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AB-1859 Collateral recovery. (2015-2016)

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Assembly Bill No. 1859

CHAPTER 509

An act to amend Sections 7500.1, 7504, 7507.3, and 7507.13 of the Business and Professions Code, relating to collateral recovery.

[Approved by Governor September 23, 2016. Filed with Secretary of State September 23, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1859, Gallagher. Collateral recovery.

(1) The Collateral Recovery Act provides for the licensure and regulation of repossession agencies by the Bureau of Security and Investigative Services under the supervision and control of the Director of Consumer Affairs. That act defines the term "repossession" as meaning the locating or recovering of collateral by means of an assignment. That act defines the term "assignment" as any written authorization by the legal owner, lienholder, lessor, lessee, registered owner, or the agent of any of them, to repossess any collateral or any written authorization by an employer to recover any collateral entrusted to an employee or former employee in possession of the collateral. That act provides for the issuance of qualification certificates, required for the management of the places of business of licensed repossession agencies, to applicants who meet certain requirements, including, among others, 2 years of lawful experience in recovering collateral and provides that lawful experience does not include employment performing work other than skip tracing, debt collection, or actual collateral recovery. That act makes a violation of any of its provisions a crime.

This bill would remove debt collection from the employment included under lawful experience. The bill would change the definition of assignment to also include any written authorization to skip trace or locate, would define the term "repossession order" as having the same meaning as "assignment," and would make conforming changes. The bill would delete the definition for the term "repossession." By expanding the scope of a crime, this bill would impose a state-mandated local program.

Under the Collateral Recovery Act, licensed repossession agencies are not liable for specified acts or omissions of a legal owner, debtor, lienholder, lessor, lessee, registered owner, or agent of any of them, and are entitled to indemnity from the legal owner, debtor, lienholder, lessor, lessee, or registered owner for losses incurred as a result of those acts or omissions. Under the act, those persons or their agents are not liable for acts or omissions by a licensed repossession agency or its agent in carrying out a repossession order and are entitled to indemnity from the licensed repossession agency for losses incurred as a result of those acts or omissions, as specified.

This bill would extend the above-described provisions applicable to a legal owner, debtor, lienholder, lessor, lessee, or registered owner to a debt collector.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 7500.1 of the Business and Professions Code is amended to read:

7500.1. The following terms as used in this chapter have the meaning expressed in this section:

(a) "Advertisement" means any written or printed communication, including a directory listing, except a free telephone directory listing that does not allow space for a license number.

(b) "Assignment" or "repossession order" means any written authorization by the legal owner, lienholder, lessor, lessee, or registered owner, or the agent of any of them, to skip trace, locate, or repossess any collateral, including, but not limited to, collateral registered under the Vehicle Code that is subject to a security agreement that contains a repossession clause. "Assignment" or "repossession order" also means any written authorization by an employer to recover any collateral entrusted to an employee or former employee in possession of the collateral. A photocopy of an assignment or repossession order, facsimile copy of an assignment or repossession order, or electronic format of an assignment or repossession order shall have the same force and effect as an original written assignment or repossession order.

(c) "Bureau" means the Bureau of Security and Investigative Services.

(d) "Chief" means the Chief of the Bureau of Security and Investigative Services.

(e) "Collateral" means any specific vehicle, trailer, boat, recreational vehicle, motor home, appliance, or other property that is subject to a security agreement.

(f) "Combustibles" means any substances or articles that are capable of undergoing combustion or catching fire, or that are flammable, if retained.

(g) "Dangerous drugs" means any controlled substances as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(h) "Deadly weapon" means and includes any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, dirk, dagger, pistol, or revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade, and any metal pipe or bar used or intended to be used as a club.

(i) "Debtor" means any person obligated under a security agreement.

(j) "Department" means the Department of Consumer Affairs.

(k) "Director" means the Director of Consumer Affairs.

(l) "Electronic format" includes, but is not limited to, a text message, email, or Internet posting.

