

**Introduced by Senator Mendoza**

February 23, 2015

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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 amended, 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. *The bill would also require that the contract be for a minimum of 4 months.*

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~~ requirements, including, but not limited to, that the pledgor pay off all outstanding charges from the prior loan then due before a replacement loan may be issued.

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

1 contract, a copy of which shall be furnished to the pledgor. The  
2 loan contract shall provide a ~~four-month loan period~~, *loan period*  
3 *that is a minimum of four months*, shall set forth the loan period  
4 and the date on which the loan is due and payable, and shall clearly  
5 inform the pledgor of his or her right to redeem the pledge during  
6 the loan period.

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

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

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

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

1 falls on a day when the pawnshop is closed, the time period is  
2 extended to the next day that the pawnshop is open.”

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

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

15 (g) The pawnbroker shall not sell any article of pledged property  
16 until he or she has become vested with the title to that property  
17 pursuant to this section. The sale of pledged property is a  
18 misdemeanor pursuant to Section 21209.

19 SEC. 3. Section 21201.5 of the Financial Code is amended to  
20 read:

21 21201.5. (a) During the contractual loan period and any  
22 extension thereof, *but prior to the start of the 10-day grace period*  
23 *provided in subdivision (d) of Section 21201*, a pledgor may  
24 request, and a pawnbroker may consent to, a replacement loan to  
25 take effect upon the expiration of the loan period stated in the  
26 active loan contract delivered to the pledgor under Section 21201  
27 or this section.

28 (b) ~~Alternatively, a pledgor may request, and a pawnbroker~~  
29 ~~may consent to, a replacement loan may also issue upon the request~~  
30 ~~of the pledgor and the consent of the pawnbroker prior to the~~  
31 ~~expiration of the grace period provided by Section 21201. This~~  
32 ~~during the 10-day grace period provided in subdivision (d) of~~  
33 ~~Section 21201. Any such replacement loan shall become effective~~  
34 ~~on the date it is issued.~~

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

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

39 ~~(2) The pledgor's consent to the terms of any replacement loan~~  
40 ~~shall be deemed given when he or she executes the written~~

1 replacement loan in person or electronically in conformity with  
2 the provisions of Section 21201.6, and pays in cash or another  
3 form acceptable to the pawnbroker all of the charges and interest  
4 due under the prior loan or if all of the following conditions are  
5 met:

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

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

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

28 (D) The replacement loan is evidenced by a written agreement  
29 or electronic record and a paper or electronic copy is mailed or  
30 otherwise transmitted to the pledgor within five business days  
31 following receipt of payment by the pawnbroker by a means for  
32 which verification of mailing or transmittal can be provided by  
33 the pawnbroker.

34 (3) The unpaid balance of the prior loan shall be debited to the  
35 replacement loan on which the same article or articles have been  
36 pledged. The replacement loan shall disclose the amount of the  
37 prior loan that is debited and shall otherwise be consistent with  
38 Section 21201.

39 (2) *Before a replacement loan may be issued, the pledgor shall*  
40 *pay off all outstanding charges from the prior loan then due,*

1 including interest or any loan writing, storage, notification, or  
2 other fee authorized in this chapter, in cash or another form  
3 acceptable to the pawnbroker. The pledgor's payment may be  
4 delivered to the pawnbroker by any method, including, but not  
5 limited to, United States mail, private mail, a personal  
6 representative, or electronic transfer, provided that the manner  
7 of payment is acceptable to the pawnbroker. If insufficient payment  
8 is tendered by the pledgor or is tendered in a form unacceptable  
9 to the pawnbroker, the pawnbroker shall, if commercially  
10 reasonable, return the payment in the same manner that the  
11 payment was delivered by the pledgor, or by another commercially  
12 reasonable manner, within five business days, and shall include  
13 a statement advising the pledgor the reason the payment was  
14 rejected. The pawnbroker is under no obligation to enter into a  
15 replacement loan if the amount is insufficient or the form of  
16 payment or method of tender is unacceptable to the pawnbroker.

17 (3) The unpaid balance of the prior loan shall be debited to the  
18 replacement loan on which the same article or articles have been  
19 pledged. The replacement loan contract shall disclose the amount  
20 of the prior loan that is debited and shall otherwise be consistent  
21 with Section 21201.

22 (4) If the pledgor requests a replacement loan in person or  
23 electronically, the pledgor's consent to the terms of the replacement  
24 loan shall be deemed given when he or she signs the written  
25 replacement loan contract in person or electronically in conformity  
26 with Section 21201.6.

27 (5) If the pledgor requests a replacement loan by mail or  
28 through a personal representative, the pledgor's consent to the  
29 terms of the replacement loan shall be deemed given when all  
30 required charges from the prior loan then due are paid in a form  
31 acceptable to the pawnbroker. The principal amount of a  
32 replacement loan requested by mail or through a personal  
33 representative shall not exceed the principal amount of the prior  
34 loan.

35 (6) The terms of the replacement loan shall be consistent with  
36 this chapter on the date the replacement loan is issued.

37 (7) The replacement loan shall be evidenced by a written  
38 agreement or electronic record. The pawnbroker shall mail or  
39 otherwise transmit a copy of the written agreement or electronic  
40 record to the pledgor within five business days following receipt

1 *of payment by means for which verification of mailing or electronic*  
2 *transmittal can be provided by the pawnbroker.*

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

5 21201.6. The requirement for a written contract signed by the  
6 pledgor as set forth in Sections 21201 and 21201.5 may be met  
7 electronically if all of the following conditions are satisfied:

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

13 (b) Any written disclosures specified in this chapter to be set  
14 forth in a specified minimum ~~font~~ *type* size are conspicuously  
15 presented to the pledgor prior to his or her execution of the  
16 electronic contract.

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

18 (1) If the principal loan amount is below two thousand five  
19 hundred dollars (\$2,500), the pawnbroker discloses the maximum  
20 compensation due a pawnbroker as set forth in Section 21200.7  
21 prior to the pledgor's execution of the ~~electronic agreement.~~  
22 *contract.*

23 (2) If the principal loan amount is two thousand five hundred  
24 dollars (\$2,500) or more, the pawnbroker discloses the provisions  
25 of Sections 21051 and 22054 prior to the pledgor's execution of  
26 the ~~electronic agreement.~~ *contract.*

27 SEC. 5. Section 21208 of the Financial Code is amended to  
28 read:

29 21208. (a) Except as provided in subdivision (b), a pawnbroker  
30 shall comply with the reporting requirements imposed on  
31 secondhand dealers under Article 4 (commencing with Section  
32 21625) of Chapter 9 of Division 8 of the Business and Professions  
33 Code.

34 (b) A pawnbroker who has issued a loan electronically pursuant  
35 to Section 21201.6 shall, in lieu of obtaining and reporting the  
36 customer's fingerprint as set forth in subdivision (g) of Section  
37 21628 of the Business and Professions Code, electronically deposit  
38 the loan proceeds into a deposit account held in the name of the  
39 pledgor at a ~~bank, savings and loan, or credit union~~ *depository*  
40 *institution* located in the United States.

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

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