

AMENDED IN ASSEMBLY APRIL 23, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 285

Introduced by Assembly Member Gallagher

February 11, 2015

An act to amend Sections ~~6400, 6402, 6403, 6404, 6405, 6406, 6407, 6407~~ and 6408 of the Business and Professions Code, relating to legal assistants.

LEGISLATIVE COUNSEL'S DIGEST

AB 285, as amended, Gallagher. Legal assistants.

~~(1) Existing law defines and regulates the activities of legal document assistants and unlawful detainer assistants, as those terms are defined. Existing law requires a legal document assistant or unlawful detainer assistant to be registered in the county in which his or her principal place of business is located, which is deemed the primary place of registration, and in any other county in which he or she performs acts for which registration is required, which is deemed a secondary place of registration. A violation of this requirement is a misdemeanor. Existing law prohibits a legal document assistant from providing self-help service, as defined, for compensation unless he or she is registered in the county in which his or her principal place of business is located and in any other county in which he or she performs acts for which registration is required.~~

~~This bill would delete the requirement that a legal document assistant or an unlawful detainer assistant be registered in any other county in which he or she performs acts for which registration is required. The~~

bill would also specify that a legal document assistant registered in the county in which his or her principal place of business is located may provide self-help services in any part of this state. The bill would also delete references to primary and secondary places of registration.

~~(2) Existing law provides that a certificate of registration as a legal document assistant or an unlawful detainer assistant is effective for 2 years, until the date the bond required for registration expires, or until the total number of legal document assistants and unlawful detainer assistants employed by a partnership or corporation exceeds the number allowed by the bond in effect, whichever occurs first. Existing law authorizes renewal of an existing registration, which is effective for the same period.~~

~~This bill would extend the effective period for a certificate of registration and for a renewals of registration to 4 years.~~

~~(3)~~

~~(1) Existing law defines and regulates the activities of legal document assistants and unlawful detainer assistants, as those terms are defined, including requiring a legal document assistant or unlawful detainer assistant to be registered, as specified. Existing law provides for the renewal of registration under these provisions and requires the county clerk to assign the same registration number to a legal document assistant or an unlawful detainer assistant renewing his or her registration provided that there is no lapse in the period of registration.~~

~~This bill would instead require the county clerk to assign the same registration number regardless of whether the period of registration has lapsed.~~

~~By changing the process by which county clerks renew registration of legal document assistants and unlawful detainer assistants, this bill would impose a state-mandated local program.~~

~~(4)~~

~~(2) Existing law requires a registered legal document assistant or unlawful detainer assistant to include his or her name, business address, telephone number, registration number, expiration date of the registration, and county of registration in any solicitation or advertisement, and on any papers or documents prepared or used by the registrant. A violation of this requirement is a misdemeanor.~~

~~This bill would additionally require that this information appear on the Internet Web site of the registered legal document assistant or unlawful detainer assistant. The bill would delete the requirement that the expiration date of the registration appear on these materials any~~

papers or documents prepared or used by the registrant. The bill would also require the legal document assistant or unlawful detainer assistant to include his or her name, business address, telephone number, registration number, expiration date of the registration, and county of registration on a written contract for services required to be provided to a ~~client~~ client, on any Internet Web site maintained by the registrant, and in any solicitation, advertisement, document, or correspondence prepared or used by the registrant in electronic form.

By changing the scope of a crime, this bill would impose a state-mandated local program.

(5)

(3) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 6400 of the Business and Professions~~
2 ~~Code is amended to read:~~
3 ~~6400. (a) "Unlawful detainer assistant" means any individual~~
4 ~~who for compensation renders assistance or advice in the~~
5 ~~prosecution or defense of an unlawful detainer claim or action,~~
6 ~~including any bankruptcy petition that may affect the unlawful~~
7 ~~detainer claim or action.~~
8 ~~(b) "Unlawful detainer claim" means a proceeding, filing, or~~
9 ~~action affecting rights or liabilities of any person that arises under~~
10 ~~Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of~~
11 ~~the Code of Civil Procedure and that contemplates an adjudication~~
12 ~~by a court.~~
13 ~~(c) "Legal document assistant" means:~~
14 ~~(1) Any person who is not exempted under Section 6401 and~~
15 ~~who provides, or assists in providing, or offers to provide, or offers~~

1 to assist in providing, for compensation, any self-help service to
2 a member of the public who is representing himself or herself in
3 a legal matter, or who holds himself or herself out as someone who
4 offers that service or has that authority. This paragraph does not
5 apply to any individual whose assistance consists merely of
6 secretarial or receptionist services.

