

Assembly Bill No. 75

CHAPTER 269

An act to amend Sections 17533.6 and 17537.9 of the Business and Professions Code, to amend Section 1195 of the Civil Code, to amend Section 3505 of the Commercial Code, and to amend Sections 8205, 8208, 8211, and 27287 of, and to add Section 12181 to, the Government Code, relating to documents.

[Approved by Governor September 7, 2011. Filed with
Secretary of State September 7, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 75, Hill. Documents: notaries public: solicitations.

(1) Existing law makes it unlawful for a nongovernmental entity to solicit funds or information by means of a mailing, electronic message, or Internet Web site that contains a seal, insignia, trade, or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any state or local government connection, approval, or endorsement, unless the nongovernmental entity has an expressed connection with a state or local entity or unless the solicitation contains specified disclosures in conspicuous and legible type. Existing law requires a business to include the contact information for a referenced governmental agency in an unsolicited mailing that offers to assist the recipient in dealing with the governmental agency. A violation of these or other provisions related to advertising is a misdemeanor, punishable by imprisonment in the county jail not exceeding 6 months, a fine not exceeding \$1,000, or both.

This bill would additionally make it unlawful for a nongovernmental entity to solicit funds or information by means of a mailing, electronic message, or Internet Web site that contains an emblem or content that reasonably could be interpreted or construed as implying any federal, state, or local government connection, approval, or endorsement, unless the nongovernmental entity has an expressed connection with a federal, state, or local government entity or unless the solicitation contains specified disclosures and meets other requirements. The bill would require the disclosures to be conspicuously displayed in specified locations, font type size, and manner. The bill would increase the maximum criminal fine for a violation of these provisions to \$2,500 and would authorize a person to recover specified damages resulting from a violation of these provisions. The bill would delete the provisions requiring a business to include the contact information for a referenced governmental agency in an unsolicited mailing that offers to assist the recipient in dealing with the governmental agency.

Existing law makes it unlawful for a person to make any untrue or misleading statements in any manner in connection with the offering or performance of an assessment reduction filing service. Existing law provides that an untrue or misleading statement includes representing that an offeror of an assessment reduction filing service is, or is affiliated with, any governmental entity by, among other things, the use of a business name including the word “appeal” or “tax” and any of a list of terms, including “agency,” “bureau,” or “department.” Existing law makes it unlawful to offer to perform an assessment reduction filing service without making a disclosure placed at the top of each page of every advertisement or promotional material disseminated by an offeror of an assessment reduction filing service in 12-point boldface type enclosed in a box formed by a heavy line.

This bill would provide that it is also an untrue or misleading statement in connection with the offering or performance of an assessment reduction filing service if the words “board” or “commission” are used with the word “appeal” or “tax” in the business name of an assessment reduction filing service. The bill would also make changes to the font size requirements that apply to the disclosure of every advertisement or promotional material disseminated by an offeror of an assessment reduction filing service.

Because a violation of these provisions would be a crime, this bill would impose a state-mandated local program.

(2) Existing law authorizes proof of the execution of an instrument by certain persons and prescribes the form for that proof. Existing law prohibits a proof of the execution of any of several types of specified instruments, including a grant deed, mortgage, deed of trust, quitclaim deed, or security agreement.

This bill would add a power of attorney to the types of instruments for which a proof of the execution is prohibited and would further prohibit a proof of the execution for any instrument requiring a notary public to obtain a thumbprint from the party signing the document in the notary public’s journal. The bill would also revise the form of certificate that may be used for proof of execution.

(3) Existing law prescribes the duties of a notary public, including the duty to demand acceptance and payment of foreign and inland bills of exchange, or promissory notes, to protest them for nonacceptance or nonpayment, and to exercise any other powers and duties that by the law of nations and according to commercial usages, or by the laws of any other state, government, or country, may be performed by notaries. Existing law provides that a protest is a certificate of dishonor of a negotiable instrument made by, among others, a notary public. Existing law provides that the protest of a notary public of a bill of exchange or promissory note for nonacceptance or nonpayment is prima facie evidence of the facts recited therein.

This bill would limit the application of these provisions to a notary public employed by a financial institution, during the course and scope of the notary’s employment with the financial institution.

