
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1182 **Hearing Date:** July 14, 2015
Author: Santiago
Version: May 5, 2015
Urgency: No **Fiscal:** Yes
Consultant: JM

Subject: *Secondhand Goods: Tangible Personal Property*

HISTORY

Source: California Association of Resellers, Reusers and Buyers

Prior Legislation: SB 762 (Hill) - Ch. 318, Stats. 2013
AB 391 (Pan), Ch. 172, Stats. 2012
SCR 63 (Yee) - Reso. Ch. 16., Stats. 2010
SB 1893 (Burton) - failed in Assembly Business and Professions, 2004
SB 1520 (Schiff) - Ch. 994, Stats. 2000

Support: Sacramento Antique Faire; Californians Against Waste

Opposition: California Pawnbrokers Association (unless amended); California State Sheriffs' Association; Secondhand Collectors Association (unless amended)

Assembly Floor Vote: 79 - 0

PURPOSE

The purpose of this bill is to: 1) clearly define items that constitute a significant class of stolen goods that secondhand dealers must report to law enforcement; and 2) require the Attorney General to annually update the list of such stolen property and post the list on the Attorney General's website.

Existing law:

Defines a "secondhand dealer" as 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 tangible personal property and specifies that a "secondhand dealer" does not include a coin dealer or participant at gun shows or events, as specified. (Bus. and Prof. Code § 21626, subd. (a).)

Specifies that "secondhand dealers" are not persons who perform the services of an auctioneer for a fee or salary, or persons whose business is limited to the reconditioning and selling of major household appliances, as long as specified conditions are met. (Bus. and Prof. Code § 21626.5.)

States that "tangible personal property" includes, but is not limited to, all secondhand tangible personal property which bears a serial number or personalized initials or inscription, or which 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).)

States that tangible personal property also includes, but is not limited to, the following:

- All tangible personal property, new or used, including motor vehicles, received in pledge as security for a loan by a pawnbroker;
- All tangible personal property that bears a serial number or personalized initials or inscription which is purchased by a secondhand dealer or a pawnbroker or which, at the time of such purchase, bears evidence of having had a serial number or personalized initials or inscription; and,
- All personal property commonly sold by secondhand dealers which statistically is found through crime reports to the DOJ to constitute a significant class of stolen goods. A list of such personal property shall be supplied by the DOJ to all local law enforcement agencies. The list shall be reviewed periodically by the DOJ to insure that it addresses current problems with stolen goods. (Bus. and Prof. Code § 21627, subd. (b).)

Specifies that “tangible personal property” does not include any new goods or merchandise purchased from a bona fide manufacturer, distributor, or wholesaler of such new goods or merchandise by a secondhand dealer, and requires a secondhand dealer to retain for one year from the date of purchase, and make available for inspection by any law enforcement officer, any receipt, invoice, bill of sale or other evidence of purchase of such new goods or merchandise. (Bus. and Prof. Code § 21627, subd. (c))

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

Requires every secondhand dealer or coin dealer, as specified to report daily, or on the first working day after receipt or purchase of secondhand tangible personal property, on forms or through an electronic reporting system approved by the Department of Justice (DOJ), all secondhand tangible personal 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, to the chief of police or to the sheriff, as specified. (Bus. and Prof. Code § 21628)

Requires the report to be legible, prepared in English, completed where applicable, and include, but not be limited to, the following information: (Bus. and Prof. Code § 21628)

- The name and current address of the intended seller or pledger of the property;
- The identification of the intended seller or pledger, as specified;
- A complete and reasonably accurate description of serialized property, including, but not limited to: serial number and other identifying marks or symbols, owner-applied numbers, manufacturer’s named brand, and model name or number;
- A complete and reasonably accurate description of non-serialized property, including, but not limited to: size, color, material, manufacturer’s pattern name (when known), owner-applied numbers and personalized inscriptions, and other identifying marks or symbols;
- A certification by the intended seller or pledger that he or she is the owner of the property or has the authority of the owner to sell or pledge the property.