7 (2) A corporation, partnership, association, or other entity that
8 employs or contracts with any person not exempted under Section
9 6401 who, as part of his or her responsibilities, provides, or assists
10 in providing, or offers to provide, or offers to assist in providing,
11 for compensation, any self-help service to a member of the public
12 who is representing himself or herself in a legal matter or holds
13 himself or herself out as someone who offers that service or has
14 that authority. This paragraph does not apply to an individual
15 whose assistance consists merely of secretarial or receptionist
16 services.

17 (d) “Self-help service” means all of the following:

18 (1) Completing legal documents in a ministerial manner, selected
19 by a person who is representing himself or herself in a legal matter,
20 by typing or otherwise completing the documents at the person’s
21 specific direction.

22 (2) Providing general published factual information that has
23 been written or approved by an attorney, pertaining to legal
24 procedures, rights, or obligations to a person who is representing
25 himself or herself in a legal matter, to assist the person in
26 representing himself or herself. This service in and of itself, shall
27 not require registration as a legal document assistant.

28 (3) Making published legal documents available to a person
29 who is representing himself or herself in a legal matter.

30 (4) Filing and serving legal forms and documents at the specific
31 direction of a person who is representing himself or herself in a
32 legal matter.

33 (e) “Compensation” means money, property, or anything else
34 of value.

35 (f) A legal document assistant, including any legal document
36 assistant employed by a partnership or corporation, may not provide
37 any self-help service for compensation, unless the legal document
38 assistant is registered in the county in which his or her principal
39 place of business is located. A legal document assistant registered

1 in the county in which his or her principal place of business is
2 located may provide self-help services in any part of this state.

3 ~~(g) A legal document assistant may not provide any kind of~~
4 ~~advice, explanation, opinion, or recommendation to a consumer~~
5 ~~about possible legal rights, remedies, defenses, options, selection~~
6 ~~of forms, or strategies. A legal document assistant shall complete~~
7 ~~documents only in the manner prescribed by paragraph (1) of~~
8 ~~subdivision (d).~~

9 SEC. 2. Section 6402 of the Business and Professions Code is
10 amended to read:

11 6402. A legal document assistant or unlawful detainer assistant
12 shall be registered pursuant to this chapter by the county clerk in
13 the county in which his or her principal place of business is located
14 and provide proof that the registrant has satisfied the bonding
15 requirement of Section 6405. No person who has been disbarred
16 or suspended from the practice of law pursuant to Article 6
17 (commencing with Section 6100) of Chapter 4 may, during the
18 period of any disbarment or suspension, register as a legal
19 document assistant or unlawful detainer assistant. The Department
20 of Consumer Affairs shall develop the application required to be
21 completed by a person for purposes of registration as a legal
22 document assistant. The application shall specify the types of proof
23 that the applicant shall provide to the county clerk in order to
24 demonstrate the qualifications and requirements of Section 6402.1.

25 SEC. 3. Section 6403 of the Business and Professions Code is
26 amended to read:

27 6403. (a) The application for registration of a natural person
28 shall contain all of the following statements about the applicant:

- 29 (1) Name, age, address, and telephone number.
- 30 (2) Whether he or she has been convicted of a felony, or of a
31 misdemeanor under Section 6126 or 6127, or found liable under
32 Section 6126.5.
- 33 (3) Whether he or she has been held liable in a civil action by
34 final judgment or entry of a stipulated judgment, if the action
35 alleged fraud, the use of an untrue or misleading representation,
36 or the use of an unfair, unlawful, or deceptive business practice.
- 37 (4) Whether he or she has ever been convicted of a misdemeanor
38 violation of this chapter.
- 39 (5) Whether he or she has had a civil judgment entered against
40 him or her in an action arising out of the applicant's negligent,

1 reckless, or willful failure to properly perform his or her obligation
2 as a legal document assistant or unlawful detainer assistant.

3 ~~(6) Whether he or she has had a registration revoked pursuant
4 to Section 6413.~~

5 ~~(b) The application for registration of a natural person shall be
6 accompanied by the display of personal identification, such as a
7 California driver's license, birth certificate, or other identification
8 acceptable to the county clerk to adequately determine the identity
9 of the applicant.~~

10 ~~(c) The application for registration of a partnership or
11 corporation shall contain all of the following statements about the
12 applicant:~~

13 ~~(1) The names, ages, addresses, and telephone numbers of the
14 general partners or officers.~~

15 ~~(2) Whether the general partners or officers have ever been
16 convicted of a felony, or a misdemeanor under Section 6126 or
17 6127, or found liable under Section 6126.5.~~