(4) Existing law prescribes the maximum fees a notary public may charge for specified services.

This bill would delete the prescribed maximum fees for every protest for the nonpayment of a promissory note or for the nonpayment or nonacceptance of a bill of exchange, draft, or check, for serving every notice of nonpayment of a promissory note or of nonpayment or nonacceptance of a bill of exchange, order, draft, or check, and for recording every protest.

(5) Existing law sets forth the fees the Secretary of State is authorized to charge for the provision of specified business services.

This bill would authorize the Secretary of State's office to refuse to perform a service or refuse a filing based on a reasonable belief that the service or filing is being requested for any of a number of specified improper purposes.

(6) 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.

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

SECTION 1. Section 17533.6 of the Business and Professions Code is amended to read:

17533.6. (a) It is unlawful for any person, firm, corporation, or association that is a nongovernmental entity to solicit information, or to solicit the purchase of or payment for a product or service, or to solicit the contribution of funds or membership fees, by means of a mailing, electronic message, or Internet Web site that contains a seal, emblem, insignia, trade or brand name, or any other term, symbol, or content that reasonably could be interpreted or construed as implying any federal, state, or local government connection, approval, or endorsement, unless the requirements of paragraph (1) or (2) have been met, as follows:

(1) The nongovernmental entity has an expressed connection with, or the approval or endorsement of, a federal, state, or local government entity, if permitted by other provisions of law.

(2) The solicitation meets all of the following requirements:

(A) The solicitation conspicuously displays the following disclosure on the front and back of every page of the solicitation:

“THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY ANY GOVERNMENTAL AGENCY, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE GOVERNMENT.”

(B) In the case of a mailed solicitation, the front of the envelope, outside cover, or wrapper in which the matter is mailed conspicuously displays the following disclosure:

“THIS IS NOT A GOVERNMENT DOCUMENT.”

(C) The disclosure in subparagraph (A) shall be displayed conspicuously, as provided in subdivision (d), and immediately below each portion of the solicitation that reasonably could be construed to specify an amount due and payable by the recipient. The disclosure in subparagraph (B) shall be displayed conspicuously, as provided in subdivision (d), and immediately below the area of the envelope, outside cover, or wrapper that is used for a return address. The disclosures in subparagraphs (A) and (B) shall not be preceded, followed, or surrounded by symbols, terms, or other content that result in the disclosures not being conspicuous or that introduce, modify, qualify, or explain the text of those disclosures.

(D) The solicitation does not use a title or trade or brand name that reasonably could be interpreted or construed as implying any federal, state, or local government connection, approval, or endorsement, including, but not limited to, use of the term “agency,” “administrative,” “assessor,” “board,” “bureau,” “collector,” “commission,” “committee,” “department,” “division,” “recorder,” “unit,” “federal,” “state,” “county,” “city,” or “municipal,” or the name or division of any government agency.

(E) The solicitation does not specify a date or time period when payment to the soliciting nongovernmental person, firm, corporation, or association is due, including, but not limited to, use of the terms “due date,” “due now,” “remit by,” “remit immediately,” “payment due,” “pay now,” “pay immediately,” or “pay no later than,” unless the solicitation displays, in the same sentence as the date or time period specified, how the information being solicited will be used, a description of the product or service that is to be provided and to what government agency it shall be rendered, or how the solicited funds or membership fees will be used, as applicable.

(F) The solicitation does not state or imply that payment to any person, firm, corporation, or association that is not a government entity is mandatory or required by law, or state or imply that penalties, fines, or consequences will occur if payment is not made to the soliciting nongovernmental person, firm, corporation, or association.

(b) Notwithstanding Section 17534, any violation of this section is a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that fine and imprisonment.

(c) Any person who is harmed as a result of a violation of this section shall be entitled to recover, in addition to any other available remedies, damages in an amount equal to three times the amount solicited.

(d) For purposes of this section, “conspicuous” or “conspicuously” means displayed apart from other print on the page, envelope, outside cover, or wrapper and in not less than 12-point boldface font type in capital letters that is at least 2-point boldface font type sizes larger than the next largest print on the page, envelope, outside cover, or wrapper and in contrasting

type, layout, font, or color in a manner that clearly calls attention to the language.

