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AB-913 Collateral recovery. (2021-2022)

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Assembly Bill No. 913

CHAPTER 416

An act to amend Sections 7500.1, 7504.4, and 7507.9 of the Business and Professions Code, relating to collateral recovery.

[Approved by Governor September 30, 2021. Filed with Secretary of State September 30, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 913, Smith. Collateral recovery.

The Collateral Recovery Act, a violation of which is punishable as a misdemeanor, 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. The act authorizes the director to suspend or revoke a repossession agency license, a qualification certificate, or registration if the director determines that the licensee or the licensee's manager, if an individual, or if the licensee is a person other than an individual, that any of its officers, partners, registrants, employees, or its manager, has been convicted of a felony or a crime substantially related to the repossession agency business, including illegally using, carrying, or possessing a deadly weapon, which the act defines as 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 5 inches, any razor with an unguarded blade, and any metal pipe or bar used or intended to be used as a club.

This bill would, among other things, redefine "deadly weapon" to mean an instrument or weapon of the kind commonly known as a firearm. The bill also would define "repossession" to mean when the reposessor moves, gains entry to, or gains control of the collateral, disconnects the collateral from any surface, or connects the collateral to a tow vehicle.

Existing law provides for the manner in which a repossession agency prepares inventory for and storage of personal effects, defined as any property that is not the property of the legal owner. Existing law requires the repossession agency to request written authorization from the debtor to release property not covered by a security agreement to someone other than the debtor.

This bill would require any instrument or weapon other than a "deadly weapon" to be inventoried and noted as "disposed of, dangerous device" and reasonably disposed of. The bill would require the repossession agency to, instead of request, receive written authorization from the debtor to release property not covered by a security agreement to someone other than the debtor. Because a violation of these requirements would be a crime, the bill would impose a state-mandated local program.

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. As used in this chapter:

- (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 firearm.
- (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 any of the following:
 - (1) A security interest in any collateral if the collateral is subject to a security agreement.
 - (2) A lien against any collateral.
 - (3) An assignment or a repossession order.
 - (4) An interest in any collateral that is subject to a lease agreement or on an assignment or repossession order as the legal owner.
- (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 and is not listed on the repossession assignment.
- (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) "Repossession" means any of the following:

- (1) When the reposessor gains entry to the collateral.
- (2) The collateral becomes connected to a tow truck or to a reposessor's tow vehicle.
- (3) The reposessor moves the entire collateral present.
- (4) The reposessor gains control of the collateral.
- (5) The reposessor disconnects any part of the collateral from any surface where it is mounted or attached.

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

(y) "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 a 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.

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

(aa) "Violent act" means any act that results in bodily harm or injury to any party involved during the repossession up until the time the reposessor is back in their vehicle.

(ab) 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 7504.4 of the Business and Professions Code is amended to read:

7504.4. If an applicant fails to pass an initial examination, the applicant shall not be eligible for a subsequent examination except upon payment of the reexamination fee for each subsequent examination, accompanied by a completed application for reexamination filed within the time limits and conditions relating to applications for initial examinations provided in Section 7504.3.

SEC. 3. Section 7507.9 of the Business and Professions Code is amended to read:

7507.9. Personal effects shall be removed from the collateral, including any personal effect that is mounted but detachable from the collateral by a release mechanism. A complete and accurate inventory of the personal effects shall be made, and the personal effects shall be labeled and stored by the licensee for a minimum of 60 days in a secure manner, except those personal effects removed by or in the presence of the debtor or the party in possession of the collateral at the time of the repossession. If the licensee or the licensee's agent cannot determine whether the property attached to the collateral is a personal effect or a part of the collateral, then that fact shall be noted on the inventory and the licensee or agent shall not be obligated to remove the item from the collateral, unless the item can be removed without the use of tools, in which case it shall be removed and inventoried. The licensee or the licensee's agent shall notify the debtor that if the debtor takes the position that an item is a personal effect, then the debtor shall contact the legal owner to resolve the issue.

(a) The date and time the inventory is made shall be indicated. The permanent records of the licensee shall indicate the name of the employee or registrant who performed the inventory.

