
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2120 **Hearing Date:** June 4, 2024
Author: Chen
Version: May 22, 2024
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Trespass*

HISTORY

Source: California Association of Licensed Repossessors

Prior Legislation: AB 515 (Chen, 2021), vetoed by the Governor
AB 913 (Smith, Ch. 416, Stats. of 2021)
AB 1787 (Maddox, Ch. 149, Stats. of 2000)

Support: Unknown

Opposition: Consumers for Auto Reliability and Safety; Consumer Federation of California

Assembly Floor Vote: 72 - 0

PURPOSE

The purpose of this bill is to authorize a licensed repossession agency and its employees to drive a vehicle upon private property that is known to be private without the consent of the owner, the owner's agent or the person in lawful possession of the property when they are searching for or repossessing collateral, provided that upon completing that search or repossession, they leave the property within a reasonable amount of time.

Existing law defines "repossession agency" to mean any person who, for any consideration whatsoever, engages in business, or accepts employment to locate or recover collateral, whether voluntarily or involuntarily, including, but not limited to collateral registered under the provisions of the Vehicle Code, which is subject to a security agreement, except as specified. (Bus. & Prof. Code, § 7500.2.)

Existing law states that no person shall engage in the activities of a repossession agency unless the person holds a valid repossession agency license or is exempt from licensure, as provided. (Bus. & Prof. Code, § 7502.)

Existing law requires a licensee to serve a debtor with notice of seizure as soon as possible within specified time periods and requires specified information to be included in the notice such as contact information of the legal owner and the repossession agency. (Bus. & Prof. Code, § 7507.10.)

Existing law authorizes the Director of Consumer Affairs to assess administrative fines for a number of enumerated prohibited acts, including unlawfully entering any private building or secured area without the consent of the owner, or of the person in legal possession thereof, at the time of repossession. The fine for such a violation is \$500 for each violation. (Bus. & Prof. Code, § 7508.2)

Existing law defines “private building” as any dwelling, outbuilding or other enclosed structure. (Bus. & Prof. Code, § 7500.1, subd. (s).)

Existing law provides that “secured area” means and includes any fenced and locked area. (Bus. & Prof. Code, § 7500.1, subd. (x).)

Existing law provides that, except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding \$1,000, or by both. (Pen. Code, § 19.)

Existing law provides that a person willfully commits a trespass by entering and occupying real property or structures of any kind without the consent of the owner, the owner’s agent, or the person in lawful possession of the property, punishable as a misdemeanor. (Pen. Code, § 602, subd. (m).)

Existing law provides that a person willfully commits a trespass by driving a vehicle, as defined, upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, the owner’s agent or the person in lawful possession. (Pen. Code, § 602, subd. (n).)

Existing law exempts from the prohibition above a process server who is making lawful service of process, provided that upon exiting the vehicle, the person proceeds immediately to attempt the service of process, and leaves immediately upon completing the service of process or upon the request of the owner or owner’s agent. (Pen. Code, § 602, subd. (n).)

Existing law exempts registered process servers from trespass laws when entering any land under cultivation, or enclosed by fence, belonging to, or occupied by another, or unenclosed land where signs forbid trespassing. (Pen. Code, § 602.8, subd. (c)(3).)

Existing law authorizes registered process servers access to a gated community for a reasonable period of time for the purpose of performing lawful service of process. (Code Civ. Proc., § 415.21.)

This bill provides that the prohibition against trespassing by driving upon real property belonging to or lawfully occupied by another without the consent of the owner or person in lawful possession does not apply to a repossession agency and its employees when they are on private property searching for collateral or repossessing collateral, and, upon completing that search or repossession, leave the property within a reasonable amount of time.

This bill specifies that it does not restrict the authority of the Director of Consumer Affairs to penalize conduct prohibited under specified provisions of the Business and Professions Code that prohibit repossessors from entering certain private property.

COMMENTS

1. Need for This Bill

According to the Author:

AB 2120 addresses the problem that occurs when a debtor who calls the police claiming that a reposessor is trespassing when they have completed a repossession. This is an ongoing occurrence when a vehicle has been repossessed or other collateral such as solar panels has been repossessed. The debtor calls the police and claims that the reposessor is trespassing. This often takes an hour-long discussion with the police to clarify that the reposessor is not trespassing, and at times it has resulted in the reposessor being arrested for trespassing. Even though the charges will be dismissed by a judge, the trouble with the unnecessary arrest wastes time and money for both the police and for the reposessor. This bill makes the common sense clarification that a reposessor is not trespassing when they come on to private property to search for collateral under a lawful repossession order and leaves immediately upon completing the search or repossessing the collateral.

