

AMENDED IN SENATE APRIL 30, 2015
AMENDED IN SENATE MARCH 26, 2015

SENATE BILL

No. 300

Introduced by Senator Mendoza

February 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 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. *The bill would consider an electronic notice of termination of the loan period valid if the pledgor responded within the previous 120 days to an electronic communication sent by the pawnbroker.*

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 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.

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

3 21201. (a) Every loan made by a pawnbroker for which goods
4 are received in pledge as security shall be evidenced by a written
5 contract, a copy of which shall be furnished to the pledgor. The
6 loan contract shall provide a loan period that is a minimum of four
7 months, shall set forth the loan period and the date on which the
8 loan is due and payable, and shall clearly inform the pledgor of
9 his or her right to redeem the pledge during the loan period.

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

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

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

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

1 electronic transmission of that notice. The 10-day notice shall state,
2 in substantially the same format as the following: “If the tenth day
3 falls on a day when the pawnshop is closed, the time period is
4 extended to the next day that the pawnshop is open.” *Electronic*
5 *notice of the termination of the loan period shall be valid if the*
6 *pledgor has responded within the previous 120 days to an*
7 *electronic communication sent by the pawnbroker to the pledgor’s*
8 *electronic address.*

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

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

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

25 SEC. 3. Section 21201.5 of the Financial Code is amended to
26 read:

27 21201.5. (a) During the contractual loan period and any
28 extension thereof, but prior to the start of the 10-day grace period
29 provided in subdivision (d) of Section 21201, a pledgor may
30 request, and a pawnbroker may consent to, a replacement loan to
31 take effect upon the expiration of the loan period stated in the
32 active loan contract delivered to the pledgor under Section 21201
33 or this section.

34 (b) Alternatively, a pledgor may request, and a pawnbroker may
35 consent to, a replacement loan during the 10-day grace period
36 provided in subdivision (d) of Section 21201. Any such
37 replacement loan shall become effective on the date it is issued.

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

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

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

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

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

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

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

1 (7) The replacement loan shall be evidenced by a written
2 agreement or electronic record. The pawnbroker shall mail or
3 otherwise transmit a copy of the written agreement or electronic
4 record to the pledgor within five business days following receipt
5 of payment by means for which verification of mailing or electronic
6 transmittal can be provided by the pawnbroker.

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

9 21201.6. The requirement for a written contract signed by the
10 pledgor as set forth in Sections 21201 and 21201.5 may be met
11 electronically if all of the following conditions are satisfied:

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

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

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

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

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

30 SEC. 5. Section 21208 of the Financial Code is amended to
31 read:

32 21208. (a) Except as provided in subdivision (b), a pawnbroker
33 shall comply with the reporting requirements imposed on
34 secondhand dealers under Article 4 (commencing with Section
35 21625) of Chapter 9 of Division 8 of the Business and Professions
36 Code.

37 (b) A pawnbroker who has issued a loan electronically pursuant
38 to Section 21201.6 shall, in lieu of obtaining and reporting the
39 customer's fingerprint as set forth in subdivision (g) of Section
40 21628 of the Business and Professions Code, electronically deposit

1 the loan proceeds into a deposit account held in the name of the
2 pledgor at a depository institution located in the United States.

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

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