or entered under this chapter.

17           [Sections 902.003-902.050 reserved for expansion]

18           SUBCHAPTER B. GENERAL POWERS AND DUTIES

19           Sec. 902.051. RULES. The executive director may adopt  
20 rules necessary to administer this chapter.

21           Sec. 902.052. FEES. The commission may by rule set fees in  
22 amounts reasonable and necessary to administer this chapter.

23           Sec. 902.053. DIRECTORY OF LICENSE HOLDERS. (a) The  
24 department shall annually prepare a directory of license holders.

25           (b) The department shall provide the directory to the public  
26 on request without charge.

27           (c) The department may comply with this section by

1 publishing the directory on-line.

2 Sec. 902.054. INVESTIGATIONS. (a) The department may  
3 examine:

4 (1) a record maintained under this chapter; or

5 (2) a record or object the department determines is  
6 necessary to conduct a complete investigation.

7 (b) To administer this chapter, the department may question  
8 a person who:

9 (1) is associated with the business of a license  
10 holder; or

11 (2) claims that the person was negatively affected by  
12 a violation of this chapter committed by a license holder.

13 Sec. 902.055. AUDIT. The department may periodically audit  
14 the business records of a license holder.

15 Sec. 902.056. PROPER TOWING EQUIPMENT. With the advice of  
16 the Texas Department of Transportation and the Department of Public  
17 Safety, the executive director shall adopt rules as necessary to  
18 ensure that a vehicle used for a repossession by a license holder is  
19 a tow truck suitable in terms of safety, considering factors such as  
20 size, towing capacity, and the use of other equipment.

21 Sec. 902.057. ADVISORY COMMITTEE. (a) The executive  
22 director may create an advisory committee to advise the executive  
23 director regarding regulation under this chapter.

24 (b) The executive director may abolish the advisory  
25 committee at any time.

26 [Sections 902.058-902.100 reserved for expansion]

1                   SUBCHAPTER C. LICENSE REQUIREMENTS

2                   Sec. 902.101. LICENSE REQUIRED. (a) A person may not  
3 engage in a repossession for consideration unless each individual  
4 who engages in the recovery holds a repossession agent license.

5                   (b) A person may not advertise that the person performs  
6 repossessions unless the person holds a repossession agent or  
7 repossession company license.

8                   (c) A person may not hire a person to engage in a  
9 repossession unless the person hired holds a license issued under  
10 this chapter.

11                   Sec. 902.102. LICENSE CLASSIFICATIONS. The executive  
12 director shall issue a repossession agent or repossession company  
13 license to an eligible applicant.

14                   Sec. 902.103. LICENSE APPLICATION. (a) A license  
15 applicant must submit an application on a form prescribed by the  
16 department.

17                   (b) The application must specify the class of license for  
18 which the applicant is applying.

19                   (c) An application for a repossession agent license must be  
20 accompanied by:

21                           (1) the application fee; and

22                           (2) the examination fee.

23                   (d) An application for a repossession company license must  
24 be accompanied by:

25                           (1) the application fee;

26                           (2) the license number of each employee who holds a  
27 repossession agent license; and

1           (3) a copy of the current sales tax permit issued to  
2 the applicant by the comptroller under Chapter 151, Tax Code, or, if  
3 the department determines that technology allows, the applicant may  
4 submit the applicant's tax identification number to the department  
5 for submission by the department to the comptroller for electronic  
6 verification.

7           (e) The department shall deny an application provided under  
8 Subsection (d) if the applicant's sales tax permit is canceled,  
9 suspended, or revoked under Subchapter F, Chapter 151, Tax Code.

10           Sec. 902.104. ELIGIBILITY REQUIREMENTS FOR REPOSSESSION  
11 AGENT LICENSE; BACKGROUND CHECK. (a) An applicant for a  
12 repossession agent license must be at least 18 years old.

13           (b) The department shall conduct a criminal background  
14 check on the applicant as authorized under Chapter 411, Government  
15 Code.

16           (c) The applicant is not eligible for a license if the  
17 applicant has been finally convicted of a felony or misdemeanor  
18 that directly relates to the duties and responsibilities of the  
19 licensed occupation.

20           (d) The executive director may deny an application if the  
21 applicant previously held a repossession agent license and the  
22 license was revoked.

23           (e) Except as provided by Subsection (c), Chapter 53 applies  
24 to this chapter.