2. Effect of this Bill

Existing law requires property repossession agencies to be licensed by the Department of Consumer Affairs and defines repossession agency as any person who, for any consideration whatsoever, engages in business, or accepts employment to locate or recover collateral, whether voluntarily or involuntarily, including, but not limited to collateral registered under the Vehicle Code and subject to a security agreement.¹ Put more simply, repossesses are individuals or entities legally authorized to recover property (also known as “collateral”) from someone who has not met their financial obligations, usually in the context of loans and credit. Although repossessors in California are generally authorized to recover collateral from public property *and* publicly accessible private property, they are prohibited from unlawfully entering any private building or secured area without consent of the owner, where private building is defined as “any dwelling, outbuilding, or other enclosed structure.”²

Separate provisions of law make it unlawful to willfully commit a trespass by driving a vehicle on to another person’s property, not open to the general public, without that person’s consent, a violation punishable as a misdemeanor.³ Under existing law, only process servers are exempt from that provision, provided that, upon existing the vehicle when making a lawful service of process, the person proceeds immediately to attempt the service of process, and leaves immediately upon completing service or upon the request of the owner of the lawful possessor of the property. This bill seeks to extend the exemption to this vehicular trespass statute to include repossession agencies, provided that when they are finished with their search or repossession, they leave the property within a reasonable amount of time. It is worthwhile to note that the exemption contained in the bill relates explicitly to “driving a vehicle” on private property without consent of the owner – a separate provision of existing law imposes criminal liability for “entering and occupying real property or structures of any kind without the consent of the

¹ Business and Professions Code §§7503 et. seq; §7500.2.

² Business and Professions Code §§ 7500.1, 7508.2(d).

³ Penal Code §602(n).

owner.”⁴ Accordingly, it appears that this bill would only apply to situations where collateral may be repossessed without the need for the repossession agent to exit their vehicle.

3. Veto of Substantially Similar Legislation – AB 515 (Chen, 2021)

This bill is nearly identical to AB 515 (Chen) of the 2021-2022 Legislative Session, which passed through this committee by a vote of 4-0, but was ultimately vetoed by Governor Newsom, who issued the following veto message:

This bill would provide that the crime of trespass does not apply to a repossession agency and its employees when they are on private property searching for or repossessing collateral.

An earlier version of this bill included a cross-reference to repossession licensing requirements that makes it clear that repossessors are not allowed to go into secured or locked areas. Unfortunately, that language was removed from the bill. I am concerned that allowing a repossessioner virtually unfettered access to a person's private property could result in confusion and possibly violent confrontations between property owners and repossessors. For these reasons, I am returning this bill without my signature.

The cross reference cited by the Governor was a reference to Section 7508.2 of the Business and Professions Code, which enumerates various prohibited acts and grants enforcement authority to the Director of Consumer Affairs, who may assess a fine for their commission. One such prohibition involves unlawfully entering any private building or secured area without the consent of the owner, or of the person in legal possession thereof, at the time of repossession, the fine for which is \$500 per violation. This bill includes the cross reference to Section 7508.2 that was removed from an earlier version of AB 515, albeit worded somewhat differently. In any event, it does not appear that the intent and effect of the exemption to criminal trespass liability included in the bill is to authorize any conduct prohibited by Business and Professions Code Section 7508.2.

4. Argument in Opposition

According to Consumers for Auto Reliability and Safety:

We appreciate the author’s recent amendments, restoring the provisions in Business and Professions Code section 7508.2, which identifies repossessing agency conduct for which the Director of the Department of Consumer Affairs may assess administrative fines of \$500 for unlawfully entering a private building or secured area without the consent of the owner or lawful possessor of the property. That is certainly an improvement to the bill and addresses one of the major concerns we had raised, citing the Governor’s prior veto message regarding a similar bill, AB 515 (Chen). However, CARS continues to oppose AB 2120 (Chen) because, even with the newly amended language, it would still significantly increase the risks of potentially violent altercations between vehicle owners and repossession agents who trespass on the vehicle owners’ private property in order to seize their motor vehicles – even in circumstances where the property is not in a garage, other private building, or other

⁴ Penal Code § 602(m).

secured area – for example, when the vehicle is parked in a private driveway adjacent to a home.

Most Californians need their vehicles in order to keep their jobs, access medical care, drive children to and from day care and / or school, and otherwise survive and function in California, where public transportation is woefully inadequate and most Californians rely on private vehicles as a necessity of life. In addition, their vehicles may contain personal items such as life-sustaining medication, purses or wallets, backpacks, cell phones, computers, child safety seats, or other valuables or irreplaceable property. Therefore, allowing repossession access to drive their tow trucks onto private property and tow away personal vehicles with little or no notice to the owners – often in the dark of night – would pose a serious threat to the economic viability of the owners and their families, and to their very survival, and would make violent altercations almost inevitable.

In sum, reasonable restrictions on repossession that enhance public safety may also help discourage unscrupulous car dealers and predatory auto lenders from engaging in widespread illegal activity, secure in the knowledge their affiliated repossession may seize their victims' only means of transportation even when it is legally parked in their own driveway.

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