

AMENDED IN SENATE MARCH 29, 2011

SENATE BILL

No. 212

Introduced by Senator De León

February 8, 2011

An act to *amend Section 21201.5 of, and to add Section 21201.6 to the Business and Professions to, the Financial Code*, relating to pawnbrokers.

LEGISLATIVE COUNSEL'S DIGEST

SB 212, as amended, De León. Pawnbrokers.

Existing law regulates the sale and redemption of pledged property by pawnbrokers. Existing law requires every loan made by a pawnbroker, for which goods are received in pledge as security, to be evidenced by a written contract and requires a copy of the contract to be furnished to the pledgor. Existing law authorizes a pledgor and a pawnbroker to agree to a new loan to take effect upon or at any time after the expiration of the loan period stated in the original contract furnished to the pledgor, requires the pledgor to pay in cash or another form acceptable to the pawnbroker all of the charges and interest due under the original loan, and requires the remaining unpaid balance of the actual amount borrowed under the original loan to be debited to the new loan on which the same article or articles are pledged. A violation of these provisions under circumstances where a person knows or should have known that a violation was being committed is a crime.

This bill would *instead authorize a pledgor and pawnbroker to agree to a replacement loan before title to pledged property has transferred, would establish that a replacement loan is a new loan subject to specified fees, and would authorize the payment of charges and fees for a loan that is being replaced to be made in person or through mail*

*or wire transfer. The bill would provide that the signature of the pledgor is not required for these ~~new~~ replacement loans if the pledgor remits payment of fees and charges due under the ~~original~~ loan contract *being replaced* by mail or proxy and certain other conditions are satisfied. The bill would require the signature of the pledgor and the pledgor's physical presence for a replacement loan that is greater than the principal amount of the loan being replaced or if the terms of the replacement loan are different than the terms of the loan being replaced. The bill would require a pawnbroker to return a pledgor's proposed payment in the same manner it was provided to the pawnbroker if the pawnbroker rejects the payment made by mail or other method.*

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

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. Section 21201.5 of the Financial Code is amended
2 to read:
3 21201.5. A pledgor may request, and a pawnbroker may
4 consent to, a ~~new~~ replacement loan to take effect upon or at any
5 time after the expiration of the loan period stated in the ~~original~~
6 ~~loan contract delivered to the pledgor under loan contract being~~
7 *replaced, but in no event after title to the pledged article transfers*
8 *to the pawnbroker pursuant to Section 21201.* ~~The~~ All of the
9 following shall apply to a replacement loan made pursuant to this
10 section:
11 (a) The loan shall be deemed to be a new loan pursuant to this
12 chapter subject to loan origination fees, storage fees, and other
13 fees authorized under this chapter. All other terms of the
14 replacement loan shall be in compliance with the requirements of
15 this chapter.
16 (b) To obtain a replacement loan, the pledgor shall pay in cash
17 or another form acceptable to the pawnbroker all of the charges

1 and interest due under the ~~original loan, and the~~ *to be replaced.*
 2 *Payment of charges and interest may be made by the pledgor in*
 3 *person, through personal delivery by a representative of the*
 4 *pledgor, through any mail service, or by wire transfer, provided*
 5 *that the form of payment is acceptable to the pawnbroker. If*
 6 *insufficient payment is rendered by the pledgor or is rendered in*
 7 *a form unacceptable to the pawnbroker, the pawnbroker shall*
 8 *return the payment in the manner that it was delivered by the*
 9 *pledgor and the pawnbroker shall be under no obligation to enter*
 10 *into the replacement loan.*

11 (c) *The remaining unpaid balance of the actual amount borrowed*
 12 *under the original loan being replaced shall be debited to the new*
 13 *replacement loan on which the same article or articles are pledged.*
 14 *The loan to which the debit is applied shall be processed as a new*
 15 *loan and shall be deemed to be a new loan subject to loan*
 16 *origination fees, storage fees, and other fees permitted by this*
 17 *chapter, when applicable. The new loan contract required by to be*
 18 *provided for the replacement loan under Section 21201 shall*
 19 *disclose the amount of the original loan being replaced that is*
 20 *debited to the new replacement loan, and the change in loan*
 21 *amount, if any, between the replacement loan and the loan being*
 22 *replaced.*

