

ASSEMBLY BILL

No. 1751

Introduced by Assembly Member Low

**(Coauthors: Assembly Members Bigelow, Cooper, Gatto,
Jones-Sawyer, Lackey, Mathis, Mullin, Rodriguez, and Waldron)**

**(Coauthors: Senators Anderson, Berryhill, Block, Hill, Mendoza,
Morrell, Nguyen, and Vidak)**

February 2, 2016

An act to amend Section 21628 of, to repeal Section 21628.1 of, and to repeal and add Section 21630 of, the Business and Professions Code, relating to secondhand goods, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1751, as introduced, Low. Secondhand goods.

Existing law provides for the regulation of secondhand dealers and coin dealers, as defined. Existing law 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 requires a local law enforcement agency to issue a license to engage in the business of a secondhand dealer or pawnbroker to an applicant who meets designated criteria. Existing law authorizes the local licensing authority and the Department of Justice to charge an initial licensure fee and a renewal fee, as specified. Existing law requires a secondhand dealer to report, as specified, to the chief of police or sheriff all secondhand "tangible personal property," as defined, purchased, taken in trade, taken in pawn, accepted for sale on consignment, or accepted for auctioning. Existing law requires the report to include, among other things, the identification of the intended seller

or pledger of the property, verified by the person taking the information by specified methods. Existing law requires the reporting of this information to the Department of Justice through a single, statewide, and uniform electronic reporting system. Existing law requires the Department of Justice to develop descriptive categories and secondhand dealers and coin dealers to use these categories in their reports.

This bill would eliminate the requirements that the Department of Justice develop, and secondhand dealers and coin dealers use, descriptive categories in their reports of acquired tangible personal property. Instead, the bill would require the Department of Justice to accept the plain text property descriptions commonly recognized and utilized by the pawn and secondhand dealer industries. The bill would require the Department of Justice to encode the plain text property descriptions, as specified, and would prohibit the Department of Justice from using funds collected from the initial licensing fee for these purposes. This bill would prohibit the Department of Justice, chiefs of police, and sheriffs from requiring secondhand dealers to report any information other than that which Section 21628 of the Business and Professions Code specifies.

Existing law provides an exception to the reporting requirement for the acquisition of the same property from the same customer within 12 months of a reported transfer, except when submission of the report is specifically requested in writing by the local authorities.

This bill would expand the reporting requirement exception to all acquisitions of the same property from the same customer within 12 months of a reported transfer.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

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

- 1 SECTION 1. (a) It is the intent of the Legislature to clarify
- 2 that pawnbrokers and other secondhand dealers are to report their
- 3 acquisition of tangible personal property received in pledge, trade,
- 4 consignment, or auction or by purchase using plain text, in
- 5 descriptive language historically used in the pawn and secondhand
- 6 industries when reporting to the single, statewide, and uniform
- 7 electronic reporting system operated by the Department of Justice,
- 8 or if not yet implemented in their respective jurisdictions, on paper

1 forms sent to the local police chief or sheriff of the jurisdiction in
2 which the secondhand dealer is physically located.

3 (b) It is further the intent of the Legislature that by specifying
4 this manner of reporting, it will relieve all secondhand dealers and
5 pawnbrokers of the inherent costs and burdens imposed under
6 existing law that requires these businesses to report their daily
7 acquisitions of secondhand tangible personal property on paper
8 forms limited to a single transaction, or where the electronic
9 reporting system is implemented, the cost associated with
10 converting industry standard descriptions to specific law
11 enforcement categories, the ongoing costs of training to that
12 standard, and the costs of implementing software to maintain that
13 standard.

14 (c) Further, it is the intent of the Legislature that the Department
15 of Justice shall continue to accept the plain text descriptive
16 language historically used in the pawn and secondhand industries
17 and shall have the continuing obligation to convert those
18 descriptions as may be required by law enforcement databases in
19 order to protect the integrity of law enforcement databases. It the
20 intent of the Legislature that only properly trained law enforcement
21 personnel of the Department of Justice or local law enforcement
22 classify and encode for law enforcement databases property
23 reported by pawnbrokers and secondhand dealers and that the cost
24 of the classification or the training of law enforcement personnel
25 not be funded by pawnbrokers or secondhand dealers.