(m) "Health hazard" means any personal effects that if retained would produce an unsanitary or unhealthful condition, or which might damage other personal effects.

(n) "Legal owner" means a person holding a security interest in any collateral where the collateral is subject to a security agreement, a lien against any collateral, an assignment or a repossession order, or an interest in any collateral that is subject to a lease agreement.

(o) "Licensee" means an individual, partnership, limited liability company, or corporation licensed under this chapter as a repossession agency.

(p) "Multiple licensee" means a repossession agency holding more than one repossession license under this chapter, with one fictitious trade style and ownership, conducting repossession business from additional licensed locations other than the location shown on the original license.

(q) "Person" includes any individual, partnership, limited liability company, or corporation.

(r) "Personal effects" means any property that is not the property of the legal owner.

(s) "Private building" means and includes any dwelling, outbuilding, or other enclosed structure.

(t) "Qualified certificate holder" or "qualified manager" is a person who possesses a valid qualification certificate in accordance with the provisions of Article 5 (commencing with Section 7504) and is in active control or management of, and who is a director of, the licensee's place of business.

(u) "Registered owner" means the individual listed in the records of the Department of Motor Vehicles, on a conditional sales contract, or on an assignment or a repossession order, as the registered owner.

(v) "Registrant" means a person registered under this chapter.

(w) "Secured area" means and includes any fenced and locked area.

(x) "Security agreement" means an obligation, pledge, mortgage, chattel mortgage, lease agreement, deposit, or lien, given by a debtor as security for payment or performance of his or her debt, by furnishing the creditor with a recourse to be used in case of failure in the principal obligation. "Security agreement" also includes a bailment where an employer-employee relationship exists or existed between the bailor and the bailee.

(y) "Services" means any duty or labor to be rendered by one person for another.

(z) "Violent act" means any act that results in bodily harm or injury to any party involved.

(aa) The amendments made to this section by Chapter 418 of the Statutes of 2006 shall not be deemed to exempt any person from the provisions of this chapter.

SEC. 2. Section 7504 of the Business and Professions Code is amended to read:

7504. (a) Except as otherwise provided in this chapter, an applicant for a qualification certificate shall comply with all of the following:

(1) Be at least 18 years of age.

(2) Have been, for at least two years of lawful experience, during the five years preceding the date on which his or her application is filed, a registrant or have had two years of lawful experience in recovering collateral within this state. Lawful experience means experience in recovering collateral as a registrant pursuant to this chapter or as a salaried employee of a financial institution or vehicle dealer. Lawful experience does not include any employment performing work other than skip tracing or actual collateral recovery.

Two years' experience shall consist of not less than 4,000 hours of actual compensated work performed by the applicant preceding the filing of an application.

An applicant shall certify that he or she has completed the claimed hours of qualifying experience and the exact details as to the character and nature thereof by written certifications from the employer, licensee, financial institution, or vehicle dealer, subject to independent verification by the director as he or she may determine. In the event of the inability of an applicant to supply the written certifications from the employer, licensee, financial institution, or vehicle dealer, in whole or in part, applicants may offer other written certifications from other persons substantiating their experience for consideration by the director. All certifications shall include a statement that representations made are true, correct, and contain no material omissions of fact to the best knowledge and belief of the applicant or the person submitting the certification. An applicant or person submitting the certification who declares as true any material matter pursuant to this paragraph that he or she knows to be false is guilty of a misdemeanor.

(3) Complete and forward to the bureau a qualified certificate holder application which shall be on a form prescribed by the director and signed by the applicant. An applicant who declares as true any material matter pursuant to this paragraph that he or she knows to be false is guilty of a misdemeanor. The application shall be accompanied by two recent photographs of the applicant, of a type prescribed by the director, and two classifiable sets of his or her fingerprints. The residence address, residence telephone number, and driver's license number of each qualified certificate holder or applicant for a qualification certificate, if requested, shall be confidential pursuant to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall not be released to the public.

