

Introduced by Senator Rosenthal

January 20, 1998

An act to amend Sections 6402, 6407, 6408, 6409, 6410, 6411, 6412, 6413, and 6415 of, to amend the heading of Chapter 5.5 (commencing with Section 6400) of Division 3 of, to add Sections 6401.6, 6412.1, 6415.1, and 6415.2 to, and to repeal and add Section 6400 of, the Business and Professions Code, relating to legal document assistants.

LEGISLATIVE COUNSEL'S DIGEST

SB 1418, as introduced, Rosenthal. Legal document assistants.

Existing law generally regulates unlawful detainer assistants, as defined, and, among other things, requires an unlawful detainer assistant to register with the county clerk of the county in which he or she performs acts for which registration is required.

This bill would revise and recast these provisions to instead apply to legal document assistants, as defined. This bill would require a legal document assistant to decline to provide service to a client who requires assistance that exceeds "self-help service" as defined. This bill would provide that any person registered as an unlawful detainer assistant prior to January 1, 1999, would be considered a legal document assistant without the need to reregister or be issued a new identification card for the valid period of registration. This bill would repeal these provisions on January 1, 2002, unless a later enacted statute, enacted before that date, deletes or extends that date.

Existing law provides that the failure of a person who engages in acts of an unlawful detainer assistant to comply with certain provisions of existing law is a misdemeanor.

Since this bill would make the current penal provisions applicable to persons registered as legal document assistants, this bill would impose a state-mandated local program by increasing the scope of an existing crime.

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. The heading of Chapter 5.5
2 (commencing with Section 6400) of Division 3 of the
3 Business and Professions Code is amended to read:

4
5 CHAPTER 5.5. ~~UNLAWFUL DETAINER~~ LEGAL DOCUMENT
6 ASSISTANTS

7 SEC. 2. Section 6400 of the Business and Professions
8 Code is repealed.

9 ~~6400. (a) "Unlawful detainer assistant" means any~~
10 ~~individual who for compensation renders assistance or~~
11 ~~advice in the prosecution or defense of an unlawful~~
12 ~~detainer claim or action, including any bankruptcy~~
13 ~~petition that may affect the unlawful detainer claim or~~
14 ~~action.~~

15 (b) ~~"Unlawful detainer claim" means proceeding,~~
16 ~~filing, or action affecting rights or liabilities of any person~~
17 ~~which arises under Chapter 4 (commencing with Section~~
18 ~~1159) of Title 3 of Part 3 of the Code of Civil Procedure~~
19 ~~and which contemplates an adjudication by a court.~~

20 (c) ~~"Compensation" means money, property, or~~
21 ~~anything else of value.~~



1 SEC. 3. Section 6400 is added to the Business and
2 Professions Code, to read:

3 6400. “Legal document assistant” means:

4 (a) Any person who is not an active member of the
5 State Bar and who provides, or offers to provide, for
6 compensation, self-help service to the public.

7 (b) A corporation, partnership, association, or other
8 entity that employs any person not exempted under
9 Section 6401 who, as part of his or her responsibilities,
10 provides self-help service or who holds himself or herself
11 out as someone who offers that service or has that
12 authority.

13 (1) “Self-help service” means all of the following:

14 (A) Providing general published factual information
15 pertaining to legal procedures, rights, or obligations to a
16 consumer who is representing himself or herself in a legal
17 matter, to assist the consumer in representing himself or
18 herself.

19 (B) Making published legal documents available to a
20 consumer who is representing himself or herself in a legal
21 matter.

22 (C) Completing legal documents selected by the
23 consumer at the direction of the consumer.

24 (2) “Compensation” means money, property, or
25 anything else of value.

26 SEC. 4. Section 6401.6 is added to the Business and
27 Professions Code, to read:

28 6401.6. A legal document assistant shall decline to
29 provide service to a client who requires assistance that
30 exceeds the definition of self-help service in subdivision
31 (b) of Section 6400, and shall inform the client that the
32 client requires the services of an attorney.

33 SEC. 5. Section 6402 of the Business and Professions
34 Code is amended to read:

35 6402. ~~An unlawful detainer~~ *A legal document*
36 assistant shall be registered pursuant to this chapter by
37 the county clerk of the county in which he or she resides
38 and of each county in which he or she performs acts for
39 which registration is required. No person who has been
40 disbarred or suspended from the practice of law pursuant



1 to Article 6 (commencing with Section 6100) of Chapter
2 4 shall, during the period of any disbarment or suspension,
3 register as ~~an unlawful detainer~~ *a legal document*
4 assistant.

