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TO: All Senators

DATE: December 29, 2010

FROM: Senator Michael J. Stack

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SUBJECT: Co-Sponsorship

In the near future, **I will reintroduce Senate Bill 1439 of the 2009-10 Session**, to regulate repossession professionals through a State Repossession and Recovery Board under the Department of State's Bureau of Professional and Occupational Affairs. The legislation also repeals sections of the Motor Vehicle Finance Act that currently regulate repossession professionals and makes corresponding changes to Title 18 (Crimes and Offenses).

Previous co-sponsors included Senators Farnese, O'Pake, and Washington.

The legislation places the document's language into different titles of the Pennsylvania Consolidated Statutes. The four portions are listed below:

1. Repeal of the current Motor Vehicle Sales Finance Act (located at the end of the document). This part of the legislation, sections 5 and 6 of the bill, repeals the current Motor Vehicle Sales Finance Act that contains the provisions currently applicable to professional repossessioners.
2. Reenactment of most of the language of the former Motor Vehicle Sales Finance Act as a new Chapter 9 in Title 12 of the Pennsylvania Consolidated Statutes in the Title relating to Commerce and Trade.
This part of the legislation reenacts the language of the former Motor Vehicle Sales Finance Act without the provisions affecting the operation of professional repossessioners. Provisions of the former Motor Vehicle Sales Finance Act that affected the financial relationship between the lender and the debtor remain in the reenacted language.

3. Addition of two new sections and an amendment to another section in Title 18 of the Pennsylvania Consolidated Statutes in the Title relating to Crimes and Offenses, that is also known as the Pennsylvania Crimes Code.
4. Addition of the professional reposessor language as a new Chapter 71 in Title 63 of the Pennsylvania Consolidated Statutes in the Title relating to Professions and Occupations.

Here is a summary of some of the major provisions of the bill:

Language added to the PA Crimes Code, Title 18 - PA Consolidated Statutes

1. The aggravated assault statute in the Crimes Code, section 2702, is amended by adding the assault of a registered recovery agent to the list of officers, employees and other persons, who are additionally protected under the statute. The types of actions covered are: 1. attempting to cause serious bodily harm; 2. attempting to cause bodily harm; 3. attempting by physical menace to put the person in fear of serious bodily injury; and 4. using tear gas or a stun gun on a person while acting in the scope of his employment. The offense is either a first or second degree felony depending on the action.

2. A new statute is added to the Crimes Code for the offense of repossession vandalism, section 3310.1. The offense occurs when a person intentionally damages collateral before or during the collateral's recovery. The grade of the offense depends upon the monetary value of the damage done to the collateral. The offense can be a third degree felony, a first degree misdemeanor, second degree misdemeanor or a third degree misdemeanor.

3. A new statute is added to the Crimes Code for the offense of unauthorized recovery of collateral or the impersonation of a registered recovery agent to recover collateral. The offense is a second degree misdemeanor for unauthorized recovery of collateral and a third degree misdemeanor for impersonation of an agent. Full time employees of lenders are excluded.

Language added as Chapter 71 of Title 63 (relating to Professional Reposessors)

A new chapter is added to Title 63 PA Consolidated Statutes
(Please note: In general, explanatory language was not included in the preliminary draft.)

1. Definitions are provided for terms used in chapter 71 of Title 63. (Please note: Definitions in the original language that were not used in other definitions or the rest of the text were not included in the preliminary draft.)

2. The State Repossession and Recovery Board is established in the PA Department of State. The board consists of 4 professional members, 2 public members, and the Commissioner of Professional and Occupational Affairs of the PA Department of State. The board, in part, regulates the licensing of businesses and persons in the repossession and recovery operations and conducts office and facility inspections.

3. License requirements are established. Provisions are added requiring licenses for each recovery agency and a registration card for each recovery agent. Each recovery agency branch office also requires a license. Provisions for renewal of licenses and registration cards are added.

A. A recovery agency must apply for a license from the board to operate in PA for the main agency's main office and for each branch office. Certain criteria must be met for recovery agency license issuance by the board.

B. An employee of a recovery agency who recovers collateral must apply for and obtain a registration card from the board. Certain criteria must be met for registration card issuance by the board. The registration card issued shall contain photo identification

C. A fee schedule is provided in statute for issuance and renewals of licenses and registration cards. Renewal fees for licenses or registration cards may be suspended following notification of the board of a request for inactive status until a restoration of an active status.

D. Criminal history record checks are required for each partner, officer and individual who owns or operated a recovery agency recovery, and for each registered recovery agent.

E. Recovery agencies must present certification of insurance with a minimum amount of coverage, and must provide a surety bond in an amount specified.

F. Provisions for licensing extension due to death or disassociation of a party who holds a recovery agency license are added. Provisions for restoration of an expired license or registration card are included.

G. Provisions prohibit the renewal, restoration or reissuance of licenses and registration cards that have not been renewed, restored or reissued within three years of expiration. An exception from this prohibition is included for a license or registration card that is not renewed, restored or reissued due to intervening military service.