SEC. 2. Section 17537.9 of the Business and Professions Code is amended to read:

17537.9. (a) It is unlawful for any person to make any untrue or misleading statements in any manner in connection with the offering or performance of an assessment reduction filing service. For the purposes of this section, an “untrue or misleading statement” includes, but is not limited to, any representation that any of the following is true:

(1) The preparation of a request for review or an assessment appeal application will result in a guaranteed reduction of property taxes.

(2) A fee is required in order for the county to process a reduction of a property’s assessed value where the county has no applicable fee.

(3) The offeror of the assessment reduction filing service will be physically present to represent the person to whom a solicitation is made before county assessor staff, an assessment appeals board, county board of equalization, or an assessment hearing officer, unless the fee includes this service.

(4) The offeror of the assessment reduction filing service will prepare or complete informal assessor review data or prepare or complete the application in full, with the exception of the property owner’s signature, on behalf of the person to whom a solicitation is made, unless the fee includes this service.

(5) The offeror of the assessment reduction filing service has a file or record covering a person to whom a solicitation is made.

(6) The offeror of the assessment reduction filing service is, or is affiliated with, any governmental entity. A violation of this paragraph includes, but is not limited to, the following:

(A) The misleading use of any governmental seal, emblem, or other similar symbol.

(B) The use of a business name including the word “appeal” or “tax” and the word “agency,” “assessor,” “board,” “bureau,” “commission,” “department,” “division,” “federal,” “state,” “county,” “city,” or “municipal,” or the name of any city, county, city and county, or any governmental entity.

(C) The use of an envelope that simulates an envelope containing a government check, tax bill, or government notice or an envelope that otherwise has the capacity to be confused with, or mistaken for, an envelope sent by a governmental entity.

(D) The use of an envelope or outside cover or wrapper in which a solicitation is mailed that does not bear on its face in capital letters and in conspicuous and legible type the following notice:

“THIS IS NOT A GOVERNMENT DOCUMENT.”

(7) A late fee is required if the person to whom the solicitation is sent fails to respond to the offeror of the assessment reduction filing service by a date stated in the solicitation.

(b) (1) It is unlawful to offer to perform an assessment reduction filing service without making the following disclosure:

“THIS ASSESSMENT REDUCTION FILING SERVICE IS NOT ASSOCIATED WITH ANY GOVERNMENT AGENCY. IF YOU DISAGREE WITH THE ASSESSED VALUE OF YOUR PROPERTY, YOU HAVE THE RIGHT TO AN INFORMAL ASSESSMENT REVIEW, AT NO COST, BY CONTACTING THE ASSESSOR’S OFFICE DIRECTLY. IF YOU AND THE ASSESSOR CANNOT AGREE TO THE VALUE OF THE PROPERTY OR IF YOU DO NOT WISH TO CONTACT THE ASSESSOR YOU CAN OBTAIN AND FILE AN APPLICATION FOR CHANGED ASSESSMENT WITH THE COUNTY BOARD OF EQUALIZATION OR ASSESSMENT APPEALS BOARD ON YOUR OWN BEHALF. AN APPEALS BOARD HAS THE AUTHORITY TO RAISE PROPERTY VALUES (BUT IN NO CASE HIGHER THAN THE PROPOSITION 13 PROTECTED VALUE) AS WELL AS TO LOWER PROPERTY VALUES.”

(2) The disclosures specified in paragraph (1) shall be placed at the top of each page of every advertisement or promotional material disseminated by an offeror of an assessment reduction filing service and shall be printed in not less than 12-point boldface font type that is at least 2-point boldface font type sizes larger than the next largest print on the page and enclosed in a box formed by a heavy line.

(3) The disclosure specified in paragraph (1) shall be recited at the beginning of every oral solicitation and every broadcast advertisement and shall be delivered in printed form as prescribed by paragraph (2) before the time each person who responds to the oral solicitation or broadcast advertisement is obligated to pay for the service.

(c) (1) No offeror of an assessment reduction filing service shall charge, demand, or collect any money in connection with a request for review until after the request is filed with the assessor.

(2) No offeror of an assessment reduction filing service shall charge, demand, or collect any money in connection with an assessment appeal application until after the application is filed with the clerk of the assessment appeals board.

