

AMENDED IN ASSEMBLY JULY 2, 2015
AMENDED IN ASSEMBLY JUNE 11, 2015
AMENDED IN SENATE MAY 5, 2015
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 and repeal Section 21201.6 of, the Financial Code, relating to pawnbrokers.

LEGISLATIVE COUNSEL'S DIGEST

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

~~Existing~~

(1) *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. Existing law requires the contract to provide a 4-month loan period.

This bill, on and after January 1, 2017, would permit the requirements for an original 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 specify that the contract be for a minimum of 4 months.

~~Existing~~

(2) *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 provide that the electronic notice of the termination of the loan period would be valid only if the pledgor has previously responded to an electronic communication sent by the pawnbroker to the pledgor's last known electronic address and would require the pledgor to affirm the electronic address on file, as prescribed.

~~Existing~~

(3) *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. The bill would also permit the replacement loan to be issued electronically, beginning January 1, 2016, subject to the same conditions for the original written contract described above.

~~Existing~~

(4) *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 depository~~ account held in the name of the ~~pledgor, as specified.~~ *pledgor at a depository institution located within the United States, and upon*

request by any peace officer, make available the account information used to deposit the loan proceeds.

Because a knowing violation of these provisions would be a crime, this bill would impose a state-mandated local program.

(5) 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~~ *Californians* the ability to transact pawn or
3 collateral loans in an efficient and expeditious manner wherever
4 they may be located. It is further the intent of the Legislature to
5 permit such loans to be made in conformity with the Uniform
6 Electronic Transactions Act, as set forth in Title 2.5 (commencing
7 with 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 pledgor. The~~
13 ~~loan contract shall provide a loan period that is a minimum of four~~
14 ~~months, shall set forth the loan period and the date on which the~~
15 ~~loan is due and payable, and shall clearly inform the pledgor of~~
16 ~~his or her right to redeem the pledge during the loan period.~~

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

20 ~~“You may redeem the property you have pledged at any time~~
21 ~~until the close of business on _____ [fill in date no fewer than four~~
22 ~~months from date loan begins]. To redeem, you must pay the~~
23 ~~amount of the loan and the applicable charges which have accrued~~
24 ~~through the date on which you redeem.”~~

25 ~~(c) Every pawnbroker shall retain in his or her possession every~~
26 ~~article pledged to him or her for the duration of the loan period.~~

1 During such period the pledgor may redeem the articles upon
2 payment of the amount of the loan and the applicable charges. If
3 the pledgor and the pawnbroker agree in writing that the pawned
4 property may be stored off premises, following the request for
5 redemption of the loan, the pawnbroker shall return the pledged
6 property to the pledgor the next calendar day when both the
7 pawnbroker's store and the storage facility are open, not to exceed
8 two business days.

9 (d) If any pledged article is not redeemed during the loan period
10 as provided herein, and the pledgor and pawnbroker do not
11 mutually agree in writing to extend the loan period, the pawnbroker
12 shall notify the pledgor within one month after expiration of the
13 loan period. If the pawnbroker fails to notify the pledgor within
14 one month after the expiration of the loan period, the pawnbroker
15 shall not charge interest from the day after the expiration of the
16 one-month period.

17 (e) The pawnbroker shall notify the pledgor at his or her last
18 known mailing or electronic address of the termination of the loan
19 period, by a means for which verification of mailing or, at the sole
20 option of the pledgor, electronic transmission of the notification
21 can be provided by the pawnbroker, and extending the right of
22 redemption, during posted business hours, for a period of 10 days
23 from date of mailing or electronic transmission of that notice. The
24 10-day notice shall state, in substantially the same format as the
25 following: "If the tenth day falls on a day when the pawnshop is
26 closed, the time period is extended to the next day that the
27 pawnshop is open." The electronic notice of the termination of the
28 loan period, if the option is offered by the pawnbroker, shall be
29 valid if the pledgor has previously responded to an electronic
30 communication sent by the pawnbroker to the pledgor's last known
31 electronic address provided by the pledgor. Upon the initiation of
32 each new or replacement loan, the pledgor shall affirm that the
33 current electronic address on file with the pawnbroker is valid.

34 (f) The posted schedule of charges required pursuant to Section
35 21200.5 shall contain a notice informing the pledgor that if he or
36 she desires, the pawnbroker shall send the notice of termination
37 of the loan period by registered or certified mail with return receipt
38 requested, upon prepayment of the mailing costs.

39 (g) If any pledged article is not redeemed within the 10-day
40 notice period, the pawnbroker shall become vested with all right,

1 title, and interest of the pledgor, or his or her assigns, to the pledged
2 article, to hold and dispose of as his or her own property. Any
3 other provision of law relating to the foreclosure and sale of
4 pledges shall not be applicable to any pledge the title to which is
5 transferred in accordance with this section.