25           Sec. 902.105. EXAMINATION FOR REPOSSESSION AGENT LICENSE.  
26 (a) The executive director shall require an examination for a  
27 repossession agent license.

1        (b) The executive director shall prescribe the method and  
2 content of the examination and shall set compliance requirements  
3 for the examination.

4        (c) The examination shall be offered at least annually or  
5 more frequently as determined by the executive director.

6        (d) The examination shall be offered at various locations in  
7 this state as determined by the executive director.

8        Sec. 902.106. EXAMINATION RESULTS. (a) Not later than the  
9 30th day after the date on which a person takes a licensing  
10 examination under this chapter, the department shall notify the  
11 person of the results of the examination.

12        (b) If the examination is graded or reviewed by a testing  
13 service:

14            (1) the department shall notify the person of the  
15 results of the examination not later than the 14th day after the  
16 date the department receives the results from the testing service;  
17 and

18            (2) if notice of the examination results will be  
19 delayed for longer than 90 days after the examination date, the  
20 department shall notify the person of the reason for the delay  
21 before the 90th day.

22        (c) The department may require a testing service to notify a  
23 person of the results of the person's examination.

24        (d) If requested in writing by a person who fails a  
25 licensing examination administered under this chapter, the  
26 department shall furnish the person with an analysis of the  
27 person's performance on the examination.

1       Sec. 902.107. ISSUANCE OF LICENSE; TERM. (a) On payment  
2 of the license fee, the department shall issue the appropriate  
3 license to an applicant who:

4           (1) meets the requirements of this subchapter;

5           (2) provides evidence of any insurance coverage  
6 required by the executive director in accordance with this chapter;  
7 and

8           (3) passes the examination, if the application is for  
9 a repossession agent license.

10       (b) A license is valid for one year from the date of  
11 issuance.

12       Sec. 902.108. RULES REGARDING RENEWAL. The executive  
13 director may adopt rules regarding the renewal of a license,  
14 including rules requiring confirmation of the continued  
15 eligibility of the license holder before renewal.

16       Sec. 902.109. LICENSE EXPIRATION AND RENEWAL. (a) A  
17 person who is otherwise eligible to renew a license may renew an  
18 unexpired license by paying the required renewal fee to the  
19 department before the expiration date of the license. A person  
20 whose license has expired may not engage in activities that require  
21 a license until the license has been renewed.

22       (b) A person whose license has been expired for 90 days or  
23 less may renew the license by paying to the department a renewal fee  
24 that is equal to 1-1/2 times the normally required renewal fee.

25       (c) A person whose license has been expired for more than 90  
26 days but less than one year may renew the license by paying to the  
27 department a renewal fee that is equal to two times the normally

1 required renewal fee.

2 (d) A person whose license has been expired for one year or  
3 more may not renew the license. The person may obtain a new license  
4 by complying with the requirements and procedures, including the  
5 examination requirements, for obtaining an original license.

6 (e) A person who was licensed in this state, moved to  
7 another state, and is currently licensed and has been in practice in  
8 the other state for the two years preceding the date of application  
9 may obtain a new license without reexamination. The person must pay  
10 to the department a fee that is equal to two times the normally  
11 required renewal fee for the license.

12 (f) Not later than the 30th day before the date a person's  
13 license is scheduled to expire, the department shall send written  
14 notice of the impending expiration to the person at the person's  
15 last known address according to the records of the department.

16 Sec. 902.110. BOND AND INSURANCE REQUIREMENTS. The  
17 executive director by rule shall set bond and insurance  
18 requirements for license holders.

19 Sec. 902.111. CONTINUING EDUCATION REQUIREMENTS FOR  
20 REPOSSESSION AGENTS. (a) The executive director by rule shall  
21 require continuing education as a condition for renewal of a  
22 repossession agent license.

23 (b) The continuing education requirements may not exceed  
24 four hours annually.

25 Sec. 902.112. CONTINUING EDUCATION PROVIDERS AND COURSE  
26 APPROVAL. (a) The executive director by rule shall recognize,  
27 prepare, or administer continuing education programs for its



1 license holders.

2 (b) The executive director by rule shall recognize and  
3 approve continuing education providers.

4 Sec. 902.113. RECIPROCITY; WAIVER OF LICENSE REQUIREMENT.

5 The executive director may waive any prerequisite to obtaining a  
6 license for an applicant after reviewing the applicant's  
7 credentials and determining that the applicant holds a license  
8 issued by another jurisdiction that has licensing requirements  
9 substantially equivalent to those of this state.