26 SEC. 2. Section 21628 of the Business and Professions Code,
27 as amended by Section 1 of Chapter 169 of the Statutes of 2015,
28 is amended to read:

29 21628. (a) Every secondhand dealer or coin dealer described
30 in Section 21626 shall report daily, or on the first working day
31 after receipt or purchase of secondhand tangible personal property,
32 on forms or through an electronic reporting system approved by
33 the Department of Justice, all secondhand tangible personal
34 property, except for firearms, which he or she has purchased, taken
35 in trade, taken in pawn, accepted for sale on consignment, or
36 accepted for auctioning, to the *electronic reporting system operated*
37 *by the Department of Justice, or until such time as this system is*
38 *operational in the jurisdiction where the secondhand dealer is*
39 *located, on paper forms sent to the chief of police or to the sheriff,*
40 in accordance with the provisions of Sections 21630 and 21633

1 and subdivision (d). The report shall be legible, prepared in
2 English, completed where applicable, and ~~include, but not be~~
3 ~~limited to,~~ *include only* the following information:

4 (1) The name and current address of the intended seller or
5 pledger of the property.

6 (2) The identification of the intended seller or pledger. The
7 identification of the seller or pledger of the property shall be
8 verified by the person taking the information, who may use
9 technology, including, but not limited to, cameras or software, or
10 both, to obtain information and verify identity remotely. The
11 verification shall be valid if the person taking the information
12 reasonably relies on any one of the following documents, provided
13 that the document is currently valid or has been issued within five
14 years and contains a photograph or description, or both, of the
15 person named on it, and, where applicable, is signed by the person,
16 and bears a serial or other identifying number:

17 (A) A passport of the United States.

18 (B) A driver's license issued by any state or Canada.

19 (C) An identification card issued by any state.

20 (D) An identification card issued by the United States.

21 (E) A passport from any other country in addition to another
22 item of identification bearing an address.

23 (F) A Matricula Consular in addition to another item of
24 identification bearing an address.

25 (3) (A) A complete and reasonably accurate description of
26 serialized property, including, but not limited to, the following:
27 serial number and other identifying marks or symbols,
28 owner-applied numbers, manufacturer's named brand, and model
29 name or number. Watches need not be disassembled when special
30 skill or special tools are required to obtain the required information,
31 unless specifically requested to do so by a peace officer. A special
32 tool does not include a penknife, caseknife, or similar instrument
33 and disassembling a watch with a penknife, caseknife, or similar
34 instrument does not constitute a special skill. In all instances where
35 the required information may be obtained by removal of a
36 watchband, then the watchband shall be removed. The cost
37 associated with opening the watch shall be borne by the
38 pawnbroker, secondhand dealer, or customer.

39 (B) In the case of the receipt or purchase of a handheld electronic
40 device by a secondhand dealer, the serial number reported pursuant

1 to subparagraph (A) may be the International Mobile Station
2 Equipment Identity (IMEI), the mobile equipment identifier
3 (MEID), or other unique identifying number assigned to that device
4 by the device manufacturer. If none of these identifying numbers
5 are available by the time period required for reporting pursuant to
6 this subdivision, the report shall be updated with the IMEI, MEID,
7 or other unique identifying number assigned to that device by the
8 device manufacturer as soon as reasonably possible but no later
9 than 10 working days after receipt or purchase of the handheld
10 electronic device.

11 (C) For the purpose of this paragraph, “handheld electronic
12 device” means any portable device that is capable of creating,
13 receiving, accessing, or storing electronic data or communications
14 and includes, but is not limited to, a cellular phone, smartphone,
15 or tablet.

16 (4) A complete and reasonably accurate description of
17 nonserialized property, including, but not limited to, the following:
18 size, color, material, manufacturer’s pattern name (when known),
19 owner-applied numbers and personalized inscriptions, and other
20 identifying marks or symbols. Watches need not be disassembled
21 when special skill or special tools are required to obtain the
22 required information, unless specifically requested to do so by a
23 peace officer. A special tool does not include a penknife, caseknife,
24 or similar instrument and disassembling a watch with a penknife,
25 caseknife, or similar instrument does not constitute a special skill.
26 In all instances where the required information may be obtained
27 by removal of a watchband, then the watchband shall be removed.
28 The cost associated with opening the watch shall be borne by the
29 pawnbroker, secondhand dealer, or customer.