6 ~~(h) The pawnbroker shall not sell any article of pledged property~~
7 ~~until he or she has become vested with the title to that property~~
8 ~~pursuant to this section. The sale of pledged property is a~~
9 ~~misdemeanor pursuant to Section 21209.~~

10 *SEC. 2. Section 21201 of the Financial Code is amended to*
11 *read:*

12 21201. (a) Every loan made by a pawnbroker for which goods
13 are received in pledge as security shall be evidenced by a written
14 contract, a copy of which shall be furnished to the ~~borrower~~
15 *pledgor*. The loan contract shall provide a ~~four-month loan period,~~
16 *loan period that is a minimum of four months*, shall set forth the
17 loan period and the date on which the loan is due and payable, and
18 shall clearly inform the ~~borrower~~ *pledgor* of his or her right to
19 redeem the pledge during the loan period.

20 *Every*

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

25 “You may redeem the property you have pledged at any time
26 until the close of business on ____ [fill in date *no less than* four
27 months from date loan begins]. To redeem, you must pay the
28 amount of the loan and the applicable charges which have accrued
29 through the date on which you redeem.”

30 *Every*

31 (c) *Every* pawnbroker shall retain in his or her possession every
32 article pledged to him or her for ~~a period of four months; the~~
33 *duration of the loan period*. During such period the ~~borrower~~
34 *pledgor* may redeem the articles upon payment of the amount of
35 the loan and the applicable charges. If the ~~borrower~~ *pledgor* and
36 the pawnbroker agree in writing that the pawned property may be
37 stored off premises, following the request for redemption of the
38 loan, the pawnbroker shall return the pledged property to the
39 ~~consumer~~ *pledgor* the next calendar day when both the

1 pawnbroker's store and the storage facility are open, not to exceed
2 two business days.

3 ~~If~~

4 (d) ~~If~~ any pledged article is not redeemed during the ~~four-month~~
5 loan period as provided herein, and the ~~borrower~~ *pledgor* and
6 pawnbroker do not mutually agree in writing to extend the loan
7 period, the pawnbroker shall notify the ~~borrower~~ *pledgor* within
8 one month after expiration of the loan period. If the pawnbroker
9 fails to notify the ~~borrower~~ *pledgor* within one month after the
10 expiration of the loan period, the pawnbroker shall not charge
11 interest from the day after the expiration of the one-month period.
12 The pawnbroker shall notify the ~~borrower~~ *pledgor* at his or her
13 last known *mailing or electronic* address of the termination of the
14 loan period, by a means for which verification of mailing ~~or~~
15 ~~delivery of the~~ *or, at the sole option of the pledgor, electronic*
16 *transmission of the* notification can be provided by the pawnbroker,
17 and extending the right of redemption, during posted business
18 hours, for a period of 10 days from date of mailing *or electronic*
19 *transmission* of that notice. *Electronic notice of the termination*
20 *of the loan period shall be valid if the pledgor has previously*
21 *responded to an electronic communication sent by the pawnbroker*
22 *to the pledgor's last known electronic address provided by the*
23 *pledgor. Upon the initiation of each new or replacement loan, the*
24 *pledgor shall affirm that the current electronic address on file with*
25 *the pawnbroker is valid. The 10-day notice shall include a*
26 ~~statement that:~~ *state, in substantially the same format as the*
27 *following: "If the tenth day falls on a day when the pawnshop is*
28 *closed, the time period is extended to the next day that the*
29 *pawnshop is open."*

30 ~~However, the~~

31 (e) The posted schedule of charges required pursuant to Section
32 21200.5 shall contain a notice informing the ~~borrower~~ *pledgor* that
33 if he or she desires, the pawnbroker shall send the notice of
34 termination of the loan period by registered or certified mail with
35 return receipt requested, upon prepayment of the mailing costs. ~~If~~

36 (f) ~~If~~ any pledged article is not redeemed within the 10-day
37 notice period, the pawnbroker shall become vested with all right,
38 title, and interest of the pledgor, or his or her assigns, to the pledged
39 article, to hold and dispose of as his or her own property. Any
40 other provision of law relating to the foreclosure and sale of

1 pledges shall not be applicable to any pledge the title to which is
2 transferred in accordance with this section. The pawnbroker shall
3 not sell any article of pledged property until he or she has become
4 vested with the title to that property pursuant to this section. ~~The~~
5 (g) *The* sale of pledged property is a misdemeanor pursuant to
6 Section 21209.

7 SEC. 3. Section 21201.5 of the Financial Code is amended to
8 read:

9 21201.5. (a) During the contractual loan period and any
10 extension thereof, but prior to the start of the 10-day grace period
11 provided in subdivision (d) of Section 21201, a pledgor may
12 request, and a pawnbroker may consent to, a replacement loan to
13 take effect upon the expiration of the loan period stated in the
14 active loan contract delivered to the pledgor under Section 21201
15 or this section.

