

Senate Bill No. 762

Passed the Senate September 6, 2013

Secretary of the Senate

Passed the Assembly September 4, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 21647 of the Business and Professions Code, to amend Section 21206.8 of the Financial Code, and to amend Sections 1411 and 11108.5 of the Penal Code, relating to secondhand goods.

LEGISLATIVE COUNSEL'S DIGEST

SB 762, Hill. Secondhand goods: lost, stolen, or embezzled items.

(1) Existing law provides for the regulation of secondhand dealers, as defined, and makes it unlawful for a person to engage in the business of a secondhand dealer without a license issued by the chief of police, the sheriff, or, where appropriate, the police commission. Existing law makes it a crime, punishable by specified fines or imprisonment, or both, if a person knowingly violates the provisions regulating secondhand dealers.

Existing law authorizes a peace officer to place a 90-day hold on property in possession of a pawnbroker, secondhand dealer, or coin dealer if the peace officer has probable cause to believe that property is stolen, as specified, and regulates the manner in which the property is placed on hold, persons claiming the property are notified, and disputes arising out of claims for the property are adjudicated, as provided.

This bill would revise these provisions to, among other things, authorize a peace officer to also place a hold on property that the officer has probable cause to believe is lost or embezzled. The bill would limit these provisions to licensed pawnbrokers and secondhand dealers and would revise notification procedures regarding lost, stolen, or embezzled property. The bill would permit the law enforcement agency to extend the hold beyond 90 days, as specified, until the conclusion of the criminal proceedings. The bill would authorize a peace officer to take physical possession of property as evidence if the property is placed on hold. The bill would provide that if a search warrant is issued for the search of the business of a licensed pawnbroker or secondhand dealer to secure lost, stolen, or embezzled property, the hold would continue as long as the property is subject to the jurisdiction of the court.

The bill would also require a person claiming ownership of the property to file a written statement, signed under penalty of perjury, stating the factual basis upon which they claim ownership or an interest in the property. This bill would require law enforcement to return property that it has taken physical possession of at the conclusion of the criminal proceedings.

(2) Because a knowing violation of the bill's provisions by a person engaging in the business of a secondhand dealer would be a crime, and because the bill would expand the crime of perjury, the 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.

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

SECTION 1. Section 21647 of the Business and Professions Code is amended to read:

21647. (a) (1) If a peace officer has probable cause to believe that property, except coins, monetized bullion, or "commercial grade ingots" as defined in subdivision (d) of Section 21627, in the possession of a licensed pawnbroker or secondhand dealer is lost, stolen, or embezzled, the peace officer may place a hold on the property for a period not to exceed 90 days.

(2) A 90-day hold issued pursuant to this section:

(A) Is created upon the receipt by a licensed pawnbroker or secondhand dealer of a written notice by a peace officer that contains the following:

(i) An accurate description of the property being placed on the 90-day hold.

(ii) An acknowledgment that the property is being placed on hold pursuant to this section and denoting whether physical possession will remain with the licensed pawnbroker or secondhand dealer or will be taken by the law enforcement agency instituting the 90-day hold.

(iii) The law enforcement agency's police report or department record number, if issued, for which the property is needed as evidence.

(iv) The date the notice was delivered to the licensed pawnbroker or secondhand dealer that shall initiate the notification period set forth in subdivisions (c) and (g).

(B) Shall not exceed a period of 90 calendar days, but may be renewed as provided in subparagraph (C).

(C) May be renewed as often as is required for a criminal investigation or criminal proceeding by any peace officer who is a member of the same law enforcement agency as the peace officer placing the hold on the property.

(D) Permits a peace officer to either take physical possession of the property as evidence, consistent with a peace officer's right to a plain view seizure for a criminal investigation or criminal proceeding, or to leave the property in the possession of the licensed pawnbroker or secondhand dealer as a custodian on behalf of the law enforcement agency.

