

Introduced by Senator MendozaFebruary 23, 2015

An act to amend Sections 21201, 21201.5, and 21208 of, and to add Section 21201.6 to, the Financial Code, relating to pawnbrokers.

LEGISLATIVE COUNSEL'S DIGEST

SB 300, as introduced, Mendoza. Pawnbrokers: regulations.

Existing law regulates pawnbrokers and requires a written contract for every loan by a pawnbroker for which goods are received in pledge as security, as specified, and requires a copy of that contract to be furnished to the borrower.

This bill would permit the requirement for a written contract to be met electronically, provided that the contract and transaction comply with the provisions of the Uniform Electronic Transactions Act and meet certain disclosure requirements.

Existing law requires a pawnbroker, within one month after the loan period expires, to notify the borrower at his or her last known address of the termination of the loan period, by a means for which verification of mailing or delivery of the notification can be provided by the pawnbroker, and provides for extending the right of redemption for a period of 10 days from the date that notice is mailed.

This bill would instead require the pawnbroker to provide that notification to the pledgor at his or her last known mailing or electronic address, by a means for which verification of mailing or, at the sole option of the pledgor, electronic transmission of the notification can be provided by the pawnbroker, as specified.

Existing law permits a pledgor and a pawnbroker to agree to a new loan to become effective at the end of the loan period and requires the

new loan to be processed as a new loan subject to loan origination, storage, and other fees as specified.

This bill would permit a replacement loan to be issued at the request of the pledgor with consent of the pawnbroker before the expiration of the redemption period, to become effective on the date it is issued, subject to specified procedures.

Existing law requires a pawnbroker to comply with the reporting requirements imposed on secondhand dealers, including the requirement to obtain and report the customer's fingerprint.

This bill would require a pawnbroker who has issued a loan electronically, instead of obtaining and reporting the customer's fingerprint, to electronically deposit the loan proceeds into a deposit account held in the name of the pledgor, as specified.

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. It is the intent of the Legislature to permit the
2 citizens of California the ability to transact pawn or collateral loans
3 in an efficient and expeditious manner wherever they may be
4 located. It is further the intent of the Legislature to permit such
5 loans to be made in conformity with the Uniform Electronic
6 Transactions Act, as set forth in Title 2.5 (commencing with
7 Section 1633.1) of Part 2 of Division 3 of the Civil Code.

8 SEC. 2. Section 21201 of the Financial Code is amended to
9 read:

10 21201. (a) Every loan made by a pawnbroker for which goods
11 are received in pledge as security shall be evidenced by a written
12 contract, a copy of which shall be furnished to the ~~borrower.~~
13 *pledgor*. The loan contract shall provide a four-month loan period,
14 shall set forth the loan period and the date on which the loan is

1 due and payable, and shall clearly inform the ~~borrower~~ *pledgor* of
2 his or her right to redeem the pledge during the loan period.

3 ~~Every~~

4 (b) *Every* loan contract shall contain the following notice, in at
5 least 8-point boldface type and circumscribed by a box,
6 immediately above the space for the ~~borrower's~~ *pledgor's*
7 signature:

8 “You may redeem the property you have pledged at any time
9 until the close of business on ____ [fill in date *no fewer than* four
10 months from date loan begins]. To redeem, you must pay the
11 amount of the loan and the applicable charges which have accrued
12 through the date on which you redeem.”

13 ~~Every~~

14 (c) *Every* pawnbroker shall retain in his or her possession every
15 article pledged to him or her for a period of four months. During
16 such period the ~~borrower~~ *pledgor* may redeem the articles upon
17 payment of the amount of the loan and the applicable charges. If
18 the ~~borrower~~ *pledgor* and the pawnbroker agree in writing that the
19 pawned property may be stored off premises, following the request
20 for redemption of the loan, the pawnbroker shall return the pledged
21 property to the consumer the next calendar day when both the
22 pawnbroker’s store and the storage facility are open, not to exceed
23 two business days.