4. Provisions addressing the administration of the act by the board are included:

A. The board is authorized to revoke a license or registration card or to impose fines or other disciplinary action on certain covered persons for violating one or more specific prohibitions. Additional prohibitions apply to recovery agencies and registered recovery agents.

B. The board may deny to issue, re-issue, or restore a license or registration card based on sufficient evidence of a lack of good moral character. Provisions addressing when the board may issue a license to an applicant with a felony is included.

C. Following the issuance of any fine by the board, a license or registration card is suspended until the fine is paid.

D. The board may impose disciplinary action against lenders for certain violations.

5. Municipalities may not enact ordinances, or enforce within its police power, provisions on the repossession of collateral that are more restrictive than the provisions contained in chapter 71. Any local regulation by ordinance or by exercise of its police power that is inconsistent with chapter 71 is superceded.

6. Provisions addressing the requirements for the notification of the local law enforcement agency or the county police radio (911) facility of a completed repossession are included. No prior notice of the repossession required. Board provides to certain law enforcement agencies a list of all recovery agencies and registered recovery agents.

7. Language is included that addresses what is a repossession and when a legal repossession occurs. Authorized methods of collateral recovery and transportation by registered recovery agents are addressed, including the towing of a vehicle.

8. Provisions impose certain requirements on lenders. When a lender places an assignment, the lender must provide certain information to the recovery agency including: complete and accurate information; a valid address or expected recovery location; and information on the number of, and any collection notes from, any previous assignments. In addition, lenders are required to provide the recovery agency with certain specified information, including the collateral's complete VIN number and the collateral's correct license plate number with the correct expiration date. Lenders may not require recovery agencies to attempt to recover collateral that has been reported stolen.

9. Language is added to clarify that a motor vehicle check by the Bureau of Motor Vehicles (PA Department of Transportation) requested by a recovery agency on a lender's behalf is a reimbursable expense.

10. Language outlines the types of repossessions and repossession assignments. Except for full time employees of lenders, only licensed recovery agencies and registered recovery agents are authorized to recover collateral in PA. Procedures are provided for unauthorized recoveries of collateral. Language is also included addressing the possession/transportation of recovered collateral by a towing or transportation firm.

11. Identification of a recovery vehicle by the license number of the recovery agency number is required.

12. Language is included that addresses locksmithing for recovered collateral. Obtaining keys and information on keys is the responsibility of the lender. Locksmithing is not a required service provided by a recovery agency.

13. Storage policies are addressed. Recovered collateral is stored at a storage facility for a minimum of the 15 day redemption period, unless redeemed by the debtor, or (for collateral subject to repurchase agreement) delivered to the selling dealer. The lender is responsible for payment of storage costs incurred by the recovery agency during the redemption period.

14. Language provides for the inventory and storage, debtor retrieval, and disposal of personal property and motor vehicle license plates from recovered collateral. Redemption by the debtor is by appointment and requires photo identification.

15. Following the redemption period, the lender may choose what to do with the collateral from three choices. Transportation of collateral by a recovery agency is not part of the services provided under a repossession.

16. Recovery agencies and agents are exempt from the Private Detectives Act.

17. Language addresses the repossession process, including:

(A) The authorization of the methods for the receipt of assignments through electronic means.

(B) The required acceptance by local law enforcement agencies of electronic methods of assignment confirmation.

(C) The requirements for the storage and redemption of recovered collateral, and for the disposal of personal property contained in recovered collateral.

(D) The provisions addressing a law enforcement stop en route to a delivery location for the repossessed collateral, and for disposition of contraband discovered in the repossessed collateral.

(E) A violation by an agent of the offense of disorderly conduct is clarified.

(F) Payments to the board are addressed.

(18) Language on the board's administration and enforcement is addressed and includes:

(A) Maintenance and availability of a roster of names and addresses for each license holder and registration card holder, including revoked licenses and cards.

(B) Authorizes the board to request injunctive relief from a court through the PA Attorney General, to issue cease and desist orders, and to issue subpoenas.

(C) Provides the board with the authority to investigate actions, qualifications of license holders and registration card holders, and to hold hearings regarding licensure and disciplinary action.

(D) Provides for a rehearing before the board and for appeal.

(19) Provides the methods by which a lender may recover collateral, prohibits recovery of collateral by unauthorized persons, and prohibits assignment of repossession accounts without board approval, provides the manner for board approval of assignment of repossession accounts, provides for disciplinary action and a fine for repossession account assignment without board approval.

(20) Prohibits a lender or its representative to engage in a policy that creates a substantial risk for an agent, and provides for a fine for a violation, and provides for additional lender limitations.

(21) Provides for procedures for a recovery agency license renewal following a change of ownership, and for procedures for notification of the board of a change of address.

(22) Authorizes the board to adopt necessary regulations and procedures to implement the chapter.

If you have any questions or would like to be added as a co-sponsor to this legislation, please call 7-9608