(E) Requires the licensed pawnbroker or secondhand dealer to maintain physical possession of the property placed on hold and prohibits the property's release or disposal, except pursuant to the written authorization signed by a peace officer who is a member of the same law enforcement agency as the peace officer placing the hold on the property.

(F) Terminates when the property is no longer needed as evidence in a criminal investigation or criminal proceeding, at which time the property shall be disposed of pursuant to subdivision (d).

(G) Shall not be applicable to secure lost, stolen, or embezzled property found in the possession of an unlicensed pawnbroker or secondhand dealer that has not duly and correctly reported the acquisition pursuant to Section 21628. In such a circumstance, a peace officer, having probable cause to believe the property found in the possession of an unlicensed pawnbroker or secondhand dealer is lost, stolen, or embezzled, may seize the item or items consistent with the authority granted the peace officer under the Penal Code or any other law.

(b) (1) Whenever property that is in the possession of a licensed pawnbroker or secondhand dealer, and that has been placed on hold pursuant to this section, is required by a peace officer in a

criminal investigation, the licensed pawnbroker or secondhand dealer, upon reasonable notice, shall produce the property at reasonable times and places or may deliver the property to the peace officer upon the request of any peace officer.

(2) If property placed on hold pursuant to this section is physically surrendered or delivered to a law enforcement agency during the period of the hold, the hold and the pawnbroker's lien against the property shall continue.

(c) Whenever a law enforcement agency has knowledge that property in the possession of a licensed pawnbroker or secondhand dealer has been reported as lost, stolen, or embezzled, the law enforcement agency shall, within two business days after placing the hold on the property pursuant to this section, notify in writing the person who reported the property as lost, stolen, or embezzled of the following:

(1) The name, address, and telephone number of the licensed pawnbroker or secondhand dealer who reported the acquisition of the property.

(2) That the law neither requires nor prohibits payment of a fee or any other condition in return for the surrender of the property, except that when the person who reported the property lost, stolen, or embezzled does not choose to participate in the prosecution of an identified alleged thief, the person shall pay the licensed pawnbroker or secondhand dealer the "out-of-pocket" expenses paid in the acquisition of the property in return for the surrender of the property.

(3) That if the person who reported the property as lost, stolen, or embezzled takes no action to recover the property from the licensed pawnbroker or secondhand dealer within 60 days of the mailing of the notice, the licensed pawnbroker or secondhand dealer may treat the property as other property received in the ordinary course of business. During the 60-day notice period, the licensed pawnbroker or secondhand dealer may not release the property to any other person.

(4) That a copy of the notice, with the address of the person who reported the property as lost, stolen, or embezzled deleted, will be mailed to the licensed pawnbroker or secondhand dealer who is in possession of the property.

(d) When property that is in the possession of a licensed pawnbroker or secondhand dealer is subject to a hold as provided

in subdivision (a), and the property is no longer required for the purpose of a criminal investigation or criminal proceeding, the law enforcement agency that placed the hold on the property shall release the hold on the property and return the property to the licensed pawnbroker or secondhand dealer from which it was taken if the law enforcement agency took physical possession of the property.

(e) If a pledgor seeks to redeem property that is subject to a hold, the licensed pawnbroker shall advise the pledgor of the name of the peace officer who placed the hold on the property and the name of the law enforcement agency of which the officer is a member. If the property is not required to be held pursuant to a criminal prosecution the hold shall be released.

(f) Whenever information regarding allegedly lost, stolen, or embezzled property is entered into the Department of Justice automated property system or automated firearms system, and the property is thereafter identified and found to be in the possession of a licensed pawnbroker or secondhand dealer, the property shall be placed on a hold pursuant to this section and Section 11108.5 of the Penal Code.