30 (5) A certification by the intended seller or pledger that he or
31 she is the owner of the property or has the authority of the owner
32 to sell or pledge the property.

33 (6) A certification by the intended seller or pledger that to his
34 or her knowledge and belief the information is true and complete.

35 (7) A legible fingerprint taken from the intended seller or
36 pledger, as prescribed by the Department of Justice. This
37 requirement does not apply to a coin dealer, unless required
38 pursuant to local regulation.

39 (b) (1) When a secondhand dealer complies with all of the
40 provisions of this section, he or she shall be deemed to have

1 received from the seller or pledger adequate evidence of authority
2 to sell or pledge the property for all purposes included in this
3 article, and Division 8 (commencing with Section 21000) of the
4 Financial Code.

5 (2) In enacting this subdivision, it is the intent of the Legislature
6 that its provisions shall not adversely affect the implementation
7 of, or prosecution under, any provision of the Penal Code.

8 (c) Any person who conducts business as a secondhand dealer
9 at any gun show or event, as defined in Section 478.100 of Title
10 27 of the Code of Federal Regulations, or its successor, outside
11 the jurisdiction that issued the secondhand dealer license in
12 accordance with subdivision (d) of Section 21641, may be required
13 to submit a duplicate of the transaction report prepared pursuant
14 to this section to the local law enforcement agency where the gun
15 show or event is conducted.

16 (d) (1) ~~The Department of Justice shall, in consultation with~~
17 ~~appropriate local law enforcement agencies, develop clear and~~
18 ~~comprehensive descriptive categories denoting tangible personal~~
19 ~~property, as detailed in this section, subject to the reporting~~
20 ~~requirements of this section. These categories shall be incorporated~~
21 ~~by secondhand dealers and coin dealers described in Section 21626~~
22 ~~for purposes of the reporting requirements set forth herein. shall~~
23 *recognize and accept the plain text property descriptions generally*
24 *accepted in the pawn and secondhand industries provided by*
25 *secondhand dealers, as has been the longstanding practice of*
26 *chiefs of police and sheriffs when they receive paper reports from*
27 *secondhand dealers. The Department of Justice shall have the*
28 *continuing duty to encode the plain text property descriptions*
29 *received by pawnbrokers and secondhand dealers for law*
30 *enforcement databases in order for those descriptions to be useful*
31 *for law enforcement purposes. Funds collected pursuant to Section*
32 *21642.5 shall not be used by the Department of Justice for the*
33 *encoding or to train personnel to encode these descriptions.*

34 (2) With the consultation by the Department of Justice with
35 local law enforcement agencies and representatives from the
36 secondhand dealer businesses, pursuant to Resolution Chapter 16
37 of the Statutes of 2010, and upon the availability of sufficient funds
38 in the Secondhand Dealer and Pawnbroker Fund created pursuant
39 to Section 21642.5, the department shall promptly develop a single,

1 statewide, uniform electronic reporting system to be used to
2 transmit these secondhand dealer reports.

3 (3) (A) Except as otherwise provided in this section, any report
4 required of a secondhand dealer shall be transmitted by electronic
5 means.

6 (B) Until the date that the Department of Justice implements
7 the single, statewide, uniform electronic reporting system described
8 in paragraph (2), each secondhand dealer may continue to report
9 the information required by this section under the reporting
10 categories described in paragraph (1) in paper format on forms
11 approved of or provided by the Department of Justice. *Chiefs of*
12 *police and sheriffs continuing to receive paper forms shall also*
13 *continue to recognize and accept the plain text property*
14 *descriptions generally recognized in the pawn and secondhand*
15 *industries.*

16 (C) On and after the date that the Department of Justice
17 implements the single, statewide, uniform electronic reporting
18 system described in paragraph (2), each secondhand dealer shall
19 electronically report using that system the information required
20 by this section under the reporting ~~categories~~ *standard* described
21 in paragraph ~~(2)~~, (1), except that for the first 30 days following
22 the implementation date, each secondhand dealer shall also report
23 the information in paper format as described in subparagraph (B).

