

AMENDED IN SENATE JUNE 20, 2016

AMENDED IN ASSEMBLY MAY 31, 2016

AMENDED IN ASSEMBLY APRIL 25, 2016

AMENDED IN ASSEMBLY APRIL 18, 2016

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1751

Introduced by Assembly Member Low

(Coauthors: Assembly Members Bigelow, Calderon, Cooper, Dababneh, Gatto, Jones, Jones-Sawyer, Lackey, Mathis, Mullin, Olsen, Rodriguez, Waldron, and Wilk)

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

February 2, 2016

An act to amend Sections 21628 and 21642.5 of, to add Section 21627.5 to, to repeal Sections 21628.1 and 21633 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 amended, 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 define “CAPSS” as the California Pawnbroker and SecondhandDealer System, which is the single, statewide, and uniform electronic reporting system operated by the Department of Justice. The bill would eliminate the requirement that a secondhand dealer send reports on paper forms. The 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 authorize a secondhand dealer to utilize an article field descriptor provided by the Department of Justice, if using the article field descriptor would, in whole or in part, populate the property description. This bill would prohibit the Department of Justice, chiefs of police, and sheriffs from requiring secondhand dealers to report any additional information other than that which is required by these provisions. The bill would require that a future change to the reporting requirements of CAPSS that substantively alters the reporting standards be implemented and operated in compliance with the Administrative Procedure Act and prohibit the Department of Justice from taking any action with respect to the implementation, operation, or maintenance of CAPSS by adoption of an emergency regulation. The bill would also require the Department of Justice to convene a meeting with the Department of Technology to discuss issues pertaining to any proposed

changes or upgrades, and authorize the Department of Technology to provide technological assistance for ongoing improvements, updates, or changes, to CAPSS.

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

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

22 (c) Further, it is the intent of the Legislature that the Department
23 of Justice shall continue to accept the plain text descriptive

1 language historically used in the pawn and secondhand industries
2 and may provide article field descriptors to secondhand dealers in
3 order to facilitate communication between the single, statewide,
4 and uniform electronic reporting system and law enforcement
5 databases. It is the intent of the Legislature that only properly
6 trained law enforcement personnel of the Department of Justice
7 or local law enforcement classify and encode for law enforcement
8 databases property reported by pawnbrokers and secondhand
9 dealers.

10 SEC. 2. Section 21627.5 is added to the Business and
11 Professions Code, to read:

12 21627.5. "CAPSS" means the California Pawnbroker and
13 SecondhandDealer System, which is a single, statewide, uniform
14 electronic reporting system that receives secondhand dealer reports
15 and is operated by the Department of Justice consistent with
16 Resolution Chapter 16 of the Statutes of 2010. The maintenance
17 and operation of CAPSS is funded by the Secondhand Dealer and
18 Pawnbroker Fund established pursuant to Section 21642.5.

19 SEC. 3. Section 21628 of the Business and Professions Code,
20 as amended by Section 1 of Chapter 169 of the Statutes of 2015,
21 is amended to read:

22 21628. (a) Every secondhand dealer or coin dealer described
23 in Section 21626 shall report daily, or no later than the next
24 business day excluding weekends and holidays after receipt or
25 purchase of secondhand tangible personal property, to CAPSS, all
26 secondhand tangible personal property, except for firearms, which
27 he or she has purchased, taken in trade, taken in pawn, accepted
28 for sale on consignment, or accepted for auctioning, in accordance
29 with the provisions of Section 21630 and subdivision (d). The
30 report shall be legible, prepared in English, completed where
31 applicable, and include only the following information:

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

34 (2) The identification of the intended seller or pledger. The
35 identification of the seller or pledger of the property shall be
36 verified by the person taking the information, who may use
37 technology, including, but not limited to, cameras or software, or
38 both, to obtain information and verify identity remotely. The
39 verification shall be valid if the person taking the information
40 reasonably relies on any one of the following documents, provided

1 that the document is currently valid or has been issued within five
2 years and contains a photograph or description, or both, of the
3 person named on it, and, where applicable, is signed by the person,
4 and bears a serial or other identifying number:

- 5 (A) A passport of the United States.
- 6 (B) A driver's license issued by any state or Canada.
- 7 (C) An identification card issued by any state.
- 8 (D) An identification card issued by the United States.
- 9 (E) A passport from any other country in addition to another
10 item of identification bearing an address.
- 11 (F) A Matricula Consular in addition to another item of
12 identification bearing an address.