24 ~~If~~

25 (d) *If* any pledged article is not redeemed during the four-month
26 loan period as provided herein, and the ~~borrower~~ *pledgor* and
27 pawnbroker do not mutually agree in writing to extend the loan
28 period, the pawnbroker shall notify the ~~borrower~~ *pledgor* within
29 one month after expiration of the loan period. If the pawnbroker
30 fails to notify the ~~borrower~~ *pledgor* within one month after the
31 expiration of the loan period, the pawnbroker shall not charge
32 interest from the day after the expiration of the one-month period.
33 The pawnbroker shall notify the ~~borrower~~ *pledgor* at his or her
34 last known *mailing or electronic* address of the termination of the
35 loan period, by a means for which verification of mailing ~~or~~
36 ~~delivery~~ *or, at the sole option of the pledgor, electronic*
37 *transmission* of the notification can be provided by the pawnbroker,
38 and extending the right of redemption, during posted business
39 hours, for a period of 10 days from date of mailing *or electronic*
40 *transmission* of that notice. The 10-day notice shall ~~include a~~

1 ~~statement that~~ state, in substantially the same format as the
2 following: “If the tenth day falls on a day when the pawnshop is
3 closed, the time period is extended to the next day that the
4 pawnshop is open.”

5 ~~However,~~

6 (e) *However*, the posted schedule of charges required pursuant
7 to Section 21200.5 shall contain a notice informing the ~~borrower~~
8 *pledgor* that if he or she desires, the pawnbroker shall send the
9 notice of termination of the loan period by registered or certified
10 mail with return receipt requested, upon prepayment of the mailing
11 costs. ~~If~~

12 (f) *If* any pledged article is not redeemed within the 10-day
13 notice period, the pawnbroker shall become vested with all right,
14 title, and interest of the pledgor, or his or her assigns, to the pledged
15 article, to hold and dispose of as his or her own property. Any
16 other provision of law relating to the foreclosure and sale of
17 pledges shall not be applicable to any pledge the title to which is
18 transferred in accordance with this section. ~~The~~

19 (g) *The* pawnbroker shall not sell any article of pledged property
20 until he or she has become vested with the title to that property
21 pursuant to this section. The sale of pledged property is a
22 misdemeanor pursuant to Section 21209.

23 SEC. 3. Section 21201.5 of the Financial Code is amended to
24 read:

25 21201.5. ~~A~~(a) *During the contractual loan period and any*
26 *extension thereof*, a pledgor may request, and a pawnbroker may
27 consent to, a ~~new replacement~~ loan to take effect upon ~~or at any~~
28 ~~time after~~ the expiration of the loan period stated in the ~~original~~
29 ~~active~~ loan contract delivered to the pledgor under Section 21201
30 ~~or this section~~. ~~The pledgor shall pay in cash or another form~~
31 ~~acceptable to the pawnbroker all of the charges and interest due~~
32 ~~under the original loan, and the remaining unpaid balance of the~~
33 ~~actual amount borrowed under the original loan shall be debited~~
34 ~~to the new loan on which the same article or articles are pledged.~~
35 ~~The loan to which the debit is applied shall be processed as a new~~
36 ~~loan and shall be deemed to be a new loan subject to loan~~
37 ~~origination fees, storage fees, and other fees permitted by this~~
38 ~~chapter, when applicable. The new loan contract required by~~
39 ~~Section 21201 shall disclose the amount of the original loan that~~
40 ~~is debited to the new loan.~~

1 (b) A replacement loan may also issue upon the request of the
2 pledgor and the consent of the pawnbroker prior to the expiration
3 of the grace period provided by Section 21201. This replacement
4 loan shall become effective on the date it is issued.

5 (c) All of the following shall apply to a replacement loan issued
6 pursuant to this section:

7 (1) The loan shall be processed as, and deemed to be, a new
8 loan subject to all other fees and charges permitted by this chapter.