(b) The following items of personal effects are items determined to present a danger or health hazard when recovered by the licensee and shall be disposed of in the following manner:

- (1) (A) Deadly weapons and dangerous drugs shall be turned over to any law enforcement agency for retention. These items shall be entered on the inventory and a notation shall be made as to the date, time, and place the deadly weapon or dangerous drug was turned over to the law enforcement agency, and a receipt from the law enforcement agency shall be maintained in the records of the repossession agency.

(B) Any other instrument or weapon, including, but not limited to, any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, dirk, dagger, 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 shall be inventoried and noted as "disposed of, dangerous device" and the item shall be disposed of in a reasonable and safe manner.

(2) Combustibles shall be inventoried and noted as "disposed of, dangerous combustible," and the item shall be disposed of in a reasonable and safe manner.

(3) Food and other health hazard items shall be inventoried and noted as "disposed of, health hazard," and disposed of in a reasonable and safe manner.

(c) Personal effects may be disposed of after being held for at least 60 days. The inventory, and adequate information as to how, when, and to whom the personal effects were disposed of, shall be filed in the permanent records of the licensee and retained for four years.

(d) The inventory shall include the name, address, business hours, and telephone number of the repossession agency to contact for recovering the personal effects and an itemization of all personal effects removal and storage charges that will be made by the repossession agency. The inventory shall also include the following statement: "Please be advised that the property listed on this inventory will be disposed of by the repossession agency after being held for 60 days from the date of this notice IF UNCLAIMED."

(e) The inventory shall be provided to a debtor not later than 48 hours after the recovery of the collateral, except that if:

(1) The 48-hour period encompasses a Saturday, Sunday, or postal holiday, the inventory shall be provided no later than 72 hours after the recovery of the collateral.

(2) The 48-hour period encompasses a Saturday or Sunday and a postal holiday, the inventory shall be provided no later than 96 hours after the recovery of the collateral.

(3) Inventory resulting from repossession of a yacht, motor home, or travel trailer is such that it shall take at least 4 hours to inventory, then the inventory shall be provided no later than 96 hours after the recovery of the collateral. When the 96-hour period encompasses a Saturday, Sunday, or postal holiday, the inventory shall be provided no later than 120 hours after the recovery of the collateral.

(4) The licensee is unable to open a locked compartment that is part of the collateral, the available inventory shall be provided no later than 96 hours after the recovery of the collateral. When the 96-hour period encompasses a Saturday, Sunday, or postal holiday, the inventory shall be provided no later than 120 hours after the recovery of the collateral.

(f) Environmental, Olympic, special interest, or other license plates issued pursuant to Article 8 (commencing with Section 5000), Article 8.4 (commencing with Section 5060), or Article 8.5 (commencing with Section 5100) of Chapter 1 of Division 3 of the Vehicle Code that remain the personal effects of the debtor shall be removed from the collateral and inventoried pursuant to this section. If the plates are not claimed by the debtor within 60 days, they shall either (1) be effectively destroyed and the licensee shall, within 30 days thereafter, notify the Department of Motor Vehicles of their effective destruction on a form promulgated by the chief that has been approved as to form by the Director of the Department of Motor Vehicles; or (2) be retained by the licensee indefinitely to be returned to the debtor upon request, in which case the licensee shall not charge more than 60 days' storage on the plates.

(g) The notice may be given by regular mail addressed to the last known address of the debtor, or by personal service at the option of the repossession agency.

(h) With the consent of the licensee, the debtor waives the preparation and presentation of an inventory if the debtor redeems the personal effects or other personal property not covered by a security interest within the time period for the notices required by this section and signs a statement that the debtor has received all the property.

(i) If personal effects or other personal property not covered by a security agreement are to be released to someone other than the debtor, the repossession agency must receive written authorization to do so from the debtor.

(j) A licensee shall not sell personal effects or other personal property not covered by a security agreement and remit money from the sale to a third party, including, but not limited to, any lending institution.

(k) The inventory shall be a confidential document. A licensee shall only disclose the contents of the inventory under the following circumstances:

(1) In response to the order of a court having jurisdiction to issue the order.

(2) In compliance with a lawful subpoena issued by a court of competent jurisdiction.

(3) When the debtor has consented in writing to the release and the written consent is signed and dated by the debtor subsequent to the repossession and states the entity or entities to whom the contents of the inventory may be disclosed.

(4) To the debtor.

SEC. 4. 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.