- A certification by the intended seller or pledger that to his or her knowledge and belief the information is true and complete;
- A legible fingerprint taken from the intended seller or pledger, as specified; and,
- When a secondhand dealer complies with all of the provisions of this section, he or she shall be deemed to have received from the seller or pledger adequate evidence of authority to sell or pledge the property, as specified.

Requires the DOJ, in consultation with appropriate local law enforcement agencies, to develop clear and comprehensive descriptive categories denoting tangible personal property, as specified. (Bus. and Prof. Code § 21628, subd. (j).)

Requires the DOJ to develop a single, statewide, uniform, electronic reporting system to be used to transmit required secondhand dealer reports, as specified. (Bus. and Prof. Code § 21628, subd. (j)(1).)

Requires secondhand and coin dealers to hold for a period of 30 days any tangible personal property acquired before disposing of the property. Pawnbrokers must wait for a period of four months before disposing of tangible personal property that is acquired. For purposes of this Section, tangible personal property means property that must be reported to law enforcement upon acquisition by the reporting entity or party. (Bus. and Prof. Code § 21636.)

This bill:

Narrows the definition of "tangible personal property" to mean only the forms of property specifically listed or enumerated in current law: serialized property, property with personalized initials or inscriptions, property that bears evidence of previously having a serial number, initials or inscription, and all personal property commonly sold by secondhand dealers that is determined by the Attorney General to constitute a statistically significant class of stolen goods.

Eliminates the statutory provision stating that the definition of tangible personal property is not limited to the specifically listed or enumerated property.

Requires the DOJ to annually update its list of personal property commonly sold by secondhand dealers that constitutes a statistically significant class of stolen goods and post the list on the DOJ's website.

Provides that a county law enforcement agency may use its own list of TPP for purposes of the requirement that secondhand dealers report acquisitions of TPP to law enforcement.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.”(Defendants’ February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

With the passage of AB 391 [(Pan) Chapter, 172, Statutes of 2012], secondhand dealers (who do not sell serialized goods or goods which are statistically found through crime reports [to the DOJ] to constitute a significant class of stolen goods to be licensed as a secondhand dealer) will now need to take the name and current address of the intended seller of the property, take the identification of the intended seller or pledger and a legible fingerprint from the intended seller, to report daily, and to retain for 30 days all tangible personal property reported.

As outlined, California law imposes all of the above-mentioned regulatory requirements on every secondhand dealer, regardless of how large the number of identical items or how low the value of each item bought and sold. As written,

separate individual reports will need to be made for every used book, every old doorknob, every piece of colored glass, every old name badge or game piece (amongst thousands of other items) sold within the State of California. There is also no consideration made for items that have been gathered over the past several decades for which re-sellers would be unable to locate the initial owners (for purposes of gaining their information, fingerprints, and identification)... With this in mind, [this bill] seeks to clarify existing law, provide law enforcement useful data they need in order to curtail the dissemination of stolen property and to facilitate the recovery of such property, and remove an unnecessary burden on secondhand dealers.

2. Electronic Reporting Database

In 2012, AB 391 (Pan) established a new requirement that secondhand dealers and pawnbrokers electronically report to the DOJ all secondhand tangible property which has been purchased, taken in trade, taken in pawn, accepted for sale on consignment or accepted for auctioning. Licensed secondhand dealers and pawnbrokers use must the new system - the California Automated Pawn and Secondhand Dealer System (CAPPS) - to submit the requisite tangible personal property transaction information to the DOJ.

A March 19, 2015 letter from DOJ to pawnbrokers and secondhand dealers stated:

The California Department of Justice (DOJ) was mandated pursuant to Assembly Bill 391 (Stats 2012, Ch. 172, Pan) to develop and implement a statewide, uniform electronic reporting system that would allow for the electronic reporting of property transaction reports (Pawnbroker/Secondhand Dealer Reports - JUS 123). The initial California Pawn and Secondhand Dealer System (CAPSS), which presented core functionality to meet the Legislative mandate was implemented by the DOJ in December 2014. Since that time, the DOJ and its contractor have been working diligently on phase-in improvements. The DOJ is happy to announce these improvements are nearing readiness. This exciting iteration will provide pawn and secondhand dealers with vastly improved user capabilities. A few of these capabilities include an auto registration component, multiple property transaction bulk upload, and an advanced licensing application for law enforcement which will streamline the licensing process. The DOJ anticipates several waves of improvement releases between April and June.