10 Sec. 902.114. PROVISIONAL REPOSSESSION AGENT LICENSE.

11 (a) The executive director may issue a provisional repossession  
12 agent license to an applicant currently licensed in another  
13 jurisdiction who seeks a license in this state and who:

14 (1) has been licensed in good standing as a  
15 repossession agent for at least two years in another jurisdiction,  
16 including a foreign country, that has licensing requirements  
17 substantially equivalent to the requirements of this chapter;

18 (2) has passed a national or other examination  
19 recognized by the executive director relating to repossession  
20 procedures and requirements; and

21 (3) is sponsored by a person licensed by the  
22 department under this chapter with whom the provisional license  
23 holder will practice during the time the person holds a provisional  
24 license.

25 (b) The executive director may waive the sponsorship  
26 requirement under Subsection (a)(3) for an applicant if the  
27 executive director determines that compliance with that subsection

1 would be a hardship to the applicant.

2 (c) A provisional license is valid until the date the  
3 department approves or denies the provisional license holder's  
4 application for a repossession agent license.

5 (d) The executive director shall issue a repossession agent  
6 license under this chapter to a provisional license holder if:

7 (1) the provisional license holder is eligible to be  
8 licensed under Section 902.113 or passes the part of the  
9 examination under Section 902.105 that relates to the applicant's  
10 knowledge and understanding of the laws and rules of this state  
11 relating to repossession; and

12 (2) the executive director verifies that the  
13 provisional license holder satisfies any other applicable  
14 licensing requirements under this chapter.

15 (e) The executive director must approve or deny a  
16 provisional license holder's application for a repossession agent  
17 license not later than the 180th day after the date on which the  
18 provisional license is issued. The executive director may extend  
19 the 180-day period if the results of an examination have not been  
20 received by the department before the end of that period.

21 (f) The commission may establish a fee for provisional  
22 licenses in an amount reasonable and necessary to cover the cost of  
23 issuing the license.

24 [Sections 902.115-902.150 reserved for expansion]

25 SUBCHAPTER D. OPERATION OF REPOSSESSION COMPANY; FACILITY  
26 REQUIREMENTS

27 Sec. 902.151. DEFINITION. In this subchapter, "storage

1 facility" means the area where a repossession company stores a  
2 repossessed motor vehicle.

3 Sec. 902.152. OFFICE; HOURS. A repossession company shall  
4 maintain a permanent office with regular office hours of not less  
5 than eight hours per day Monday through Friday, excluding legal  
6 holidays, during which a person may claim personal property from a  
7 repossessed motor vehicle.

8 Sec. 902.153. STORAGE OF REPOSSESSED MOTOR VEHICLE. A  
9 repossession company shall store a repossessed motor vehicle inside  
10 a storage facility that complies with the requirements of this  
11 subchapter.

12 Sec. 902.154. ENCLOSURE AND SECURITY AT FACILITY.

13 (a) Each storage facility shall be:

14 (1) completely enclosed by a fence at least six feet  
15 high; and

16 (2) locked when the license holder or an employee of  
17 the license holder is not at the facility.

18 (b) A repossession company shall secure a repossessed motor  
19 vehicle to prevent theft of the vehicle or its contents, including  
20 locking doors, closing windows and hatchbacks, and raising or  
21 covering convertible tops.

22 Sec. 902.155. FACILITY SURFACE. A storage facility must  
23 contain an all-weather surface such as concrete, asphalt,  
24 black-top, stone, macadam, limestone, iron ore, gravel, shell, or  
25 caliche. The surface must enable the safe and effective movement of  
26 the vehicle on all portions of the lot, both under the vehicle's own  
27 power and under tow, at all times and regardless of weather

1 conditions.

2 Sec. 902.156. FACILITY LIGHTING. A repossession company  
3 shall maintain lighting at the storage facility sufficient to allow  
4 inspection of a repossessed motor vehicle for damage at the time of  
5 the vehicle's release, including at least a 250-watt light bulb for  
6 each quarter acre of storage area.

7 Sec. 902.157. FACILITY SIGNS. A repossession company shall  
8 post a clearly visible and readable sign at the storage facility's  
9 main entrance. The sign shall:

10 (1) use letters at least two inches in height, with  
11 contrasting background;

12 (2) be visible from at least 10 feet;

13 (3) contain the street address of the facility; and

14 (4) contain the repossession company's name, address,  
15 phone number, office hours, and license number.

