
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1993 **Hearing Date:** June 26, 2018
Author: Gipson
Version: April 12, 2018
Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Secondhand Goods: Tangible Personal Property: Dealers*

HISTORY

Source: California Pawnbrokers Association

Prior Legislation: AB 1751 (Low), Ch. 793, Stats. 2015
SB 782 (Hill), Ch. 318, Stats. 2013
AB 391 (Pan), Ch. 172, Stats. 2012
AB 1796 (Galgiani), 2012, failed passage Assembly Public Safety Comm.
AB 704 (Ma), 2011, held in Assembly Judiciary Comm.
SB 1520 (Schiff), Ch. 994, Stats. 2000
AB 2967 (Young), Ch. 499, Stats. 1980

Support: National Federation of Independent Business, California

Opposition: California Police Chiefs Association; California State Sheriffs' Association

Assembly Floor Vote: 66 - 4

PURPOSE

The purpose of this bill is to reduce from 30-days to seven-days, or five-days if specified information is collected, the length of time that a secondhand dealer and coin dealer must hold tangible person property prior to selling the property.

Existing law states that it is the intent of the Legislature in enacting the sections related to second hand goods to curtail the dissemination of stolen property and to facilitate the recovery of stolen property by means of a uniform, statewide, state-administered program of regulation of persons whose principal business is the buying, selling, trading, auctioning, or taking in pawn of tangible personal property and to aid the State Board of Equalization to detect possible sales tax evasion. (Bus. & Prof. Code, § 21625.)

Existing law defines a "secondhand dealer" to mean and include any person, co-partnership, firm, or corporation whose business includes buying, selling, trading, taking in pawn, accepting for sale on consignment, accepting for auctioning or auctioning secondhand property but does not include a coin dealer or a participant at gun shows, as specified. (Bus. and Prof. Code, § 21626.)

Existing law defines “tangible personal property” to include all secondhand property that bears a serial number or personalized initials or inscription or, that at the time it is acquired by the secondhand dealer, bears evidence of having had a serial number or personalized initials or inscription. (Bus. and Prof. Code, § 21627, subd. (a).)

Existing law states that tangible property also includes all tangible personal property that the Attorney General statistically determines through the most recent Department of Justice crime data to constitute a significant class of stolen goods. (Bus. and Prof. Code, § 21627, subd. (b)(3).)

Existing law specifies that tangible personal property does not include coins, monetized bullion, or commercial grade ingots of gold, silver, or other precious metals. (Bus. and Prof. Code, § 21627, subd. (d).)

Existing law defines “CAPSS” to mean the California Pawn and Secondhand Dealer System, which is a single statewide, uniform electronic reporting system that receives secondhand dealer reports and is operated by the Department of Justice (DOJ). (Bus. and Prof. Code, § 21627.5.)

Existing law requires every secondhand or coin dealer, as defined, to report daily or no later than the next business day, excluding weekends and holidays, after receipt or purchase of secondhand property to CAPSS, all secondhand property, except for firearms which he or she has purchased, taken in trade, taken in pawn, accepted for sale on consignment, or accepted for auctioning. (Bus. and Prof. Code, § 21628, subd. (a).)

Existing law requires the report to CAPSS, to be legible, prepared in English, and include the following information:

- 1) The name and current address of the intended seller;
- 2) The identification of the intended seller or pledger verified by the person taking the information, as specified; and,
- 3) A description of the property. (Bus. and Prof. Code, § 21628, subd. (a)(1)(2).)

Existing law requires a secondhand dealer to verify the identification of the seller or pledger for each transaction, not for each item that shall be reported. (Bus. and Prof. Code, § 21628.3.)

Existing law requires a secondhand dealer or coin dealer to electronically transmit to CAPSS no later than the next business day after the date of the transaction excluding weekends and holidays or, if not possible due to an electrical, telecommunications, or other malfunction as soon as reasonable thereafter, the report of acquisition of the property. (Bus. and Prof. Code, § 21630.)

Existing law requires every secondhand dealer and coin dealer to retain in his or her possession for a period of 30 days all reportable property commencing with the date the report of its acquisition to CAPSS, during which time the secondhand dealer or coin dealer shall produce the property for inspection by any peace officer or employee designated by the chief of police or sheriff or the DOJ. (Bus. and Prof. Code, § 21636, subsd. (a)-(b).)

Existing law states that the chief of police, the sheriff or DOJ, may for good cause, as specified by DOJ, authorize prior disposition of any property described in a specific report, provided that a secondhand dealer who disposes of tangible personal property pursuant to that authorization shall report the sale thereof to the chief of police or the sheriff or the DOJ. (Bus. and Prof. Code, § 21636, subd. (a).)

This bill replaces the 30-day hold requirement for property that is acquired by a second dealer or coin dealer with a 5-day hold, with the exception of firearms which would still be subject to the 30-day hold, commencing with the date the report of its acquisition was made to CAPSS.

This bill requires every secondhand and coin dealer, during the seven-day holding period, to produce any reported property for inspection by any peace officer or employee designated by the local licensing authority or the DOJ.

This bill requires property subject to inspection and all property held in pawn that is stored off the business premises to be produced for inspection at the licensee's business premises within one business day of a request for inspection by the local licensing authority or the DOJ.