5 SEC. 6. Section 6407 of the Business and Professions
6 Code is amended to read:

7 6407. (a) The county clerk shall maintain a register
8 of ~~unlawful detainer~~ *legal document* assistants, assign a
9 unique number to each ~~unlawful detainer~~ *legal*
10 *document* assistant, and issue an identification card to
11 each one. Additional cards for employees of ~~unlawful~~
12 ~~detainer~~ *legal document* assistants shall be issued upon
13 the payment of ten dollars (\$10) for each card. Upon
14 renewal of registration, the same number shall be
15 assigned, provided there is no lapse in the period of
16 registration.

17 (b) The identification card shall be a card 3¹/₂ inches
18 by 2¹/₄ inches, and shall contain at the top, the title
19 ~~“Unlawful Detainer~~ *“Legal Document Assistant”*
20 followed by the registrant’s name, address, registration
21 number, date of expiration, and county of registration. It
22 shall also contain a photograph of the registrant in the
23 lower left corner.

24 SEC. 7. Section 6408 of the Business and Professions
25 Code is amended to read:

26 6408. The registrant’s registration number and
27 county of registration shall appear on any solicitation or
28 advertisement, and on the registrant’s work product,
29 including, but not limited to, letterhead, *business cards*,
30 correspondence, documents, forms, claims, petitions,
31 checks, receipts, money orders, pleadings, and other
32 papers relating to ~~unlawful detainer~~ claims or actions.

33 SEC. 8. Section 6409 of the Business and Professions
34 Code is amended to read:

35 6409. No ~~unlawful detainer~~ *legal document* assistant
36 shall retain in his or her possession original documents of
37 a client.

38 SEC. 9. Section 6410 of the Business and Professions
39 Code is amended to read:



1 6410. (a) Every ~~unlawful-detainer~~ *legal document*
2 assistant who enters into a contract or agreement with a
3 client to provide services shall, prior to providing any
4 services, provide the client with a written contract, the
5 contents of which shall be prescribed by regulations
6 adopted by the Department of Consumer Affairs.

7 (b) The written contract shall include provisions
8 relating to the following:

9 (1) The services to be performed.

10 (2) The costs of the services to be performed.

11 (3) There shall be printed on the face of the contract
12 in 10-point boldface type a statement that the ~~unlawful~~
13 ~~detainer~~ *legal document* assistant is not an attorney and
14 may not perform the legal services that an attorney
15 performs.

16 (c) The provisions of the written contract shall be
17 stated both in English and, if the client is
18 non-English-speaking, in the language of the client.

19 (d) Failure of an ~~unlawful-detainer~~ *a legal document*
20 assistant to comply with ~~the provisions of~~ subdivisions (a),
21 (b), and (c) shall make the contract or agreement for
22 services voidable at the option of the client. Upon the
23 voiding of the contract, the ~~unlawful-detainer~~ *legal*
24 *document* assistant shall immediately return in full any
25 fees paid by the client.

26 (e) The client shall have the right to rescind the
27 contract within 24 hours of the signing of the contract.
28 Upon the voiding or rescinding of the contract or
29 agreement for services, the ~~unlawful-detainer~~ *legal*
30 *document* assistant shall immediately return to the client
31 any fees paid by the client, except fees for services that
32 were actually, necessarily, and reasonably performed on
33 the client's behalf by the ~~unlawful-detainer~~ *legal*
34 *document* assistant. The requirements of this subdivision
35 shall be conspicuously set forth in the written contract in
36 both English and, if the client is non-English-speaking, in
37 the language of the client.

38 SEC. 10. Section 6411 of the Business and Professions
39 Code is amended to read:



1 6411. It is unlawful for any person engaged in the
2 business or acting in the capacity of ~~an unlawful detainer~~
3 *a legal document* assistant to do any of the following:

4 (a) Make false or misleading statements to a client
5 while providing services to that client.

6 (b) Make any guarantee or promise to a client, unless
7 the guarantee or promise is in writing and the ~~unlawful~~
8 ~~detainer~~ *legal document* assistant has some basis for
9 making the guarantee or promise.

10 (c) Make any statement that the ~~unlawful detainer~~
11 *legal document* assistant can or will obtain special favors
12 or has special influence with a court, or a state or federal
13 agency.

14 (d) Provide assistance or advice which constitutes the
15 unlawful practice of law pursuant to Section 6125, 6126,
16 or 6127.