(4) Pass the required examination.

(5) Pay the required application and examination fees to the bureau.

(b) Upon the issuance of the initial qualification certificate or renewal qualification certificate, the bureau shall issue to the certificate holder a suitable pocket identification card which includes a photograph of the certificate holder. The photograph shall be of a size prescribed by the bureau. The card shall contain the name of the licensee with whom the certificate holder is employed.

(c) The application form shall contain a statement informing the applicant that a false or dishonest answer to a question may be grounds for denial or subsequent suspension or revocation of a qualification certificate.

SEC. 3. Section 7507.3 of the Business and Professions Code is amended to read:

7507.3. A repossession agency shall be required to keep and maintain adequate records of all transactions, including, but not limited to, assignment or repossession order forms; vehicle report of repossession required by Section 28 of the Vehicle Code; vehicle condition reports, including odometer readings, if available; personal effects inventory; notice of seizure; and records of all transactions pertaining to the sale of collateral that has been repossessed, including, but not limited to, bids solicited and received, cash received, deposits made to the trust account, remittances to the seller, and allocation of any moneys not so remitted to appropriate ledger accounts. Records, including bank statements of the trust account, shall be retained for a period of not less than four years and shall be available for examination by the bureau upon demand. In addition, collateral and personal effects storage areas shall be made accessible for inspection by the bureau upon demand. An assignment or repossession order form may be an original, a photocopy, a facsimile copy, or a copy stored in an electronic format.

SEC. 4. Section 7507.13 of the Business and Professions Code is amended to read:

7507.13. (a) A licensed repossession agency is not liable for the act or omission of a legal owner, debt collector, debtor, lienholder, lessor, lessee, or registered owner, or an agent of any of them, in making an assignment or repossession order to it or for accepting an assignment or repossession order from any legal owner, debt collector, debtor, lienholder, lessor, lessee, or registered owner, or an agent of any of them, and is entitled to indemnity from the legal owner, debt collector, debtor, lienholder, lessor, lessee, or registered owner for any loss, damage, cost, or expense, including court costs and attorney's fees, that it may reasonably incur as a result thereof. Nothing in this subdivision limits the liability of any person for his or her tortious conduct.

(b) The legal owner, debt collector, debtor, lienholder, lessor, lessee, or registered owner, or the agent of any of them, is not liable for any act or omission by a licensed repossession agency, or its agent, in carrying out an assignment or repossession order and is entitled to indemnity from the repossession agency for any loss, damage, cost, or expense, including court costs and attorney's fees, that the legal owner, debt collector, debtor, lienholder, lessor, lessee, or registered owner, or the agent of any of them, may reasonably incur as a result thereof. Nothing in this subdivision limits the liability of any person for his or her tortious conduct.

(c) The legal owner, debtor, lienholder, lessor, lessee, or registered owner, or the agent of any of them, is not guilty of a violation of Section 7502.1 or 7502.2 if, at the time of the assignment or repossession order, the party making the assignment or repossession order has in its possession a copy of the repossession agency's current, unexpired repossession agency license, and a copy of the current, unexpired repossession agency's qualified manager's certificate, and does not have actual knowledge of any order of suspension or revocation of the license or certificate.

(d) Neither a licensed repossession agency nor a legal owner, debtor, lienholder, lessor, lessee, or registered owner, or an agent of any of them may, by any means, direct or indirect, express or implied, instruct or attempt to coerce the other to violate any law, regulation, or rule regarding the recovery of any collateral, including, but not limited to, the provisions of this chapter or Section 9609 of the Commercial Code.

(e) A licensed repossession agency, at least annually, on or before January 31 of each year, shall provide a legal owner from which the agency accepts an assignment or repossession order with a copy of this section, Sections 7500.2, 7507.4, 7507.115, 7507.12, and 7507.125 of this code, and Section 28 of the Vehicle Code.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.