9 (2) The pledgor's consent to the terms of any replacement loan
10 shall be deemed given when he or she executes the written
11 replacement loan in person or electronically in conformity with
12 the provisions of Section 21201.6, and pays in cash or another
13 form acceptable to the pawnbroker all of the charges and interest
14 due under the prior loan or if all of the following conditions are
15 met:

16 (A) The pledgor pays off all outstanding charges from the prior
17 loan then due, including interest, and any loan writing, storage,
18 notification, or other fee authorized in this chapter in cash or
19 another form acceptable to the pawnbroker. The pledgor's payment
20 may be delivered to the pawnbroker by any method, including, but
21 not limited to, United States mail, private mail, a personal
22 representative, or electronic transfer, provided that manner of
23 payment is acceptable to the pawnbroker. If insufficient payment
24 is tendered by the pledgor or is tendered in a form unacceptable
25 to the pawnbroker, the pawnbroker shall, if commercially
26 reasonable, return the payment in the same manner that the
27 payment was delivered by the pledgor or by another commercially
28 reasonable manner within five business days and shall include a
29 statement advising the pledgor the reason the payment was
30 rejected. The pawnbroker is under no obligation to enter into a
31 replacement loan if the amount is insufficient or the form of
32 payment or method of tender is unacceptable to the pawnbroker.

33 (B) If the replacement loan is executed other than pursuant to
34 Section 21201.6, the principal amount of the replacement loan is
35 equal to or less than the principal amount of the prior loan.

36 (C) The terms of the replacement loan are consistent with this
37 chapter on the date the replacement loan is issued.

38 (D) The replacement loan is evidenced by a written agreement
39 or electronic record and a paper or electronic copy is mailed or
40 otherwise transmitted to the pledgor within five business days

1 following receipt of payment by the pawnbroker by a means for
2 which verification of mailing or transmittal can be provided by
3 the pawnbroker.

4 (3) The unpaid balance of the prior loan shall be debited to the
5 replacement loan on which the same article or articles have been
6 pledged. The replacement loan shall disclose the amount of the
7 prior loan that is debited and shall otherwise be consistent with
8 Section 21201.

9 SEC. 4. Section 21201.6 is added to the Financial Code, to
10 read:

11 21201.6. The requirement for a written contract signed by the
12 pledgor as set forth in Sections 21201 and 21201.5 may be met
13 electronically if all of the following conditions are satisfied:

14 (a) The contract and transaction comply with the provisions of
15 the Uniform Electronic Transactions Act, as set forth in Title 2.5
16 (commencing with Section 1633.1) of Part 2 of Division 3 of the
17 Civil Code, as may be applicable at the time that the loan is entered
18 into between the pawnbroker and the pledgor.

19 (b) Any written disclosures specified in this chapter to be set
20 forth in a specified minimum font size are conspicuously presented
21 to the pledgor prior to his or her execution of the electronic
22 contract.

23 (c) The pawnbroker makes one of the following disclosures:

24 (1) If the principal loan amount is below two thousand five
25 hundred dollars (\$2,500), the pawnbroker discloses the maximum
26 compensation due a pawnbroker as set forth in Section 21200.7
27 prior to the pledgor's execution of the electronic agreement.

28 (2) If the principal loan amount is two thousand five hundred
29 dollars (\$2,500) or more, the pawnbroker discloses the provisions
30 of Sections 21051 and 22054 prior to the pledgor's execution of
31 the electronic agreement.

32 SEC. 5. Section 21208 of the Financial Code is amended to
33 read:

34 21208. ~~A~~(a) Except as provided in subdivision (b), a
35 pawnbroker shall comply with the reporting requirements imposed
36 on secondhand dealers under Article 4 (commencing with Section
37 21625) of Chapter 9 of Division 8 of the Business and Professions
38 Code.

39 (b) A pawnbroker who has issued a loan electronically pursuant
40 to Section 21201.6 shall, in lieu of obtaining and reporting the

1 *customer's fingerprint as set forth in subdivision (g) of Section*
2 *21628 of the Business and Professions Code, electronically deposit*
3 *the loan proceeds into a deposit account held in the name of the*
4 *pledgor at a bank, savings and loan, or credit union located in the*
5 *United States.*

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

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