This bill specifies that if 5 days have elapsed since the transmission of the report of acquisition to CAPSS the remainder of the 7-day hold shall not apply to the property sold by the secondhand dealer or coin dealer when the following are present:

- 1) The secondhand dealer or coin dealer has recorded the sale in its book of records;
- 2) The record of sale includes:
 - a) The name of buyer to whom the tangible personal property was sold;
 - b) The buyer's address; and,
 - c) At least one of the following:
 - i. The buyer's telephone number.
 - ii. The buyer's email address.
 - iii. The buyer's electronic address for receiving text messages.

This bill states that in documenting the record of sale, the secondhand dealer or coin dealer shall not have any duty to verify the accuracy of the information provided by the buyer.

This bill provides that the information collected pursuant to the provisions of this bill shall be retained by the secondhand dealer or coin dealer for 21 days following the date of sale and shall be available for inspection by a local law enforcement agency during this period.

This bill states that if a sale of property is made, and within 21 days of the sale a local law enforcement agency notifies the secondhand dealer or coin dealer that the property has been reported stolen, the record of the sale and all information contained therein shall be provided to that local law enforcement agency by the secondhand dealer or coin dealer upon written request by that agency.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Secondhand dealers are at a disadvantage when it comes to selling items they have purchased from an individual. For example when an individual walks into a pawnshop, jewelry store, or any business that buys items from a private citizen they must hold this item(s) for 30 days before putting it up for sale.

Today's ability to instantly buy or sell items over the internet or on APP based platforms has increased the speed of transactions beyond what could have been envisioned at the time the 30 day hold was enacted into law. The market place is as fast as a click on your phone or computer. Everyone who sells an item of tangible personal property competes with brick and mortar secondhand dealers.

2. CAPSS and Reporting Requirements

To address the issue of stolen property potentially being sold at a pawn shop, existing law specifies that when secondhand dealers or pawnbrokers take in items, whether buying outright or loaning money and holding for collateral, they are required to report daily or on the first working day after they have taken possession of an item. (Bus. & Prof. Code, § 21628.) Until January 1, 2016, that property report was completed on the "JUS 123" which was a standardized paper form that was completed for each item purchased, taken in trade, taken in pawn or accepted for sale on consignment. As a result of AB 391 (Pan, Chapter 172, Statutes of 2012), the paper forms were replaced with an electronic database commonly referred to as the "CAPSS system", which aimed to make property reporting for secondhand dealers more efficient and easier for law enforcement to reconcile with reports of stolen property. Through CAPSS, properties held by secondhand dealers are uploaded directly to a database under the jurisdiction of the DOJ. The electronic system was designed to allow for easier access to those items which have been held under law for review by law enforcement.

Existing law requires that a secondhand dealer hold an item for 30 days before allowing that property to be sold. (Bus. & Prof. Code, § 21636.) Additionally, during that 30-day holding period, a secondhand dealer and coin dealer is required to make the property available for inspection by any peace officer or employee designated by the local licensing authority or the DOJ. If the item is stored offsite, the secondhand dealer must produce the item for inspection within one business day.

This bill does not change the current reporting requirements for secondhand dealers or coin dealers, just the hold period for those items reported which are not firearms. Any property taken-in, will still be subject to the same reporting requirements. This bill also maintains the inspection authority for local law enforcement or other regulators. However, instead of holding an item for 30 days, this bill will reduce the holding period to seven days, or five days if the secondhand dealer records the sale in his or her book of records and includes identifying information about the purchaser including the name and address of who purchased the item along with either a telephone number, an email address or the buyers electronic address for receiving text messages.

Under current law, a secondhand dealer is required to verify the identification of the seller or pledger of each transaction. (Bus. & Prof. Code, § 21628.3.) This bill specifically exempts the secondhand dealer from verifying the identity of a person who purchases the item under the five-day hold and report provision. The information about the transaction after a five-day hold will be required to be retained for 21-days, presumably to allow law enforcement or the local regulatory agency to review who the items was sold to in the event a stolen property report was received in an effort to retrieve the item. However, because this bill specifically exempts the secondhand dealer from verifying the identity of a person who purchases the item, these records may prove unreliable.

3. Argument in Support

According to the California Pawnbrokers Association, the sponsor of this bill:

The 30-day hold required of all licensed secondhand dealers was introduced into law 59 years ago, before reporting to law enforcement and before the internet or any electronic APPS were around. We applaud your efforts to create a level playing field for brick and mortar stores that remain the backbone of commercial areas of California.

4. Argument in Opposition

According to the California Police Chiefs Association:

While the amendments are a step in the right direction, we remain concerned the timeline is too short. During our discussions with the proponents and with the author, we proposed a ten-day hold on personal property with the remaining of the 30 days dedicated to collecting buyers; personal information. Our proposal was focused on giving private citizens sufficient time to report stolen property and for property crime units to review any stolen item reports they receive.

While our members understand that local secondhand dealers are having to complete with large online platforms, such as Amazon and EBay, they also acknowledge that the time frame established by AB 1993 would severely hinder law enforcement's ability to retrieve stolen items.

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