16 Sec. 902.158. SHARING OF STORAGE FACILITY PROHIBITED. A  
17 repossession company may not share a storage facility with another  
18 repossession company.

19 Sec. 902.159. ENTRY OF TOW TRUCKS. A repossession company  
20 may not permit a tow truck to enter its storage facility unless the  
21 tow truck complies with the rules adopted under Section 902.056.

22 [Sections 902.160-902.200 reserved for expansion]

23 SUBCHAPTER E. PRACTICE BY LICENSE HOLDER

24 Sec. 902.201. USE OF PROPER TOWING EQUIPMENT. A  
25 repossession agent may not engage in a repossession unless the tow  
26 truck used by the agent complies with department rules regarding  
27 safety.

1       Sec. 902.202. USE OF FORCE; BREACH OF THE PEACE. A  
2 repossession agent may not use force or breach the peace when  
3 engaging in a repossession.

4       Sec. 902.203. EMPLOYMENT OR HIRING OF REPOSSESSION AGENT.

5       (a) A licensed repossession agent may not engage in a repossession  
6 unless the agent is hired or employed by a licensed repossession  
7 company or a lender.

8       (b) A person may not hire or employ a licensed repossession  
9 agent unless the person is a licensed repossession company or a  
10 lender.

11       Sec. 902.204. DUTY TO REPORT REPOSSESSION TO LAW  
12 ENFORCEMENT. Not later than two hours after engaging in a  
13 repossession, a repossession agent shall report the repossession to  
14 the police department of the municipality in which the recovery  
15 occurred or, if the recovery was not located in a municipality  
16 having a police department, to the sheriff of the county in which  
17 the recovery occurred. The report must include:

18               (1) the license number and telephone number of each  
19 repossession agent engaging in the repossession;

20               (2) the location at which the repossession occurred  
21 and the location at which the motor vehicle is stored; and

22               (3) a description of the motor vehicle recovered,  
23 including identification information such as a vehicle  
24 identification number and the state and number of a license plate.

25       [Sections 902.205-902.250 reserved for expansion]

26                       SUBCHAPTER F. ENFORCEMENT

27       Sec. 902.251. CEASE AND DESIST ORDERS. The department may

1 issue a cease and desist order.

2 Sec. 902.252. CIVIL PENALTIES. (a) Except as provided by  
3 Subsection (b), a person who violates this chapter is subject to a  
4 civil penalty under Section 51.352 of not less than \$2,000 for the  
5 first violation and not less than \$4,000 for each subsequent  
6 violation.

7 (b) A repossession company or lender who violates this  
8 chapter is subject to a civil penalty of not less than \$4,000 for  
9 the first violation and not less than \$8,000 for each subsequent  
10 violation.

11 Sec. 902.253. CRIMINAL PENALTY. (a) A person commits an  
12 offense if the person knowingly engages in a repossession without  
13 holding a license issued under this chapter.

14 (b) Each repossession of a motor vehicle constitutes a  
15 separate offense.

16 (c) An offense under this section is a Class B misdemeanor.

17 SECTION 2. Subsection (a), Section 411.093, Government  
18 Code, is amended to read as follows:

19 (a) The Texas Department of Licensing and Regulation is  
20 entitled to obtain from the department criminal history record  
21 information maintained by the department that relates to a person  
22 who is:

23 (1) an applicant for a license under:

24 (A) Chapter 902, Occupations Code; or

25 (B) Chapter 2052, Occupations Code [~~the Texas~~  
26 ~~Boxing and Wrestling Act (Article 8501-1, Vernon's Texas Civil~~  
27 ~~Statutes)]~~; or

1           (2) the holder of a license under those chapters [~~that~~  
2 ~~Act~~].

3           SECTION 3. (a) A person is not required to obtain a license  
4 under Subchapter C, Chapter 902, Occupations Code, as added by this  
5 Act, until September 1, 2004.

6           (b) The executive director of the Texas Department of  
7 Licensing and Regulation shall adopt rules as required under  
8 Chapter 902, Occupations Code, as added by this Act, not later than  
9 June 1, 2004.

10          SECTION 4. (a) Except as provided by Subsection (b) of  
11 this section, this Act takes effect September 1, 2003.

12          (b) Subchapters D, E, and F, Chapter 902, Occupations Code,  
13 as added by this Act, take effect September 1, 2004.