23 (d) *If the pledgor is personally present, the replacement loan*
 24 *contract shall be provided to the pledgor at the time the*
 25 *replacement loan is made. If the pledgor is not physically present*
 26 *at the time the replacement loan is made, the pawnbroker shall*
 27 *mail the replacement loan contract to the pledgor at the pledgor's*
 28 *last known address, within 10 days of making the loan, by a means*
 29 *that allows the pawnbroker to obtain verification of mailing or*
 30 *delivery of the contract.*

31 **SECTION 1.**

32 **SEC. 2.** Section 21201.6 is added to the Financial Code, to
 33 read:

34 21201.6. (a) ~~Notwithstanding any other provision of law to~~
 35 ~~the contrary~~ *Except as provided in subdivision (b), the signature*
 36 *of a pledgor shall not be required for any new replacement loan*
 37 *contract entered into pursuant to Section 21201.5 if the pledgor*
 38 *remits payment of the fees and charges due under the original loan*
 39 *contract being replaced by mail or by proxy, and all of the*
 40 *following are satisfied:*

1 (1) The pawnbroker accepts the payment and issues a ~~new~~
2 *replacement* loan consistent with Section 21201.5 and this section.

3 (2) The pawnbroker issues a receipt, as set forth in Section
4 21204, to the pledgor either in the same manner in which the
5 pledgor transmitted the payment to the pawnbroker or as otherwise
6 provided under the terms of the ~~original contract~~ *loan contract*
7 *being replaced*.

8 (3) The ~~new replacement~~ loan contract is in writing.

9 (4) The ~~new replacement~~ loan and its fees and charges satisfy
10 the requirements of Sections 21200 to 21201.4, inclusive, excepting
11 Section 21200.7.

12 (5) For a loan of a bona fide principal amount of two thousand
13 five hundred dollars (\$2,500) or more, the formula for calculating
14 the compensation due under the ~~new replacement~~ loan is set forth
15 in the ~~original~~ loan contract *being replaced* or, if none is stated,
16 the compensation for the ~~new replacement~~ loan shall be calculated
17 by the same formula stated in the ~~original loan contract~~ *contract*
18 *being replaced*. *If the dollar amount of the replacement loan is*
19 *two thousand five hundred dollars (\$2,500) or less, the rates*
20 *provided for in Sections 21200 and 21200.5 shall apply.*

21 (b) *Notwithstanding any other provision of law to the contrary,*
22 *the physical presence of the pledgor shall not be required to enter*
23 *into a replacement loan pursuant to Section 21201.5. However,*
24 *the physical presence of the pledgor and his or her signature shall*
25 *be required to enter into a replacement loan if either of the*
26 *following applies:*

27 (1) *The principal amount of the replacement loan is greater*
28 *than the principal amount of the loan being replaced.*

29 (2) *The terms of the replacement loan are different than the*
30 *terms of the loan being replaced.*

31 ~~(b) An original~~

32 (c) A loan contract may be ~~renewed~~ *replaced* under Section
33 21201.5 as many times as the pawnbroker and pledgor may agree,
34 except that all ~~new replacement~~ loans issued as a result of the
35 pledgor's payment by mail or by proxy shall comply with the
36 requirements of subdivision (a).

37 (c) If a pawnbroker rejects a pledgor's proposed payment made
38 by mail or other method, the pawnbroker shall promptly return the
39 pledgor's proposed payment in the same manner it was made to
40 the pawnbroker by the pledgor.

1 ~~SEC. 2.~~

2 *SEC. 3.* No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section 17556 of
8 the Government Code, or changes the definition of a crime within
9 the meaning of Section 6 of Article XIII B of the California
10 Constitution.

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