

By: Harris

S.B. No. 1159

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.

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

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

11           Sec. 902.002. ADMINISTRATION OF CHAPTER. The department  
12 shall administer this chapter.

13           [Sections 902.003-902.050 reserved for expansion]

14           SUBCHAPTER B. GENERAL POWERS AND DUTIES

15           Sec. 902.051. RULES. The commission may adopt rules  
16 necessary to administer this chapter.

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

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

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

23           (c) The department may comply with this section by  
24 publishing the directory online.

25           Sec. 902.054. INVESTIGATIONS. (a) The department may  
26 examine:

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

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

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

5           (1) is associated with the business of a license  
6 holder; or

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

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

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

17           Sec. 902.057. ADVISORY COMMITTEE. (a) The presiding  
18 officer of the commission, with the commission's approval, may  
19 appoint an advisory committee to advise the department in  
20 administering this chapter, or the commission in adopting rules  
21 under this chapter.

22           (b) A committee must include persons with experience in the  
23 repossession industry.

24           (c) The presiding officer of the commission, with the  
25 commission's approval, shall appoint the presiding officer of a  
26 committee established under this section.

27           (d) The commission may abolish the advisory committee at any

1 time.

2 [Sections 902.058-902.100 reserved for expansion]

3 SUBCHAPTER C. LICENSE REQUIREMENTS

4 Sec. 902.101. LICENSE REQUIRED. (a) Except as provided by  
5 Subchapter F, a person may not engage in a repossession for  
6 consideration unless each individual who engages in the recovery  
7 holds a repossession agent license.

8 (b) A person may not advertise that the person performs  
9 repossessions unless the person holds a repossession company  
10 license.

11 (c) A person may not hire a person to engage in a  
12 repossession unless the hired person holds a license issued under  
13 this chapter.

14 Sec. 902.102. LICENSE CLASSIFICATIONS. The department  
15 shall issue a repossession agent or repossession company license to  
16 an eligible applicant.

17 Sec. 902.103. LICENSE APPLICATION. (a) A license  
18 applicant must submit an application on a form prescribed by the  
19 department.

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

22 (c) An application for a repossession agent license must be  
23 accompanied by:

- 24 (1) the application fee; and  
25 (2) the examination fee.

26 (d) An application for a repossession company license must  
27 be accompanied by:

1           (1) the application fee;

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

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

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

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

16           (b) The department shall conduct a criminal background  
17 check on the applicant as authorized by Chapter 411, Government  
18 Code.

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

23           (d) The executive director may deny an application if the  
24 applicant previously held a repossession agent license and the  
25 license was revoked.

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

1       Sec. 902.105. EXAMINATION FOR REPOSSESSION AGENT LICENSE.

2       (a) The executive director shall require an examination for a  
3 repossession agent license.

4       (b) The executive director shall prescribe the method and  
5 content of the examination and shall set compliance requirements  
6 for the examination.

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

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

11       Sec. 902.106. EXAMINATION RESULTS. (a) Not later than the  
12 30th day after the date on which a person takes a licensing  
13 examination under this chapter, the department shall notify the  
14 person of the results of the examination.

15       (b) If the examination is graded or reviewed by a testing  
16 service:

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

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

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

27       (d) If requested in writing by a person who fails a

1 licensing examination administered under this chapter, the  
2 department shall furnish the person with an analysis of the  
3 person's performance on the examination.

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

7 (1) meets the requirements of this subchapter;

8 (2) provides evidence of any insurance coverage  
9 required by the executive director in accordance with this chapter;  
10 and

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

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

15 Sec. 902.108. RULES REGARDING RENEWAL. The commission may  
16 adopt rules regarding the renewal of a license, including rules  
17 requiring confirmation of the continued eligibility of the license  
18 holder before renewal.

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

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

1       (c) A person whose license has been expired for more than 90  
2 days but less than one year may renew the license by paying to the  
3 department a renewal fee that is equal to two times the normally  
4 required renewal fee.

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

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

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

19       Sec. 902.110. BOND AND INSURANCE REQUIREMENTS. The  
20 commission by rule shall set bond and insurance requirements for  
21 license holders.

22       Sec. 902.111. CONTINUING EDUCATION REQUIREMENTS FOR  
23 REPOSSESSION AGENTS. (a) The commission by rule shall require  
24 continuing education as a condition for renewal of a repossession  
25 agent license.

26       (b) The continuing education requirements may not exceed  
27 four hours annually.