17 SEC. 11. Section 6412 of the Business and Professions
18 Code is amended to read:

19 6412. (a) Any owner or manager of residential or
20 commercial rental property, tenant, or other person who
21 is awarded damages in any action or proceeding for
22 injuries caused by the acts of a registrant while in the
23 performance of his or her duties as ~~an unlawful detainer~~
24 *a legal document* assistant may recover damages from the
25 bond or cash deposit required by Section 6405.

26 (b) Whenever there has been a recovery against a
27 bond or cash deposit under subdivision (a) and the
28 registration has not been revoked pursuant to Section
29 6413, the registrant shall file a new bond or deposit an
30 additional amount of cash within 30 days to reinstate the
31 bond or cash deposit to the amount required by Section
32 6405. If the registrant does not file a bond, or deposit this
33 amount within 30 days, his or her certificate of
34 registration shall be revoked.

35 SEC. 12. Section 6412.1 is added to the Business and
36 Professions Code, to read:

37 6412.1. (a) Any consumer injured by the unlawful act
38 of a legal document assistant shall retain all rights and
39 remedies cognizable under law. Nothing in this chapter
40 shall be construed to limit an injured consumer's right to



1 bring a civil action for damages and any other relief as
2 may be appropriate in a court of general jurisdiction.

3 (b) Any consumer injured by a violation of this
4 chapter by a legal document assistant may file a
5 complaint and seek redress in any municipal or superior
6 court for injunctive relief, restitution, and damages.
7 Attorney's fees shall be awarded to the prevailing
8 plaintiff.

9 SEC. 13. Section 6413 of the Business and Professions
10 Code is amended to read:

11 6413. The county clerk shall revoke the registration of
12 ~~an unlawful detainer~~ *a legal document* assistant upon
13 receipt of an official document or record stating that the
14 registrant has been found guilty of the unauthorized
15 practice of law pursuant to Section 6125, 6126, or 6127, has
16 been found guilty of a misdemeanor violation of this
17 chapter, or that a civil judgment has been entered against
18 the registrant in an action arising out of the registrant's
19 failure to properly perform his or her obligation as ~~an~~
20 ~~unlawful detainer~~ *a legal document* assistant. The county
21 clerk shall be given notice of the disposition in any court
22 action by the city attorney, district attorney, or plaintiff,
23 as applicable. A registrant whose registration is revoked
24 pursuant to this section may reapply for registration after
25 one year.

26 SEC. 14. Section 6415 of the Business and Professions
27 Code is amended to read:

28 6415. A failure, by a person who engages in acts of ~~an~~
29 ~~unlawful detainer~~ *a legal document* assistant, to comply
30 with any of the requirements of Section 6402 or 6408, or
31 subdivision (a), (b), or (c) of Section 6411 is punishable
32 as a misdemeanor punishable by a fine of not less than one
33 thousand dollars (\$1,000) or more than two thousand
34 dollars (\$2,000), as to each client with respect to whom a
35 violation occurs, or imprisonment for not more than one
36 year, or by both fine and imprisonment. Payment of
37 restitution to a client shall take precedence over payment
38 of a fine.

39 SEC. 15. Section 6415.1 is added to the Business and
40 Professions Code, to read:

1 6415.1. Any person registered with a county clerk as
2 an unlawful detainer assistant prior to January 1, 1999,
3 shall be considered a legal document assistant as defined
4 by this chapter without the need to reregister with the
5 county clerk or be issued a new identification card for the
6 valid period of registration. However, an unlawful
7 detainer assistant who is registered pursuant to this
8 chapter prior to January 1, 1999, may perform the
9 additional duties authorized by this chapter on and after
10 January 1, 1999, only if the bond required pursuant to
11 Section 6405 reflects the nature of those expanded duties.

12 SEC. 16. Section 6415.2 is added to the Business and
13 Professions Code, to read:

14 6415.2. This chapter shall remain in effect only until
15 January 1, 2002, and as of that date is repealed, unless a
16 later enacted statute, that is enacted before January 1,
17 2002, deletes or extends that date.

18 SEC. 17. No reimbursement is required by this act
19 pursuant to Section 6 of Article XIII B of the California
20 Constitution because the only costs that may be incurred
21 by a local agency or school district will be incurred
22 because this act creates a new crime or infraction,
23 eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section
25 17556 of the Government Code, or changes the definition
26 of a crime within the meaning of Section 6 of Article
27 XIII B of the California Constitution.

28 Notwithstanding Section 17580 of the Government
29 Code, unless otherwise specified, the provisions of this act
30 shall become operative on the same date that the act
31 takes effect pursuant to the California Constitution.