(d) For the purposes of this section, the following definitions apply:

(1) “Assessment reduction filing service” means any service performed or offered to be performed for compensation in connection with the preparation or completion of an application or request of any kind for reduction in assessment of residential property or in connection with the assistance in any manner of another person to either (A) prepare or complete an application or request of any kind for reduction in assessment of residential property or (B) provide comparable sales information in connection with an application or request for reduction in assessment of residential property.

(2) “Assessment appeal application” has the meaning described in Section 1603 of the Revenue and Taxation Code.

(e) (1) It is unlawful for an offeror of an assessment reduction filing service to file a request or application of any kind for reduction in assessment without first obtaining a written authorization from the property owner.

(2) A true and correct copy of the written authorization shall be submitted with any request or application for reduction in assessment. The offeror shall maintain the original written authorization for a period of three years and shall make it available for inspection and copying within 24 hours of a request without a warrant to law enforcement, the Attorney General, district attorney, or city attorney.

SEC. 3. Section 1195 of the Civil Code is amended to read:

1195. (a) Proof of the execution of an instrument, when not acknowledged, may be made by any of the following:

(1) By the party executing it, or either of them.

(2) By a subscribing witness.

(3) By other witnesses, in cases mentioned in Section 1198.

(b) (1) Proof of the execution of a power of attorney, grant deed, mortgage, deed of trust, quitclaim deed, or security agreement is not permitted pursuant to Section 27287 of the Government Code, though proof of the execution of a trustee’s deed or deed of reconveyance is permitted.

(2) Proof of the execution for any instrument requiring a notary public to obtain a thumbprint from the party signing the document in the notary public’s journal is not permitted.

(c) Any certificate for proof of execution taken within this state may be in the following form, although the use of other, substantially similar forms is not precluded:

State of California)
County of _____) ss.

On ____ (date), before me, the undersigned, a notary public for the state, personally appeared ____ (name of subscribing witness), proved to me to be the person whose name is subscribed to the within instrument, as a witness thereto, on the oath of ____ (name of credible witness), a credible witness who is known to me and provided a satisfactory identifying document. ____ (name of subscribing witness), being by me duly sworn, said that he/she was present and saw/heard ____ (name[s] of principal[s]), the same person(s) described in and whose name(s) is/are subscribed to the within or attached instrument in his/her/their authorized capacity(ies) as (a) party(ies) thereto, execute or acknowledge executing the same, and that said affiant subscribed his/her name to the within or attached instrument as a witness at the request of ____ (name[s] of principal[s]).

WITNESS my hand and official seal.

Signature _____ (Notary public seal)

SEC. 4. Section 3505 of the Commercial Code is amended to read:

3505. (a) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(1) A document regular in form as provided in subdivision (b) which purports to be a protest.

(2) A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor.

(3) A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business that shows dishonor, even if there is no evidence of who made the entry.

(b) A protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public during the course and scope of employment with a financial institution or other person authorized to administer oaths by the laws of any other state, government, or country in the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest shall identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

SEC. 5. Section 8205 of the Government Code is amended to read:

8205. (a) It is the duty of a notary public, when requested:

(1) To demand acceptance and payment of foreign and inland bills of exchange, or promissory notes, to protest them for nonacceptance and nonpayment, and, with regard only to the nonacceptance or nonpayment of bills and notes, to exercise any other powers and duties that by the law of nations and according to commercial usages, or by the laws of any other state, government, or country, may be performed by a notary. This paragraph applies only to a notary public employed by a financial institution, during the course and scope of the notary's employment with the financial institution.

(2) To take the acknowledgment or proof of advance health care directives, powers of attorney, mortgages, deeds, grants, transfers, and other instruments of writing executed by any person, and to give a certificate of that proof or acknowledgment, endorsed on or attached to the instrument. The certificate shall be signed by the notary public in the notary public's own handwriting. A notary public may not accept any acknowledgment or proof of any instrument that is incomplete.

(3) To take depositions and affidavits, and administer oaths and affirmations, in all matters incident to the duties of the office, or to be used before any court, judge, officer, or board. Any deposition, affidavit, oath, or affirmation shall be signed by the notary public in the notary public's own handwriting.

