

ASSEMBLY BILL

No. 2170

Introduced by Assembly Member Calderon

February 18, 2004

An act to amend Sections 7507.9, 7507.10, and 7508.2 of the Business and Professions Code, relating to repossession agencies.

LEGISLATIVE COUNSEL'S DIGEST

AB 2170, as introduced, Calderon. Collateral recovery.

Existing law, the Collateral Recovery Act, provides for the licensing and regulation of repossession agencies. The act requires a licensed repossession agency to make an inventory of personal property recovered that is not covered by a debtor's security agreement, and requires the inventory to be signed by the repossession agency registrant or employee who performs the inventory and to include the name, address, business hours, and phone number of the person at the repossession agency to contact for recovering personal effects.

This bill would delete the signature requirement for the inventory and would require the permanent records of the licensee to indicate the name of the employee or registrant who performed the inventory. The bill would require the inventory to include the name, address, business hours, and phone numbers of the repossession agency, rather than of the person at the repossession agency to be contacted for repossession.

Existing law requires a licensee to serve a debtor with notice of a seizure of collateral that includes the name, address, and telephone number of the representative of the legal owner and of the representative of the repossession agency to be contacted regarding repossession.

This bill would instead require that the notice include the name, address, and telephone number of the legal owner and of the repossession agency to be contacted regarding repossession.

Existing law authorizes the assessment of specified administrative fines against a licensee that uses collateral or personal effects for the personal benefit of the licensee or officer, partner, manager, registrant, or employee of the licensee.

This bill would specify that this provision does not prohibit the using or taking of personal effects that are spatially contiguous to collateral if the use or taking is reasonably necessary to effectuate the recovery in a safe manner or to protect the collateral or personal effects.

Because this bill would place additional requirements on a person licensed under the Collateral Recovery Act, the violation of which is 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. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7507.9 of the Business and Professions
2 Code is amended to read:

3 7507.9. If personal effects or other personal property, not
4 covered by a security agreement, are contained in or on collateral
5 at the time it is recovered, the effects shall be removed from the
6 collateral subject to the security interest, a complete and accurate
7 inventory shall be made, and the personal effects shall be labeled
8 and stored by the licensee for a minimum of 60 days in a secure
9 manner, except those personal effects removed by or in the
10 presence of the debtor or the party in possession of the collateral
11 at the time of the repossession.

12 (a) The date and time the inventory is made shall be indicated
13 ~~and shall be signed by the repossession agency registrant or~~
14 ~~employee who performs the inventory.~~ *The permanent records of*



1 *the licensee shall indicate the name of the employee or registrant*
2 *who performed the inventory.*

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

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

13 (2) Combustibles shall be inventoried and noted as “disposed
14 of, dangerous combustible,” and the item shall be disposed of in
15 a reasonable and safe manner.

16 (3) Food and other health hazard items shall be inventoried and
17 noted as “disposed of, health hazard,” and disposed of in a
18 reasonable and safe manner.

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

23 (d) The inventory shall include the name, address, business
24 hours, and phone number of the ~~person at the~~ repossession agency
25 to contact for recovering the personal effects and an itemization of
26 all personal effects removal and storage charges that will be made
27 by the repossession agency. The inventory shall also include the
28 following statement: “Please be advised that the property listed on
29 this inventory will be disposed of by the repossession agency after
30 being held for 60 days from the date of this notice IF
31 UNCLAIMED.”

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

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

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



1 (3) Inventory resulting from repossession of a yacht,
2 motorhome, or travel trailer is such that it shall take at least four
3 hours to inventory, then the inventory shall be provided no later
4 than 96 hours after the recovery of the collateral. When the
5 96-hour period encompasses a Saturday, Sunday, or postal
6 holiday, the inventory shall be provided no later than 120 hours
7 after the recovery of the collateral.

8 (f) Environmental, Olympic, special interest, or other license
9 plates issued pursuant to Article 8 (commencing with Section
10 5000), Article 8.4 (commencing with Section 5060) or Article 8.5
11 (commencing with Section 5100) of Chapter 1 of Division 3 of the
12 Vehicle Code that remain the personal effects of the debtor shall
13 be removed from the collateral and inventoried pursuant to this
14 section. If the plates are not claimed by the debtor within 60 days,
15 they shall be effectively destroyed and the licensee shall, within 30
16 days thereafter, notify the Department of Motor Vehicles of their
17 effective destruction on a form promulgated by the chief ~~which~~
18 *that* has been approved as to form by the Director of the
19 Department of Motor Vehicles.