(g) If the hold, including any additional hold, is allowed to lapse, or 60 days elapse following the delivery of the notice required to be given by subdivision (c) to the person who reported the property to be lost, stolen, or embezzled without a claim being made by that person, whichever is later, the licensed pawnbroker or secondhand dealer may mail under a certificate of mailing issued by the United States Post Office, addressed to the law enforcement agency that placed the property on hold, a written request to delete the property listing from the Department of Justice automated property system or automated firearms system, as is applicable. Within 30 days after the request has been mailed, the law enforcement agency shall either cause the property listing to be deleted as requested or place a hold on the property. If no law enforcement agency takes any further action with respect to the property within 45 days after the mailing of the request, the licensed pawnbroker or secondhand dealer may presume that the property listing has been deleted as requested and may thereafter deal with the property accordingly, and shall not be subject to liability arising from the failure of the removal of the property

listing from the Department of Justice automated property system or automated firearms system.

(h) A licensed pawnbroker or secondhand dealer shall not refuse a request to place property in their possession on hold pursuant to this section when a peace officer has probable cause to believe the property is lost, stolen, or embezzled. If a licensed pawnbroker or secondhand dealer refuses a request to place property on hold pursuant to this section, the property may be seized with or without a warrant. The peace officer shall issue a receipt, as described in Section 21206.7 of the Financial Code, left with the licensed pawnbroker or secondhand dealer. The property shall be disposed of pursuant to procedures set forth in Section 21206.8 of the Financial Code, which shall apply to both licensed pawnbrokers and secondhand dealers under this section.

(i) If a search warrant is issued for the search of the business of a licensed pawnbroker or secondhand dealer to secure lost, stolen, or embezzled property that has been placed on hold, the hold shall continue for the duration that the property remains subject to the court's jurisdiction. Notwithstanding any other law, when the use of the property seized for a criminal investigation or criminal proceeding has concluded, the property shall be disposed of pursuant to subdivision (d).

(j) If a civil or criminal court is called upon to adjudicate the competing claims of a licensed pawnbroker or secondhand dealer and another party claiming ownership or an interest in the property that is or was subject to a hold pursuant to this section, the court shall award possession of the property only after due consideration is given to the effect of Section 2403 of the Commercial Code.

(k) A licensed pawnbroker or secondhand dealer is not subject to civil liability for compliance with this section.

SEC. 2. Section 21206.8 of the Financial Code is amended to read:

21206.8. (a) Notwithstanding the provisions of Chapter 12 (commencing with Section 1407) of Title 10 of Part 2 of the Penal Code, whenever property alleged to have been lost, stolen, or embezzled is taken from a pawnbroker, the peace officer, magistrate, court, clerk, or other person having custody of the property shall not deliver the property to any person claiming ownership unless the provisions of this section are complied with.

(b) (1) If any person makes a claim of ownership, the person shall file a written statement, signed under penalty of perjury, stating the factual basis upon which they claim ownership or an interest in the property with the person having custody of the property, and the person having custody of the property shall notify the pawnbroker of the claim by providing a true and correct copy of the claim to the pawnbroker.

(2) If the pawnbroker makes no claim with respect to the property within 10 days of such notification, the property may be disposed of as otherwise provided by law.

(3) In adjudicating the competing claims of a pawnbroker and a person claiming ownership or an interest in the property seized from a pawnbroker, the adjudicating court shall give due consideration to the effect Section 2403 of the Commercial Code may have on the claims.

(4) At least 30 calendar days before any hearing adjudicating any competing claims of a pawnbroker and a person claiming ownership or an interest in the property, the person having custody of the property shall deliver to the pawnbroker a true and correct copy of the police report, redacted as may be required by law and consistent with due process of law, substantiating the basis of the seizure of the property from the pawnbroker.

(c) If property alleged to have been stolen or embezzled is taken from a pawnbroker, prior to any disposal of the property pursuant to Section 1411 of the Penal Code, the notice to be given to the owner and owner of a security interest pursuant to Section 1411 shall be given to the pawnbroker. Such property shall not be disposed of pursuant to Section 1411 until three months after such notice has been given.

(d) A pawnbroker shall not be liable to any person for any property seized from the pawnbroker on account of the pawnbroker's inability to return the property to that person because of the seizure.