18 ~~(3) Whether the general partners or officers have ever been held
19 liable in a civil action by final judgment or entry of a stipulated
20 judgment, if the action alleged fraud, the use of an untrue or
21 misleading representation, or the use of an unfair, unlawful, or
22 deceptive business practice.~~

23 ~~(4) Whether the general partners or officers have ever been
24 convicted of a misdemeanor violation of this chapter.~~

25 ~~(5) Whether the general partners or officers have had a civil
26 judgment entered against them in an action arising out of a
27 negligent, reckless, or willful failure to properly perform the
28 obligations of a legal document assistant or unlawful detainer
29 assistant.~~

30 ~~(6) Whether the general partners or officers have ever had a
31 registration revoked pursuant to Section 6413.~~

32 ~~(d) The applications made under this section shall be made under
33 penalty of perjury.~~

34 ~~(e) The county clerk shall retain the application for registration
35 for a period of three years following the expiration date of the
36 application, after which time the application may be destroyed if
37 it is scanned or if the conditions specified in Section 26205.1 of
38 the Government Code are met. If the application is scanned, the
39 scanned image shall be retained for a period of 10 years, after
40 which time that image may be destroyed and, notwithstanding~~

1 Section 26205.1 of the Government Code, no reproduction thereof
2 need be made or preserved.

3 SEC. 4. ~~Section 6404 of the Business and Professions Code is~~
4 ~~amended to read:~~

5 ~~6404. An applicant shall pay a fee of one hundred seventy-five~~
6 ~~dollars (\$175) to the county clerk at the time he or she files an~~
7 ~~application for initial registration or renewal of registration. An~~
8 ~~additional fee of ten dollars (\$10) shall be paid to the county clerk~~
9 ~~for each additional identification card.~~

10 SEC. 5. ~~Section 6405 of the Business and Professions Code is~~
11 ~~amended to read:~~

12 ~~6405. (a) (1) An application for a certificate of registration~~
13 ~~by an individual shall be accompanied by a bond of twenty-five~~
14 ~~thousand dollars (\$25,000) executed by a corporate surety qualified~~
15 ~~to do business in this state and conditioned upon compliance with~~
16 ~~this chapter. The total aggregate liability on the bond shall be~~
17 ~~limited to twenty-five thousand dollars (\$25,000).~~

18 ~~(2) An application for a certificate of registration by a~~
19 ~~partnership or corporation shall be accompanied by a bond executed~~
20 ~~by a corporate surety qualified to do business in this state and~~
21 ~~conditioned upon compliance with this chapter in the following~~
22 ~~amount, based on the total number of legal document assistants~~
23 ~~and unlawful detainer assistants employed by the partnership or~~
24 ~~corporation:~~

25 ~~(A) Twenty-five thousand dollars (\$25,000) for one to four~~
26 ~~assistants.~~

27 ~~(B) Fifty thousand dollars (\$50,000) for five to nine assistants.~~

28 ~~(C) One hundred thousand dollars (\$100,000) for 10 or more~~
29 ~~assistants. An application for a certificate of registration by a~~
30 ~~person employed by a partnership or corporation shall be~~
31 ~~accompanied by a bond of twenty-five thousand dollars (\$25,000)~~
32 ~~only if the partnership or corporation has not posted a bond in the~~
33 ~~amount required by this subdivision.~~

34 ~~(3) If a partnership or corporation increases the number of~~
35 ~~assistants it employs above the number stated in its application for~~
36 ~~a certificate of registration, the partnership or corporation shall~~
37 ~~promptly increase the bond to the applicable amount in~~
38 ~~subparagraphs (B) or (C) of paragraph (2) based on the actual~~
39 ~~number of assistants it employs, and shall promptly submit the~~
40 ~~increased bond to the county clerk.~~

1 ~~(4) The bond may be terminated pursuant to Section 995.440~~
2 ~~of, and Article 13 (commencing with Section 996.310) of Chapter~~
3 ~~2 of Title 14 of Part 2 of, the Code of Civil Procedure.~~

4 ~~(b) The county clerk shall, upon filing of the bond, deliver the~~
5 ~~bond forthwith to the county recorder for recording. The recording~~
6 ~~fee specified in Section 27361 of the Government Code shall be~~
7 ~~paid by the registrant. The fee may be paid to the county clerk who~~
8 ~~shall transmit it to the recorder.~~

9 ~~(c) The fee for filing, canceling, revoking, or withdrawing the~~
10 ~~bond is seven dollars (\$7).~~

