

Date of Hearing: March 28, 2017

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Rudy Salas, Chair

AB 290 (Salas) – As Introduced February 2, 2017

SUBJECT: Collateral recovery: repossession agencies.

SUMMARY: Removes the current January 1, 2018 sunset date that would return the statute to its pre-2012 prohibition on dealers of agriculture, forestry, lawn care, and construction equipment from directly repossessing financed equipment after default. Defines repossession agency as not including certain persons and entities and extends that definition indefinitely.

EXISTING LAW:

- 1) Establishes a definition for those that must register with the Bureau of Security and Investigative Services as a “repossession agency.” (Business and Professions Code (BPC) Section 7500.2)
- 2) Lists exclusions from established “repossession agency” definition with a repeal date of January 1, 2018, including dealers of collateral designed primarily for agriculture use. (BPC Section 7500.3)
- 3) Lists exclusions from established “repossession agency” definition after the repeal date of January 1, 2018, does not include dealers of collateral designed primarily for agriculture use. (BPC Section 7500.3)

THIS BILL:

- 1) Makes permanent the exclusion of agriculture, forestry, lawn care, and construction equipment dealers from “repossession agency.”
- 2) Removes the sunset date of January 1, 2018, for this exclusion.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by John Deere. According to the author, “Agricultural equipment dealers in California are currently allowed to work directly with customers to retrieve equipment if payments have been defaulted. Agriculture equipment dealers typically maintain good relationships with their customers. In most cases the two parties have been doing business together for years. Unfortunately, due to the cyclical nature of farming, there are times when repossession is necessary.

These types of equipment sales, which include heavy agriculture, forestry, and construction equipment, can run in the hundreds of thousands of dollars. When a dealer is required to hire repossession agents, several thousand dollars are added to the amount a customer already owes.

AB 290 removes the January 1, 2018 sunset date on an exemption that allows certain dealers of agriculture, forestry, lawn care, and construction equipment to retrieve equipment directly from customers in the case of a repossession. By continuing to provide this exemption, business practices can be streamlined and additional costs on consumers can be avoided.”

Background. Under current law, agriculture equipment dealers have the ability to repossess collateral directly rather than hiring a repossession agency to do it for them or becoming licensed as a repossessioner. However, the exemption that allows them to do so will expire on January 1, 2018. This bill would extend the exemption for these dealers indefinitely.

The current exemption for agriculture equipment dealers was created by AB 1877 (Ma) Chapter 476, Statutes of 2012. At the time, the sponsors, John Deere and Far West Equipment Dealers Association argued:

Currently, third party repossession and hauling fees creates an additional and unnecessary cost to the customer. Customers would prefer to work directly with a dealer rather than an unknown repossession agent, someone with whom they have had no previous relationship, and to which is attached a social stigma, both when a ‘Repo Truck and Trailer’ shows up at their home or business, and local law enforcement is notified...By exempting authorized dealers and financial entities from repossession licensing requirements, dealers are allowed to streamline their business practices and avoid or reduce expensive repossession and hauling fees that would have been passed on to the farmer. More importantly, dealers want to protect and preserve their relationships with their customers, especially those who are subjected to circumstances outside his or her control.

While repossession is not a large component of a dealer’s business, the sponsor’s believe that having the ability to work collaboratively with the customer when they must repossess an item allows them to maintain existing relationships and prevent unnecessary embarrassment for the customer.

AB 1877 was opposed by the California Association of Licensed Repossessors, who wrote in their letter that the bill “would undermine the licensed repossession industry” and “would also allow for non-voluntary repossessions conducted by non-licensed individuals that could potentially have violent felony convictions who would not pass the background check to which all licensed repossessioners are subjected to.”

According to the author, the current sunset date of January 1, 2018, was included to address concerns from opposition that the individuals carrying out repossessions for the dealer may cause problems since they are not licensed. As there have not been any major instances when this concern has been realized, the exemption is being made indefinite.

Prior Related Legislation. AB 1877 (Ma), Chapter 476, Statutes of 2012 established the exemption for agricultural equipment dealers.

SB 944 (Committee on Business, Professions and Economic Development, Chapter 432, Statutes of 2011) made several non-controversial, minor, non-substantive or technical changes to various miscellaneous provisions pertaining to regulatory boards of the Department of Consumer Affairs and professions including authorizing a person to work as a qualified repossession certificate holder or as a registrant.

AB 515 (Hagman, Chapter 322, Statutes of 2009) made numerous revisions to the Collateral Recovery Act and Vehicle Code Sections relating to the impound of vehicles.

AB 659 (Ma, Chapter 192, Statutes of 2007) specified that the legal owner of collateral registered under the Vehicle Code includes the seller or lessee named on a valid conditional sales contract or lease agreement and requires a licensed reposessor to provide details about the incident to the person who made the assignment. That person will then be required to notify a subsequent reposessor of that information at the time of making another assignment to skip trace, locate, or repossess that vehicle.

AB 2318 (Calderon, Chapter 418, Statutes of 2006) indicated that a reposessor shall not be required to remove property that is attached to or that is on the collateral of being repossessed if the reposessor cannot determine whether or not the item is a "personal effect" (i.e., property that does not belong to the legal owner of the collateral) or a part of the collateral, except that the reposessor shall remove and inventory all items that can be removed without using tools, and increases the fine to \$250 on a repossession agency that does not register repossessors with the BSIS in a timely fashion.

ARGUMENTS IN SUPPORT:

John Deere, the sponsor of the bill, writes: "current statute allows us to be able to handle taking back the property ourselves rather than involving a third-party repossession agent. However, this exemption is currently set to sunset in January of 2018.

It is important the opportunity remains and the sunset is removed so our dealers, can continue to handle the take back of equipment, as repossession agents have no relationship with the customer. Also in many cases, they do not have the expertise or equipment to properly handle expensive heavy duty products like tractors and combines. As a result, the sponsors, along with the support of the farming community, seek to remove the current sunset date to continue to allow for an exemption from the licensing mandate when a dealer is acting on behalf of a manufacturer that holds title to the property through a security agreement. California would be the only state in the country that mandates the involvement of repossession agents in our situation if the sunset is not removed."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

John Deere (sponsor)
California Farm Bureau Federation
Far West Equipment Dealers Association
Agricultural Council of California
California Cattleman's Association
Caterpillar Inc.

REGISTERED OPPOSITION:

None on file.

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