(4) To certify copies of powers of attorney under Section 4307 of the Probate Code. The certification shall be signed by the notary public in the notary public's own handwriting.

(b) It shall further be the duty of a notary public, upon written request:

(1) To furnish to the Secretary of State certified copies of the notary's journal.

(2) To respond within 30 days of receiving written requests sent by certified mail from the Secretary of State's office for information relating to official acts performed by the notary.

SEC. 6. Section 8208 of the Government Code is amended to read:

8208. The protest of a notary public acting in the course and scope of employment by a financial institution, under his or her hand and official seal, of a bill of exchange or promissory note for nonacceptance or nonpayment, specifying any of the following is prima facie evidence of the facts recited therein:

(a) The time and place of presentment.

(b) The fact that presentment was made and the manner thereof.

(c) The cause or reason for protesting the bill.

(d) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

SEC. 7. Section 8211 of the Government Code is amended to read:

8211. Fees charged by a notary public for the following services shall not exceed the fees prescribed by this section.

(a) For taking an acknowledgment or proof of a deed, or other instrument, to include the seal and the writing of the certificate, the sum of ten dollars (\$10) for each signature taken.

(b) For administering an oath or affirmation to one person and executing the jurat, including the seal, the sum of ten dollars (\$10).

(c) For all services rendered in connection with the taking of any deposition, the sum of twenty dollars (\$20), and in addition thereto, the sum of five dollars (\$5) for administering the oath to the witness and the sum of five dollars (\$5) for the certificate to the deposition.

(d) No fee may be charged to notarize signatures on vote by mail ballot identification envelopes or other voting materials.

(e) For certifying a copy of a power of attorney under Section 4307 of the Probate Code the sum of ten dollars (\$10).

(f) In accordance with Section 6107, no fee may be charged to a United States military veteran for notarization of an application or a claim for a pension, allotment, allowance, compensation, insurance, or any other veteran's benefit.

SEC. 8. Section 12181 is added to the Government Code, to read:

12181. The Secretary of State's office may refuse to perform a service or refuse a filing based on a reasonable belief that the service or filing is being requested for an unlawful, false, or fraudulent purpose, to promote or conduct an illegitimate object or purpose, or is being requested or submitted in bad faith or for the purpose of harassing or defrauding a person or entity.

SEC. 9. Section 27287 of the Government Code, as amended by Section 7 of Chapter 319 of the Statutes of 1997, is amended to read:

27287. Unless it belongs to the class provided for in either Sections 27282 to 27286, inclusive, or Section 1202 or 1203, of the Civil Code, or is a fictitious mortgage or deed of trust as provided in Section 2952 or 2963 of the Civil Code, or is a fictitious oil and gas lease as provided in Section 1219 of the Civil Code, or is a claim of lien, as provided in Section 3084 of the Civil Code, or a notice of completion, as provided in Section 3093 of the Civil Code, before an instrument can be recorded its execution shall be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary or other person executing it on behalf of the corporation, or, except for any power of attorney, quitclaim deed, or grant deed other than a trustee's deed or a deed of reconveyance, mortgage, deed of trust, or security agreement, proved by subscribing witness or as provided in Sections 1198 and 1199 of the Civil Code, and the acknowledgment or proof certified as prescribed by law.

SEC. 10. Section 27287 of the Government Code, as amended by Section 33 of Chapter 697 of the Statutes of 2010, is amended to read:

27287. Unless it belongs to the class provided for in either Sections 27282 to 27286, inclusive, or Section 1202 or 1203, of the Civil Code, or is a fictitious mortgage or deed of trust as provided in Section 2952 or 2963 of the Civil Code, or is a fictitious oil and gas lease as provided in Section 1219 of the Civil Code, or is a claim of lien under Section 8416 of the Civil Code or a notice of completion under Section 8182 or 9204 of the Civil Code, before an instrument can be recorded its execution shall be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary or other person executing it on behalf of the corporation, or, except for any power of attorney, quitclaim deed, or grant deed other than a trustee's deed or a deed of reconveyance, mortgage, deed of trust, or security agreement, proved by subscribing witness or as provided in Sections 1198 and 1199 of the Civil Code, and the acknowledgment or proof certified as prescribed by law.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.