11 ~~(d) The county recorder shall record the bond and any notice~~
12 ~~of cancellation, revocation, or withdrawal of the bond, and shall~~
13 ~~thereafter mail the instrument, unless specified to the contrary, to~~
14 ~~the person named in the instrument and, if no person is named, to~~
15 ~~the party leaving it for recording. The recording fee specified in~~
16 ~~Section 27361 of the Government Code for notice of cancellation,~~
17 ~~revocation, or withdrawal of the bond shall be paid to the county~~
18 ~~clerk, who shall transmit it to the county recorder.~~

19 ~~(e) In lieu of the bond required by subdivision (a), a registrant~~
20 ~~may deposit the amount required by subdivision (a) in cash with~~
21 ~~the county clerk.~~

22 ~~(f) If the certificate is revoked, the bond or cash deposit shall~~
23 ~~be returned to the bonding party or depositor subject to subdivision~~
24 ~~(g) and the right of a person to recover against the bond or cash~~
25 ~~deposit under Section 6412.~~

26 ~~(g) The county clerk may retain a cash deposit until the~~
27 ~~expiration of three years from the date the registrant has ceased to~~
28 ~~do business, or three years from the expiration or revocation date~~
29 ~~of the registration, in order to ensure there are no outstanding~~
30 ~~claims against the deposit. A judge may order the return of the~~
31 ~~deposit prior to the expiration of three years upon evidence~~
32 ~~satisfactory to the judge that there are no outstanding claims against~~
33 ~~the deposit.~~

34 ~~(h) The bond required by this section shall be in favor of the~~
35 ~~State of California for the benefit of any person who is damaged~~
36 ~~as a result of the violation of this chapter or by the fraud,~~
37 ~~dishonesty, or incompetency of an individual, partnership, or~~
38 ~~corporation registered under this chapter. The bond required by~~
39 ~~this section shall also indicate the name of the county in which it~~
40 ~~will be filed.~~

1 ~~SEC. 6.— Section 6406 of the Business and Professions Code is~~
2 ~~amended to read:~~

3 ~~6406. (a) If granted, a certificate of registration shall be~~
4 ~~effective for a period of four years, until the date the bond expires,~~
5 ~~or until the total number of legal document assistants and unlawful~~
6 ~~detainer assistants employed by a partnership or corporation~~
7 ~~exceeds the number allowed for the amount of the bond in effect,~~
8 ~~whichever occurs first. Thereafter, a registrant shall file a new~~
9 ~~certificate of registration or a renewal of the certificate of~~
10 ~~registration and pay the fee required by Section 6404, and increase~~
11 ~~the amount of the bond if required to comply with subdivision (a)~~
12 ~~of Section 6405. A certificate of registration that is currently~~
13 ~~effective may be renewed up to 60 days prior to its expiration date~~
14 ~~and the effective date of the renewal shall be the date the current~~
15 ~~registration expires. The renewal shall be effective for a period of~~
16 ~~four years from the effective date or until the expiration date of~~
17 ~~the bond, or until the total number of legal document assistants~~
18 ~~and unlawful detainer assistants employed by a partnership or~~
19 ~~corporation exceeds the number allowed for the dollar amount of~~
20 ~~the bond in effect, whichever occurs first.~~

21 ~~(b) Except as provided in subdivisions (d) to (f), inclusive, an~~
22 ~~applicant shall be denied registration or renewal of registration if~~
23 ~~the applicant has been any of the following:~~

24 ~~(1) Convicted of a felony, or of a misdemeanor under Section~~
25 ~~6126 or 6127, or found liable under Section 6126.5.~~

26 ~~(2) Held liable in a civil action by final judgment or entry of a~~
27 ~~stipulated judgment, if the action alleged fraud, or the use of an~~
28 ~~untrue or misleading representation, or the use of an unfair,~~
29 ~~unlawful, or deceptive business practice.~~

30 ~~(3) Convicted of a misdemeanor violation of this chapter.~~

31 ~~(4) Had a civil judgment entered against him or her in an action~~
32 ~~arising out of the applicant's negligent, reckless, or willful failure~~
33 ~~to properly perform his or her obligation as a legal document~~
34 ~~assistant or unlawful detainer assistant.~~

35 ~~(5) Had his or her registration revoked pursuant to Section 6413.~~

36 ~~(e) If the county clerk finds that the applicant has failed to~~
37 ~~demonstrate having met the requisite requirements of Section 6402~~
38 ~~or 6402.1, or that any of the paragraphs of subdivision (b) apply,~~
39 ~~the county clerk, within three business days of submission of the~~
40 ~~application and fee, shall return the application and fee to the~~

1 applicant with a notice to the applicant indicating the reason for
2 the denial and the method of appeal.