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

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

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

24 (2) Before a replacement loan may be issued, the pledgor shall
25 pay off all outstanding charges from the prior loan then due,
26 including interest or any loan writing, storage, notification, or other
27 fee authorized in this chapter, in cash or another form acceptable
28 to the pawnbroker. The pledgor's payment may be delivered to
29 the pawnbroker by any ~~method~~, *method acceptable to the*
30 *pawnbroker*, including, but not limited to, United States mail,
31 private mail, a personal representative, or electronic ~~transfer~~,
32 ~~provided that the manner of payment is acceptable to the~~
33 ~~pawnbroker.~~ *transfer*. If insufficient payment is tendered by the
34 pledgor or is *not* tendered in *cash or* a form ~~unacceptable~~
35 ~~acceptable~~ to the pawnbroker, the pawnbroker shall, if
36 commercially reasonable, return the payment in the same manner
37 that the payment was delivered by the pledgor, or by another
38 commercially reasonable manner, within five business days, and
39 shall include a statement advising the pledgor the reason the
40 payment was rejected. The pawnbroker is under no obligation to

1 enter into a replacement loan if the amount is insufficient or the
2 ~~form method~~ of payment or ~~method form~~ of tender is ~~unacceptable~~
3 ~~not cash or acceptable~~ to 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 contract shall disclose the amount
7 of the prior loan that is debited and shall otherwise be consistent
8 with Section 21201.

9 (4) If the pledgor requests a replacement loan in person or
10 electronically, the pledgor's consent to the terms of the replacement
11 loan shall be deemed given when he or she signs the written
12 replacement loan contract in person or electronically in conformity
13 with Section 21201.6.

14 (5) If the pledgor requests a replacement loan by mail or through
15 a personal representative, the pledgor's consent to the terms of the
16 replacement loan shall be deemed given when all required charges
17 from the prior loan then due are paid in a form acceptable to the
18 pawnbroker. The principal amount of a replacement loan requested
19 by mail or through a personal representative shall not exceed the
20 principal amount of the prior loan.

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

23 (7) The replacement loan shall be evidenced by a written
24 agreement or electronic record. The pawnbroker shall mail or
25 otherwise transmit a copy of the written agreement or electronic
26 record to the pledgor within five business days following receipt
27 of payment by means for which verification of mailing or electronic
28 transmittal can be provided by the pawnbroker.

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

31 21201.6. The requirement for a written contract signed by the
32 pledgor as set forth in Section 21201.5 may be met electronically
33 if all of the following conditions are satisfied:

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

39 (b) Any written disclosures specified in this chapter to be set
40 forth in a specified minimum type size are conspicuously presented

1 to the pledgor prior to his or her execution of the electronic
2 contract.

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

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

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

12 (d) This section shall remain in effect only until January 1, 2017,
13 and as of that date is repealed.

14 SEC. 5. Section 21201.6 is added to the Financial Code, to
15 read:

16 21201.6. The requirement for a written contract signed by the
17 pledgor as set forth in Sections 21201 and 21201.5 may be met
18 electronically if all of the following conditions are satisfied:

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

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

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

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

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

37 (d) This section shall become operative on January 1, 2017.

38 SEC. 6. Section 21208 of the Financial Code is amended to
39 read:

1 21208. (a) Except as provided in subdivision ~~(b)~~, (c), a
 2 pawnbroker shall comply with the reporting requirements imposed
 3 on secondhand dealers under Article 4 (commencing with Section
 4 21625) of Chapter 9 of Division 8 of the Business and Professions
 5 Code.

6 ~~(b) A pawnbroker who has issued a loan electronically pursuant~~
 7 ~~to Section 21201.6 shall, in lieu of obtaining and reporting the~~
 8 ~~customer's fingerprint as set forth in subdivision (g) of Section~~
 9 ~~21628 of the Business and Professions Code, electronically deposit~~
 10 ~~the loan proceeds into a deposit account held in the name of the~~
 11 ~~pledgor at a depository institution located in the United States.~~

12 *(b) A pawnbroker who has issued a loan electronically pursuant*
 13 *to Section 21201.6 shall electronically deposit the loan proceeds*
 14 *into a depository account held in the name of the pledgor at a*
 15 *depository institution located within the United States.*

16 *(c) A pawnbroker who has issued a loan electronically pursuant*
 17 *to Section 21201.6 shall make available, upon request by any peace*
 18 *officer, the account information used to deposit the loan proceeds,*
 19 *in lieu of obtaining and reporting the customer's fingerprint as*
 20 *set forth in subdivision (g) of Section 21628 of the Business and*
 21 *Professions Code.*

22 SEC. 7. No reimbursement is required by this act pursuant to
 23 Section 6 of Article XIII B of the California Constitution because
 24 the only costs that may be incurred by a local agency or school
 25 district will be incurred because this act creates a new crime or
 26 infraction, eliminates a crime or infraction, or changes the penalty
 27 for a crime or infraction, within the meaning of Section 17556 of
 28 the Government Code, or changes the definition of a crime within
 29 the meaning of Section 6 of Article XIII B of the California
 30 Constitution.