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

33 (B) A secondhand dealer may utilize an article field descriptor,
34 the format of which shall be provided by the Department of Justice,
35 if using the article field descriptor would, in whole or in part,
36 accurately populate the property description with a plain text
37 description generally accepted in the secondhand industry. The
38 lack of an article field descriptor by a secondhand dealer shall not
39 be relevant to any determination as to whether the secondhand

1 dealer has received evidence of authority to sell or pledge the
2 property pursuant to paragraph (1) of subdivision (b).

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

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

20 (4) A certification by the intended seller or pledger that he or
21 she is the owner of the property or has the authority of the owner
22 to sell or pledge the property.

23 (5) A certification by the intended seller or pledger that to his
24 or her knowledge and belief the information is true and complete.

25 (6) A legible fingerprint taken from the intended seller or
26 pledger, as prescribed by the Department of Justice. This
27 requirement does not apply to a coin dealer, unless required
28 pursuant to local regulation.

29 (7) A report submitted by a pawnbroker or secondhand dealer
30 shall be deemed to have been accepted by the Department of Justice
31 if a good faith effort has been made to supply all of the required
32 information. An error or omission on the report shall be noted, and
33 the reporting pawnbroker or secondhand dealer shall be notified
34 of the error or omission by the Department of Justice. A reporting
35 pawnbroker or secondhand dealer shall have three business days
36 from that notice to amend or correct the report before being subject
37 to any enforcement violation.

38 (b) (1) When a secondhand dealer complies with all of the
39 provisions of this section, he or she shall be deemed to have
40 received from the seller or pledger adequate evidence of authority

1 to sell or pledge the property for all purposes included in this
2 article, and Division 8 (commencing with Section 21000) of the
3 Financial Code.

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

7 (c) Upon request from a local law enforcement agency, the
8 Department of Justice shall electronically provide to the requesting
9 local law enforcement agency transaction data reported by a
10 secondhand dealer who is not licensed by the requesting local law
11 enforcement agency but who is ~~attending~~ *conducting business as*
12 *a secondhand dealer* at a gun show or event, as defined in Section
13 478.100 of Title 27 of the Code of Federal Regulations, in the
14 jurisdiction of the requesting local law enforcement agency.

15 (d) (1) The Department of Justice shall recognize and accept
16 the plain text property descriptions generally accepted in the pawn
17 and secondhand industries provided by pawnbrokers and
18 secondhand dealers, as has been the longstanding practice of chiefs
19 of police and sheriffs when they had received paper reports from
20 pawnbrokers and secondhand dealers.

21 (2) A report required of a secondhand dealer pursuant to this
22 section shall be transmitted by electronic means to CAPSS by the
23 secondhand dealer.

24 (3) 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 concerning
27 the seller, the pledger, or the property received by the secondhand
28 dealer in the report required by this section.

29 (4) If there is a future change to the reporting requirements of
30 CAPSS that substantively alters the reporting standards provided
31 by this article, those changes shall be implemented and operated
32 in compliance with the Administrative Procedure Act (Chapter
33 3.5 commencing with Section 11340) of Part 1 of Division 3 of
34 Title 2 of the Government Code). In implementing and operating
35 a future change to CAPSS, the Department of Justice, chiefs of
36 police, and sheriffs shall comply with Sections 21637 and 21638.
37 Notwithstanding any other law, the Department of Justice shall
38 not take any action with respect to the implementation, operation,
39 or maintenance of CAPSS required by this chapter by adoption of
40 an emergency regulation.

1 (5) On or before July 1, 2017, the Department of Justice shall
2 convene a meeting with the Department of Technology to discuss
3 issues pertaining to any proposed changes or upgrades to CAPSS
4 required by this chapter. The Department of Technology may
5 provide technological assistance for ongoing improvements,
6 updates, or changes to CAPSS required by this chapter, as
7 requested.

8 (6) A coin dealer shall report the information required by this
9 section under the reporting standard described in paragraph (1) on
10 a form developed by the Attorney General that the coin dealer
11 shall transmit each day by facsimile transmission or by mail to the
12 chief of police or sheriff. A transaction shall consist of not more
13 than one item.

14 (7) For purposes of this subdivision, “item” shall mean any
15 single physical article. However, with respect to a commonly
16 accepted grouping of articles that are purchased as a set, including,
17 but not limited to, a pair of earrings or place settings of china,
18 silverware, or other tableware, “item” shall mean that commonly
19 accepted grouping.

20 (8) Nothing in this subdivision shall be construed as excepting
21 a secondhand dealer from the fingerprinting requirement of
22 paragraph (6) of subdivision (a).

23 (e) Nothing in this section shall be construed to exempt a person
24 licensed as a firearms dealer pursuant to Sections 26700 to 26915,
25 inclusive, of the Penal Code from the reporting requirements for
26 the delivery of firearms pursuant to Sections 26700 to 26915,
27 inclusive, of the Penal Code.