24 (D) *Unless specifically identified in this section, the Department*
25 *of Justice, chiefs of police, and sheriffs shall not require a*
26 *secondhand dealer to include any additional information*
27 *concerning the seller, the pledger, or the property received by the*
28 *secondhand dealer in the report required by this section.*

29 (4) A coin dealer shall report the information required by this
30 section under the reporting ~~categories~~ *standard* described in
31 paragraph (1) on a form developed by the Attorney General that
32 the coin dealer shall transmit each day by facsimile transmission
33 or by mail to the chief of police or sheriff. A transaction shall
34 consist of not more than one item.

35 (5) For purposes of this subdivision, “item” shall mean any
36 single physical article. However, with respect to a commonly
37 accepted grouping of articles that are purchased as a set, including,
38 but not limited to, a pair of earrings or place settings of china,
39 silverware, or other tableware, “item” shall mean that commonly
40 accepted grouping.

1 (6) Nothing in this subdivision shall be construed as excepting
2 a secondhand dealer from the fingerprinting requirement of
3 paragraph (7) of subdivision (a).

4 (e) Nothing in this section shall be construed to exempt a person
5 licensed as a firearms dealer pursuant to Sections 26700 to 26915,
6 inclusive, of the Penal Code from the reporting requirements for
7 the delivery of firearms pursuant to Sections 26700 to 26915,
8 inclusive, of the Penal Code.

9 SEC. 3. Section 21628.1 of the Business and Professions Code
10 is repealed.

11 ~~21628.1. (a) Notwithstanding Section 21628, submission of~~
12 ~~transaction reports are not required to be submitted to the local~~
13 ~~law enforcement agency if the report of an acquisition of the same~~
14 ~~property from the same customer has been submitted within the~~
15 ~~preceding 12 months, except when submission of the reports is~~
16 ~~specifically requested in writing by the local licensing authority.~~

17 ~~(b) This section shall become operative on July 1, 2010.~~

18 SEC. 4. Section 21630 of the Business and Professions Code
19 is repealed.

20 ~~21630. If the transaction takes place within the territorial limits~~
21 ~~of an incorporated city, the report shall be submitted to the police~~
22 ~~chief executive of the city or his or her designee. If the transaction~~
23 ~~takes place outside the territorial limits of an incorporated city,~~
24 ~~the report shall be submitted to the sheriff of the county or his or~~
25 ~~her designee.~~

26 SEC. 5. Section 21630 is added to the Business and Professions
27 Code, to read:

28 21630. (a) A secondhand dealer shall electronically transmit
29 to the Department of Justice’s single, statewide, uniform electronic
30 reporting system on the date of transaction or, if not then possible
31 due to an electrical, telecommunications, or other malfunction, as
32 soon as reasonable thereafter, the report of acquisition of tangible
33 personal property as required by Section 21628.

34 (b) Notwithstanding Section 21628, submission of a tangible
35 property acquisition report is not required if the report of an
36 acquisition of the same property from the same customer has been
37 submitted within the preceding 12 months.

38 (c) If the electronic reporting system operated by the Department
39 of Justice has not been implemented in the jurisdiction where the
40 secondhand dealer is located, the report shall be submitted to the

1 chief of police of the city or his or her designee within the territorial
2 limits of the incorporated city in which the secondhand dealer is
3 located. If the transaction takes place outside the territorial limits
4 of an incorporated city in which the secondhand dealer is located,
5 the report shall be submitted to the sheriff of the county or his or
6 her designee.

7 SEC. 6. This act is an urgency statute necessary for the
8 immediate preservation of the public peace, health, or safety within
9 the meaning of Article IV of the Constitution and shall go into
10 immediate effect. The facts constituting the necessity are:

11 In order to make the single, statewide, uniform electronic system
12 a cost savings for secondhand dealers and pawnbrokers, the plain
13 text property descriptions historically utilized by these industries
14 must be accepted by the Department of Justice, just as these plain
15 text descriptions have historically been accepted by chiefs of police
16 and sheriffs.

17 Further, to protect the integrity of law enforcement databases,
18 it is necessary to specify that only trained law enforcement
19 personnel shall input classification codes of property reported by
20 these businesses, not the businesses themselves.