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

23 (h) The debtor may waive the preparation and presentation of
24 an inventory if the debtor redeems the personal effects or other
25 personal property not covered by a security interest within the time
26 period for the notices required by this section and signs a statement
27 that he or she has received all the property.

28 (i) If personal effects or other personal property not covered by
29 a security interest are to be released to someone other than the
30 debtor, the repossession agency may request written authorization
31 to do so from either the debtor or the legal owner.

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

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

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

39 (3) When the debtor has consented in writing to the release and
40 the written consent is signed and dated by the debtor subsequent



1 to the repossession and states the entity or entities to whom the
2 contents of the inventory may be disclosed.

3 SEC. 2. Section 7507.10 of the Business and Professions
4 Code is amended to read:

5 7507.10. ~~Each~~A licensee shall serve a debtor with a notice of
6 seizure as soon as possible after the recovery of collateral and not
7 later than 48 hours, except that if the 48-hour period encompasses
8 a Saturday, Sunday, or postal holiday, the notice of seizure shall be
9 provided not later than 72 hours or, if the 48-hour period
10 encompasses a Saturday or Sunday and a postal holiday, the notice
11 of seizure shall be provided not later than 96 hours, after the
12 repossession of collateral. The notice shall include all of the
13 following:

14 (a) The name, address, and telephone number of the
15 ~~representative of the~~ legal owner to be contacted regarding the
16 repossession.

17 (b) The name, address, and telephone number of the
18 ~~representative of the~~ repossession agency to be contacted
19 regarding the repossession.

20 (c) A statement printed on the notice containing the following:
21 “Repossessors are regulated by the Bureau of Security and
22 Investigative Services, Department of Consumer Affairs,
23 Sacramento, CA 95814. Repossessors are required to provide you,
24 not later than 48 hours after the recovery of collateral, with an
25 inventory of personal effects or other personal property recovered
26 during repossession unless the 48-hour period encompasses a
27 Saturday, Sunday, or a postal holiday, then the inventory shall be
28 provided no later than 96 hours after the recovery of collateral.”

29 (d) A disclosure that “Damage to a vehicle during or
30 subsequent to a repossession and only while the vehicle is in
31 possession of the repossession agency and which is caused by the
32 repossession agency is the liability of the repossession agency. A
33 mechanical or tire failure shall not be the responsibility of the
34 repossession agency unless the failure is due to the negligence of
35 the repossession agency.”

36 (e) If applicable, a disclosure that “Environmental, Olympic,
37 special interest, or other license plates issued pursuant to Article
38 8 (commencing with Section 5000), Article 8.4 (commencing with
39 Section 5060) or Article 8.5 (commencing with Section 5100) of
40 Chapter 1 of Division 3 of the Vehicle Code that remain the



1 personal effects of the debtor will be removed from the collateral
2 and inventoried, and that if the plates are not claimed by the debtor
3 within 60 days, they will be destroyed.”

4 (f) A disclosure of the charges payable by the debtor to the
5 repossession agency for the storage of the collateral and personal
6 effects from the date of repossession until release of the property
7 from storage.

8 The notice may be given by regular mail addressed to the last
9 known address of the debtor or by personal service at the option
10 of the repossession agency.

11 SEC. 3. Section 7508.2 of the Business and Professions Code
12 is amended to read:

13 7508.2. The director may assess administrative fines for any
14 of the following prohibited acts:

15 (a) Recovering collateral or making any money demand in lieu
16 thereof, including, but not limited to, collateral registered under
17 the Vehicle Code, ~~which~~ *that* has been sold under a security
18 agreement before a signed or telegraphic authorization has been
19 received from the legal owner, debtor, lienholder, lessor, or
20 repossession agency acting on behalf of the legal owner, debtor,
21 lienholder, or lessor of the collateral. A telephonic assignment is
22 acceptable if the legal owner, debtor, lienholder, lessor, or
23 repossession agency acting on behalf of the legal owner, debtor,
24 lienholder, or lessor is known to the licensee and a written
25 authorization from the legal owner, debtor, lienholder, lessor, or
26 repossession agency acting on behalf of the legal owner, debtor,
27 lienholder, or lessor is received by the licensee within 10 working
28 days or a request by the licensee for a written authorization from
29 the legal owner, debtor, lienholder, lessor, or repossession agency
30 acting on behalf of the legal owner, debtor, lienholder, or lessor is
31 made in writing within 10 working days. Referrals of assignments
32 from one licensee to another licensee are acceptable. The referral
33 of an assignment shall be made under the same terms and
34 conditions as in the original assignment. The fine shall be
35 twenty-five dollars (\$25) for each of the first five violations and
36 one hundred dollars (\$100) for each violation thereafter, per audit.

37 (b) Using collateral or personal effects, which have been
38 recovered, for the personal benefit of a licensee, or officer, partner,
39 manager, registrant, or employee of a licensee. The fine shall be
40 twenty-five dollars (\$25) for the first violation and one hundred



1 dollars (\$100) for each violation thereafter. This subdivision does
2 not apply to personal effects disposed of pursuant to subdivision
3 (c) of Section 7507.9. *Nothing in this subdivision prohibits using*
4 *or taking personal effects that are spatially contiguous to the*
5 *collateral if the use or taking is reasonably necessary to effectuate*
6 *the recovery in a safe manner or to protect the collateral or*
7 *personal effects.*

8 (c) Selling collateral recovered under the provisions of this
9 chapter, except with written authorization from the legal owner or
10 mortgagee thereof. The fine shall be one hundred dollars (\$100)
11 for the first violation and five hundred dollars (\$500) for each
12 violation thereafter, per audit.

13 (d) Failing to remit all money due clients within 10 working
14 days after finalization of the sale of collateral. The licensee shall
15 deposit all money received in the form of cash or negotiable
16 instruments made payable to the licensee for money due clients
17 from the sale of collateral ~~which~~ *that* has been repossessed in a
18 trust account within five working days, and the money shall be
19 withdrawn only for remittance to the client and for the payment of
20 amounts due the licensee. The fine shall be two hundred fifty
21 dollars (\$250) for the first violation and one thousand dollars
22 (\$1,000) for each violation thereafter. For purposes of this
23 subdivision, “finalization of sale” means the time when the
24 documents of title or ownership which permit transfer of title from
25 the legal owner to the purchaser are received by the repossession
26 agency.

27 (e) Failing to remit moneys collected in lieu of repossession or
28 redemption to a client within 10 working days after receipt of the
29 moneys. The fine shall be two hundred fifty dollars (\$250) for the
30 first violation and one thousand dollars (\$1,000) for each violation
31 thereafter.

32 (f) Failing to deliver to a client any negotiable instrument
33 received by the licensee made payable to the client within 10
34 working days of receipt of the negotiable instrument. No licensee,
35 manager, registrant, or employee of a licensee shall accept a
36 negotiable instrument made payable to a client unless they have
37 authorization from the client to accept ~~such a~~ *the* negotiable
38 instrument. The fine shall be two hundred fifty dollars (\$250) for
39 the first violation and one thousand dollars (\$1,000) for each
40 violation thereafter.



1 (g) Unlawfully entering any private building or secured area
2 without the consent of the owner, or of the person in legal
3 possession thereof, at the time of repossession. The fine shall be
4 five hundred dollars (\$500) for each violation.
5 (h) Committing unlawful assault or battery on another person.
6 The fine shall be five hundred dollars (\$500) for each violation.
7 (i) Falsification or alteration of an inventory. The fine shall be
8 twenty-five dollars (\$25) for each violation.
9 (j) Soliciting from the legal owner the recovery of specific
10 collateral registered under the Vehicle Code or under the motor
11 vehicle licensing laws of other states after the collateral has been
12 seen or located on a public street or on public or private property
13 without divulging the location of the vehicle. The fine shall be one
14 hundred dollars (\$100) for the first violation and two hundred fifty
15 dollars (\$250) for each violation thereafter.
16 SEC. 4. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.