28 SEC. 4. Section 21628.1 of the Business and Professions Code
29 is repealed.

30 SEC. 5. Section 21630 of the Business and Professions Code
31 is repealed.

32 SEC. 6. Section 21630 is added to the Business and Professions
33 Code, to read:

34 21630. (a) A secondhand dealer or coin dealer shall
35 electronically transmit to CAPSS no later than the next business
36 day after the date of transaction excluding weekends and holidays
37 or, if not then possible due to an electrical, telecommunications,
38 or other malfunction, as soon as reasonable thereafter, the report
39 of acquisition of tangible personal property as required by Section
40 21628.

1 (b) Notwithstanding Section 21628, submission of a tangible
2 property acquisition report is not required if the report of an
3 acquisition of the same property from the same customer has been
4 submitted within the preceding 12 months.

5 SEC. 7. Section 21633 of the Business and Professions Code
6 is repealed.

7 SEC. 8. Section 21642.5 of the Business and Professions Code
8 is amended to read:

9 21642.5. (a) The Department of Justice shall require each
10 applicant for an initial license under Section 21641 of this code or
11 Section 21300 of the Financial Code and each applicant for renewal
12 of a license under Section 21642 of this code or Section 21301 of
13 the Financial Code to pay a fee not to exceed three hundred dollars
14 (\$300), but in no event exceeding the costs described in subdivision
15 (b), except that the fee may be increased at a rate not to exceed
16 any increase in the California Consumer Price Index as compiled
17 and reported by the Department of Industrial Relations.

18 (b) The fees assessed pursuant to subdivision (a) shall be no
19 more than necessary to cover the reasonable regulatory costs to
20 the department of doing all of the following:

21 (1) Processing initial license applications under Section 21641
22 of this code and Section 21300 of the Financial Code.

23 (2) Processing renewal applications under Section 21642 of this
24 code and Section 21301 of the Financial Code.

25 (3) Implementing, operating, and maintaining CAPSS described
26 in Section 21627.5.

27 (c) All licensees holding a license issued before the effective
28 date of the act adding this section pursuant to Section 21641 or
29 21642 of this code or Section 21300 or 21301 of the Financial
30 Code shall, within 120 days after enactment of the act adding this
31 section in the 2011–12 Regular Session, in addition to any fee
32 required under subdivision (a), pay a fee not to exceed two hundred
33 eighty-eight dollars (\$288) to the Department of Justice.

34 (d) The fees paid pursuant to subdivisions (a) and (c) shall be
35 deposited in the Secondhand Dealer and Pawnbroker Fund, which
36 is hereby established in the State Treasury. The revenue in the
37 fund shall, upon appropriation by the Legislature, be used by the
38 Department of Justice for the purpose of paying for the costs
39 described in paragraphs (1) to (3), inclusive, of subdivision (b),
40 except that the revenue received pursuant to subdivision (c) shall,

1 upon appropriation by the Legislature, be used by the Department
2 of Justice for the purpose of paying for the costs described in
3 paragraph (3) of subdivision (b).

4 (e) Applicants described in subdivision (a) shall submit to the
5 Department of Justice fingerprint images and related information
6 required by the Department of Justice for the purposes of obtaining
7 information as to the existence and contents of a record of state
8 convictions and state arrests and information as to the existence
9 and contents of a record of state arrests for which the Department
10 of Justice establishes that the person is free on bail or on his or her
11 own recognizance pending trial or appeal.

12 (1) The Department of Justice shall prepare a state-level
13 response pursuant to paragraph (1) of subdivision (l) of Section
14 11105 of the Penal Code.

15 (2) The Department of Justice shall provide subsequent
16 notification service pursuant to Section 11105.2 of the Penal Code
17 for applicants described in this subdivision.

18 (3) The Department of Justice shall charge a fee sufficient to
19 cover the cost of processing the request described in this
20 subdivision. The fee revenues shall be deposited in the Fingerprint
21 Fee Account and shall, upon appropriation by the Legislature, be
22 used by the department for the purposes of paying the costs
23 associated with this subdivision.

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

28 In order to make the single, statewide, uniform electronic system
29 a cost savings for secondhand dealers and pawnbrokers, the plain
30 text property descriptions historically utilized by these industries
31 must be accepted by the Department of Justice, just as these plain
32 text descriptions have historically been accepted by chiefs of police
33 and sheriffs.

34 Further, to protect the integrity of law enforcement databases,
35 it is necessary to specify that only trained law enforcement
36 personnel shall input classification codes of property reported by
37 these businesses, not the businesses themselves.

O