1       Sec. 902.112. CONTINUING EDUCATION PROVIDERS AND COURSE  
2 APPROVAL. (a) The commission by rule shall recognize, prepare, or  
3 administer continuing education programs for repossession agent  
4 license holders.

5       (b) The commission by rule shall recognize and approve  
6 continuing education providers.

7       Sec. 902.113. RECIPROCITY; WAIVER OF LICENSE REQUIREMENT.  
8 The commission may waive any prerequisite to obtaining a license  
9 for an applicant after reviewing the applicant's credentials and  
10 determining that the applicant holds a license issued by another  
11 jurisdiction that has licensing requirements substantially  
12 equivalent to those of this state.

13       Sec. 902.114. PROVISIONAL REPOSSESSION AGENT LICENSE. (a)  
14 The department may issue a provisional repossession agent license  
15 to an applicant currently licensed in another jurisdiction who  
16 seeks a license in this state and who:

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

21           (2) has passed a national or other examination  
22 recognized by the executive director relating to repossession  
23 procedures and requirements; and

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

1       (b) The executive director may waive the sponsorship  
2 requirement under Subsection (a)(3) for an applicant if the  
3 executive director determines that compliance with that  
4 subdivision would be a hardship to the applicant.

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

8       (d) The department shall issue a repossession agent license  
9 under this chapter to a provisional license holder if:

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

15           (2) the executive director verifies that the  
16 provisional license holder satisfies any other applicable  
17 licensing requirements under this chapter.

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

24       (f) The commission may prescribe a fee for provisional  
25 licenses in an amount reasonable and necessary to cover the cost of  
26 issuing the license.

27       [Sections 902.115-902.150 reserved for expansion]

1           SUBCHAPTER D. OPERATION OF REPOSSESSION COMPANY; FACILITY

2                           REQUIREMENTS

3           Sec. 902.151. DEFINITION. In this subchapter, "storage  
4 facility" means the area in which a repossession company stores a  
5 repossessed motor vehicle.

6           Sec. 902.152. OFFICE; HOURS. A repossession company shall  
7 maintain a permanent office with regular office hours of at least  
8 eight hours each day Monday through Friday, excluding legal  
9 holidays, during which a person may claim personal property from a  
10 repossessed motor vehicle.

11           Sec. 902.153. CUSTODY AND CONTROL OF MOTOR VEHICLE. A  
12 repossession company may maintain possession of a repossessed motor  
13 vehicle until the vehicle is sold at auction or otherwise  
14 transferred to a person with the right to possess the vehicle.

15           Sec. 902.154. STORAGE OF REPOSSESSED MOTOR VEHICLE. A  
16 repossession company shall store a repossessed motor vehicle inside  
17 a storage facility that complies with the requirements of this  
18 subchapter.

19           Sec. 902.155. ENCLOSURE AND SECURITY AT FACILITY. (a) Each  
20 storage facility must be:

21                   (1) completely enclosed by a fence at least six feet  
22 high; and

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

25           (b) A repossession company shall secure a repossessed motor  
26 vehicle to prevent theft of the vehicle and its contents, including  
27 locking doors, closing windows and hatchbacks, and raising or

1 covering convertible tops.

2 Sec. 902.156. FACILITY SURFACE. A storage facility must  
3 contain an all-weather surface such as concrete, asphalt,  
4 black-top, stone, macadam, limestone, iron ore, gravel, shell, or  
5 caliche. The surface must enable the safe and effective movement of  
6 the vehicle on all portions of the lot, both under the vehicle's own  
7 power and under tow, at all times and regardless of weather  
8 conditions.

9 Sec. 902.157. FACILITY LIGHTING. A repossession company  
10 shall maintain lighting at the storage facility sufficient to allow  
11 inspection of a repossessed motor vehicle for damage at the time of  
12 the vehicle's release, including at least a 250-watt light bulb for  
13 each quarter acre of storage area.

14 Sec. 902.158. FACILITY SIGNS. A repossession company shall  
15 post a clearly visible and readable sign at the storage facility's  
16 main entrance. The sign must:

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

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

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

21 (4) contain the repossession company's name, address,  
22 telephone number, office hours, and license number.

23 Sec. 902.159. SHARING OF STORAGE FACILITY PROHIBITED. A  
24 repossession company may not share a storage facility with another  
25 repossession company.

26 Sec. 902.160. ENTRY OF TOW TRUCKS. A repossession company  
27 may not permit a tow truck to enter its storage facility unless the

1 tow truck complies with the rules adopted under Section 902.056.