SEC. 3. Section 1411 of the Penal Code is amended to read:

1411. (a) If the ownership of the property stolen or embezzled and the address of the owner, and the address of the owner of a security interest therein, can be reasonably ascertained, the peace officer who took custody of the property shall notify the owner, and a person having a security interest therein, by letter of the location of the property and the method by which the owner may

obtain it. This notice shall be given upon the conviction of a person for an offense involving the theft, embezzlement, or possession of the property, or if a conviction was not obtained, upon the making of a decision by the district attorney not to file the case or upon the termination of the proceedings in the case. Except as provided in Section 217 of the Welfare and Institutions Code, if the property stolen or embezzled is not claimed by the owner before the expiration of three months after the giving of this notice, or, in any case in which such a notice is not given, before the expiration of six months from the conviction of a person for an offense involving the theft, embezzlement, or possession of the property, or if a conviction was not obtained, then from the time the property came into the possession of the peace officer or the case involving the person from whom it was obtained is disposed of, whichever is later, the magistrate or other officer having it in custody may, on the payment of the necessary expenses incurred in its preservation, deliver it to the county treasurer or other proper county officer, by whom it shall be sold and the proceeds paid into the county treasury. However, notwithstanding any other law, if the person from whom custody of the property was taken is a secondhand dealer or licensed pawnbroker and reasonable but unsuccessful efforts have been made to notify the owner of the property and the property is no longer needed for the criminal proceeding, the property shall be returned to the secondhand dealer or pawnbroker who had custody of the property and be treated as regularly acquired property. If the property is transferred to the county purchasing agent it may be sold in the manner provided by Article 7 (commencing with Section 25500) of Chapter 5 of Part 2 of Division 2 of Title 3 of the Government Code for the sale of surplus personal property. If the county officer determines that any of the property transferred to him or her for sale is needed for a public use, the property may be retained by the county and need not be sold. The magistrate or other officer having the property in custody may, however, provide for the sale of the property in the manner provided for the sale of unclaimed property which has been held for at least three months pursuant to Section 2080.4 of the Civil Code.

(b) This section shall not govern the disposition of property placed on hold pursuant to Section 21647 of the Business and Professions Code, notwithstanding the current custodial status of

the property, unless the licensed pawnbroker or secondhand dealer, after receipt of the written advisement required by subdivision (h) of Section 21647 of the Business and Professions Code, willfully refuses to consent to a statutory hold as provided by Section 21647 of the Business and Professions Code or a search warrant for the business of the licensed pawnbroker or secondhand dealer has resulted in the seizure of the property subject to this section.

SEC. 4. Section 11108.5 of the Penal Code is amended to read:

11108.5. (a) If a law enforcement agency identifies serialized property or any property reported pursuant to Section 21628 of the Business and Professions Code that has been reported lost or stolen by the owner or a person entitled to possession of the property and the property has been entered into the appropriate Department of Justice automated property system pursuant to Section 11108, the agency shall notify the owner or person claiming to be entitled to possession of the property of the location of the property within 15 days of making the identification. If the location of the property was reported by a licensed pawnbroker or secondhand dealer pursuant to Section 21630 of the Business and Professions Code, notwithstanding the method by which the property was identified, notice shall be given to the party who reported the property lost or stolen pursuant to Section 21647 of the Business and Professions Code.

(b) If the property is in the custody of the law enforcement agency and it is determined that the property is no longer required for use as evidence in a criminal case, the property shall be made available to the person entitled to possession pursuant to Section 1417.5 or if the property was found in the possession of a licensed pawnbroker or secondhand dealer, pursuant to Section 21647 of the Business and Professions Code.

(c) Subdivision (a) shall not apply to the return to an owner of a lost or stolen vehicle, as defined in Section 670 of the Vehicle Code if the report of theft or loss of the vehicle into the automated property system preceded the report of the acquisition of property as set forth in Section 21628 of the Business and Professions Code by a licensed pawnbroker.

SEC. 5. 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.

Approved _____, 2013

Governor