The utilization of the electronic database is not intended to change the kinds of property that must be reported by secondhand dealers. Nevertheless, the CAPSS Website includes an Excel table with a code number for reporting each of over 800, from accordions to zithers. The list includes bee hives, beer kegs, defibrillators, ladders, pavers, parking meters, pottery wheels, roller blades, shocks, tillers, timing light, toilets and wheel chairs. Clearly this does not constitute the list of items that must be reported by secondhand dealers. However, it does appear that under the CAPSS system any kind of property that becomes commonly stolen could be readily reported.

3. Determining What Property is Frequently Stolen and Subject to Reporting by Secondhand Dealers

Arguably, the optimal list of reportable goods would include readily reportable and identifiable property that can be matched against police reports of stolen goods. An overly broad reporting requirement could be onerous for secondhand dealers, yet produce data that is mostly of no value to law enforcement - a larger haystack with a few useful needles. An overly broad and onerous requirement could reduce compliance, paradoxically reducing reports of recoverable stolen property.

The only kinds of property the secondhand goods reporting statute specifically describes are serialized and initialed property. The statute also requires secondhand dealers to report *property* “commonly sold by secondhand dealers which statistically is *found through crime reports to the Attorney General* to constitute a significant class of stolen goods.” The statute directs the Attorney General to update the list periodically. The current list has not been updated for some time and includes only jewelry and sterling silver.

DOJ is required by statute to collect data from law enforcement agencies about “the amount and types of offenses known to the public authorities.” DOJ has great latitude as to how data must be reported. DOJ could direct law enforcement agencies to include in reports the kinds of property stolen in theft, burglary and robbery offenses. (Pen. Code §§ 13000, 13002 and 13020.) It can be argued that the current statute requires DOJ to statistically determine significant classes of stolen goods commonly sold by secondhand dealers from reports submitted annually by all state law enforcement agencies. However, it could also be argued that changing the California crime reporting system to serve the purpose of secondhand goods reports could be expensive and overly time-consuming for law enforcement agencies and DOJ.

The author’s office and the sponsor have reported that DOJ representatives have stated that DOJ could use crime data published by the Federal Bureau of Investigation (FBI), as those reports include the kinds of property taken in larcenies. The FBI maintains the Uniform Crime Reporting (UCR.) system.¹ The FBI publishes four UCR reports annually. Two of the reports are “Crime in the United States” and the “National Incident-Based Reporting System” (NIBRS). The reports include a compilation and analysis of data submitted in mandatory reports by law enforcement agencies across the country. However, FBI reports may not include the property stolen in burglaries. Exclusion of property taken in burglaries could produce inaccurate data on the kinds of property that are most often stolen.

To address concerns that the UCR would not reflect the types of property most often stolen in California, the statute could authorize DOJ, in addition to crime reports submitted by California law enforcement agencies, to use other relevant and reliable sources of data, including UCR reports.

As noted above, the governing statute requires DOJ to statistically determine property constituting a “*significant class of stolen goods*” commonly sold by secondhand dealers. The statute does not define “significant.” Nor does the statute provide how DOJ would determine

¹ Casualty insurance organizations track stolen property claims with some specificity and detail. And have found that the most commonly stolen items included in loss claims are jewelry, electronics and apparel, with women’s purses leading the last category.

property that is “commonly sold by secondhand dealers.” The sponsor and author have proposed that “significant” be defined as property constituting 10% of the kinds of property reported in the UCR. A 10% standard would be arbitrary to some extent. Further, until relevant data is analyzed, it cannot be determined if a 10% would produce useful data that could be readily reported.

The electronic reporting system that is currently being implemented will provide consistency in the form and analysis of reporting. Arguably, the requirements for the contents of the reports should be similarly consistent if the full benefits of the electronic system in finding stolen property and prosecuting thieves are to be realized.