2 [Sections 902.161-902.200 reserved for expansion]

3 SUBCHAPTER E. PRACTICE BY LICENSE HOLDER

4 Sec. 902.201. USE OF PROPER TOWING EQUIPMENT. A  
5 repossession agent may not engage in a repossession unless the tow  
6 truck used by the agent complies with department rules regarding  
7 safety.

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

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

12 (a) A licensed repossession agent may not engage in a repossession  
13 unless the agent is hired or employed by a licensed repossession  
14 company or a lender.

15 (b) A person may not hire or employ a licensed repossession  
16 agent unless the person is a licensed repossession company or a  
17 lender.

18 Sec. 902.204. DUTY TO REPORT REPOSSESSION TO LAW  
19 ENFORCEMENT. Not later than two hours after engaging in a  
20 repossession, a repossession agent shall report the repossession to  
21 the police department of the municipality in which the recovery  
22 occurred or, if the recovery was not in a municipality having a  
23 police department, to the sheriff of the county in which the  
24 recovery occurred. The report must include:

25 (1) the license number and telephone number of each  
26 repossession agent engaging in the repossession;

27 (2) the location at which the repossession occurred

1 and the location at which the motor vehicle is stored; and

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

5 Sec. 902.205. RETAIL SERVICES PROHIBITED. A repossession  
6 agent may not sell the agent's repossession services directly to  
7 the public.

8 Sec. 902.206. COLLECTION OF MONEY PROHIBITED. A  
9 repossession agent may not accept an assignment to collect money.

10 [Sections 902.207-902.250 reserved for expansion]

11 SUBCHAPTER F. ADDITIONAL REPOSSESSION AND STORAGE REQUIREMENTS FOR  
12 MOTOR VEHICLE DEALERS AND LENDERS

13 Sec. 902.251. DEFINITION. In this subchapter, "dealer"  
14 means a person who holds a general distinguishing number issued by  
15 the Motor Vehicle Board of the Texas Department of Transportation  
16 under Chapter 503, Transportation Code.

17 Sec. 902.252. LICENSE NOT REQUIRED FOR CERTAIN  
18 REPOSSESSIONS BY MOTOR VEHICLE DEALERS OR LENDERS. A repossession  
19 agent who is not licensed may engage in a repossession if:

20 (1) the agent is hired or employed by a dealer or  
21 lender;

22 (2) the person who has custody or control of the motor  
23 vehicle agrees to the repossession;

24 (3) a tow truck is not used for the repossession; and

25 (4) the motor vehicle moves under its own power and  
26 meets all required safety standards.

27 Sec. 902.253. STORAGE OF REPOSSESSED MOTOR VEHICLE. (a) A

1 dealer or lender may store a motor vehicle repossessed under this  
2 subchapter on the property of the dealer or lender.

3 (b) Before storing the motor vehicle, the dealer or lender  
4 must inventory the personal property in the vehicle.

5 (c) A licensed repossession agent hired or employed by a  
6 lender may store a motor vehicle on the lender's property after  
7 engaging in a repossession for the lender.

8 [Sections 902.254-902.300 reserved for expansion]

9 SUBCHAPTER G. ENFORCEMENT

10 Sec. 902.301. CEASE AND DESIST ORDERS. The department may  
11 issue a cease and desist order.

12 Sec. 902.302. CIVIL PENALTIES. (a) Except as provided by  
13 Subsection (b), a person who violates this chapter is subject to a  
14 civil penalty under Section 51.352 of not less than \$2,000 for the  
15 first violation and not less than \$4,000 for each subsequent  
16 violation.

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

21 Sec. 902.303. CRIMINAL PENALTY. (a) A person commits an  
22 offense if the person knowingly engages in a repossession without  
23 holding a license issued under this chapter.

24 (b) Each repossession of a motor vehicle constitutes a  
25 separate offense.

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

27 SECTION 2. (a) A person is not required to obtain a license

1 under Subchapter C, Chapter 902, Occupations Code, as added by this  
2 Act, until September 1, 2006.

3 (b) The Texas Commission of Licensing and Regulation shall  
4 adopt rules as required by Chapter 902, Occupations Code, as added  
5 by this Act, not later than June 1, 2006.

6 SECTION 3. (a) Except as provided by Subsection (b) of  
7 this section, this Act takes effect September 1, 2005.

8 (b) Section 902.101 and Subchapters D, E, F, and G, Chapter  
9 902, Occupations Code, as added by this Act, take effect September  
10 1, 2006.