3 ~~(d) The denial of an application may be appealed by the~~
4 ~~applicant by submitting, to the director, the following:~~

5 ~~(1) The completed application and notice from the county clerk~~
6 ~~specifying the reasons for the denial of the application.~~

7 ~~(2) A copy of any final judgment or order that resulted from~~
8 ~~any conviction or civil judgment listed on the application.~~

9 ~~(3) Any relevant information the applicant wishes to include~~
10 ~~for the record.~~

11 ~~(e) The director shall order the applicant's certificate of~~
12 ~~registration to be granted if the director determines that the issuance~~
13 ~~of a certificate of registration is not likely to expose consumers to~~
14 ~~a significant risk of harm based on a review of the application and~~
15 ~~any other information relating to the applicant's unlawful act or~~
16 ~~unfair practice described in paragraphs (1) to (5), inclusive, of~~
17 ~~subdivision (b). The director shall order the applicant's certificate~~
18 ~~of registration to be denied if the director determines that issuance~~
19 ~~of a certificate of registration is likely to expose consumers to a~~
20 ~~significant risk of harm based on a review of the application and~~
21 ~~any other information relating to the applicant's unlawful act or~~
22 ~~unfair practice described in paragraphs (1) to (5), inclusive, of~~
23 ~~subdivision (b). The director shall send to the applicant and the~~
24 ~~county clerk a written decision listing the reasons registration shall~~
25 ~~be granted or denied within 30 days of the submission of the matter.~~

26 ~~(f) If the director orders that the certificate of registration be~~
27 ~~granted, the applicant may resubmit the application, with the~~
28 ~~appropriate application fee and the written decision of the director.~~
29 ~~The county clerk shall grant the certificate of registration to the~~
30 ~~applicant within three business days of being supplied this~~
31 ~~information.~~

32 ~~SEC. 7.~~

33 *SECTION 1.* Section 6407 of the Business and Professions
34 Code is amended to read:

35 6407. (a) The county clerk shall maintain a register of legal
36 document assistants, and a register of unlawful detainer assistants,
37 assign a unique number to each legal document assistant, or
38 unlawful detainer assistant, and issue an identification card to each
39 one. Upon renewal of registration, the same number shall be
40 assigned.

1 (b) The identification card shall be a card not less than 3 ¼ by
2 2 inches, and shall contain at the top, the title “Legal Document
3 Assistant” or “Unlawful Detainer Assistant,” as appropriate,
4 followed by the registrant’s name, address, registration number,
5 date of expiration, and county of registration. It shall also contain
6 a photograph of the registrant in the lower left corner. The
7 identification card for a partnership or corporation registration
8 shall be issued in the name of the partnership or corporation, and
9 shall not contain a photograph. The front of the card, above the
10 title, shall also contain the following statement in 12-point boldface
11 type: “This person is not a lawyer.” The front of the card, at the
12 bottom, shall also contain the following statement in 12-point
13 boldface type: “The county clerk has not evaluated this person’s
14 knowledge, experience, or services.”

15 ~~SEC. 8.~~

16 *SEC. 2.* Section 6408 of the Business and Professions Code is
17 amended to read:

18 6408. The registrant’s name, business address, telephone
19 number, registration number, and county of registration shall appear
20 in any solicitation or advertisement, ~~Internet Web site~~, and on any
21 *printed* papers or documents prepared or used by the registrant,
22 including, but not limited to, contracts, letterhead, business cards,
23 correspondence, documents, forms, claims, petitions, checks,
24 receipts, and pleadings. The registrant’s name, business address,
25 telephone number, registration number, expiration date of the
26 registration, and county of registration shall appear on the written
27 contract required to be provided to a client pursuant to Section
28 ~~6410~~: 6410, *as well as on any Internet Web site maintained by the*
29 *registrant, and in any solicitation, advertisement, document, or*
30 *correspondence prepared or used by the registrant in electronic*
31 *form.*

32 ~~SEC. 9.~~

33 *SEC. 3.* No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution for certain
35 costs that may be incurred by a local agency or school district
36 because, in that regard, this act creates a new crime or infraction,
37 eliminates a crime or infraction, or changes the penalty for a crime
38 or infraction, within the meaning of Section 17556 of the
39 Government Code, or changes the definition of a crime within the

1 meaning of Section 6 of Article XIII B of the California
2 Constitution.

3 However, if the Commission on State Mandates determines that
4 this act contains other costs mandated by the state, reimbursement
5 to local agencies and school districts for those costs shall be made
6 pursuant to Part 7 (commencing with Section 17500) of Division
7 4 of Title 2 of the Government Code.

O