DOES THE EXISTING SECONDHAND GOODS REPORTING STATUTE REQUIRE DOJ TO ANALYZE CRIME DATA LAW ENFORCEMENT AGENCIES ARE REQUIRED TO REPORT TO DOJ IN ORDER TO DETERMINE SIGNIFICANT CLASSES OF STOLEN GOODS COMMONLY SOLD BY SECONDHAND DEALERS?

IN COMPILING A LIST OF COMMONLY STOLEN GOODS, SHOULD DOJ BE GIVEN DISCRETION TO USE RELIABLE AND RELEVANT DATA SOURCES?

4. Sponsor’s Proposal that the Governing Statute Explicitly Authorize Secondhand Dealers to Report Goods by Transaction, not by each Item of Property

The sponsor has noted that secondhand dealers often obtain goods in sets of property. This is especially true for purchases of property from an estate sale. The dealer may buy a set of furniture, china or other combined goods. In such cases, the dealer should be allowed to obtain a single identification and fingerprint of the seller, not a separate identification and print for each item. It does appear that law enforcement, in practice, allows reporting of goods as a set. For example, the Attorney General’s CAPSS Website specifically states that the system will have “multiple property transaction bulk upload” capacity and that “[t]here is no limit to the number of items that can be included as part of a single property transaction report. ...The Customer signature and thumbprint will be required.”² However, the law does not explicitly allow multiple transaction reporting.

SHOULD THE GOVERNING STATUTE SPECIFICALLY AUTHORIZE SECONDHAND DEALERS TO REPORT PURCHASES OF GOODS IN MATCHED SETS OR OTHER STANDARD COMBINATIONS?

5. State Law Currently Preempts Local Reporting Ordinances

The Court of Appeal, Third Appellate District, recently considered whether a secondhand dealer or pawnbroker must comply with a local ordinance requiring reporting of property that need not be reported under state law. The court held that a Sacramento County ordinance imposing additional reporting requirements was preempted by state law:

In Sacramento County Code section 4.30.030, subdivisions A through G, the ordinance prescribes the collection of the information specified under various state laws, including section 21628. However, as noted above, Sacramento County Code section 4.30.030, subdivision H adds additional reporting requirements.

² <https://oag.ca.gov/secondhand/capss>

As we have explained, to the extent the ordinance is duplicative of state law, it is not preempted. But under the authority of *Malish, supra*, 84 Cal.App.4th at pages 735, 736, it cannot add to the reporting requirements of state law. Having demonstrated that it is likely to prevail on this issue (without rejoinder from defendants) and is at risk of irreparable injury from enforcement of the ordinance, CLSDA is entitled to have the preliminary injunction include a restraint on enforcing Sacramento County Code section 4.30.030, subdivision H as well. (*Collateral Loan and Secondhand Dealers Association v. County Of Sacramento* (2014) 223 Cal.App. 4th 1032, 1042-1043.)

6. Amendment to Strike Reference in the Bill to the Authorization for each County Sheriff's Department to use its own List of Property Subject to Reporting

This bill would essentially eliminate state preemption of local ordinances requiring reporting of acquisitions of secondhand property until the Attorney General provides a list of frequently stolen items that must be reported. It would appear that state preemption would apply at that point.

Authorizing each sheriff to determine what TPP must be reported by secondhand goods dealers could be confusing and burdensome to a secondhand dealer who does business in more than one county. The Bay Area, for example is generally described as being composed of nine counties. Further, having a different list of TPP in each county could produce a database with a myriad of categories, and perhaps an overly voluminous database that could be difficult to effectively search. Further, a county-by-county system conflicts with the Legislature's stated purpose of having a "uniform, statewide, state-administered program." (Bus. & Prof. Code § 21625.)

Stakeholders and interested parties have told Committee staff that the author agreed in the Assembly Business and Professions Committee to strike the county-by-county reporting provision.

SHOULD THIS AMENDMENT BE MADE?

-- END --