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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 8. SPECIAL BUSINESS REGULATIONS [18400 - 22949.92.2] (*Division 8 added by Stats. 1941, Ch. 44.*)

CHAPTER 9. Secondhand Goods [21500 - 21672] (*Chapter 9 added by Stats. 1941, Ch. 50.*)

ARTICLE 4. Tangible Personal Property [21625 - 21647] (*Heading of Article 4 amended by Stats. 1980, Ch. 499, Sec. 4.5.*)

21625. It is the intent of the Legislature in enacting this article 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.

Further, it is the intent of the Legislature in enacting this article to require the uniform statewide reporting of tangible personal property acquired by persons whose principal business is the buying, selling, trading, auctioning, or taking in pawn of tangible personal property, unless the property or the transaction is specifically exempt herein, for the purpose of correlating these reports with other reports of city, county, and city and county law enforcement agencies and further utilizing the services of the Department of Justice to aid in tracing and recovering stolen property.

Further, it is the intent of the Legislature that this article shall not be superseded or supplanted by the provisions of any ordinance or charter of any city, county, or city and county.

(Amended by Stats. 1980, Ch. 499, Sec. 1.)

21626. (a) A "secondhand dealer," as used in this article, means and includes any person, copartnership, 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. A "secondhand dealer" does not include a "coin dealer" or participants at gun shows or events, as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, or its successor, who are not required to be licensed pursuant to Sections 26700 to 26915, inclusive, of the Penal Code, who are acting in compliance with the requirements of Sections 26500 to 26585, inclusive, and 27545 of the Penal Code, and who are not a "Gun Show Trader," as described in Sections 16620 and 26525 of the Penal Code.

(b) As used in this section, a "coin dealer" means any person, firm, partnership, or corporation whose principal business is the buying, selling, and trading of coins, monetized bullion, or commercial grade ingots of gold, or silver, or other precious metals.

(Amended by Stats. 2010, Ch. 178, Sec. 15. (SB 1115) Effective January 1, 2011. Operative January 1, 2012, by Sec. 107 of Ch. 178.)

21626.5. "Secondhand dealer," as used in this article, does not include either of the following:

(a) Any person who performs the services of an auctioneer for a fee or salary.

(b) Any person whose business is limited to the reconditioning and selling of major household appliances, provided all the following conditions are met:

(1) The person does not trade, take in pawn, accept for drop-off, accept as a trade-in, accept for sale on consignment, accept for auction, auction, or buy, except in bulk, the appliances.

(2) The person does not perform repair services for owners of appliances unless the appliance was purchased from the person.

(3) The person has never been convicted of the crime of attempting to receive or receiving stolen property or any other theft-related crime.

(Amended by Stats. 1996, Ch. 103, Sec. 1. Effective July 1, 1996.)

21627. (a) As used in this article, "tangible personal property" means all secondhand tangible personal 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.

(b) "Tangible personal property" also means the following:

(1) All tangible personal property, new or used, including motor vehicles, received in pledge as security for a loan by a pawnbroker.

(2) All tangible personal property that bears a serial number or personalized initials or inscription and that is purchased by a secondhand dealer or a pawnbroker or that, at the time of the purchase, bears evidence of having had a serial number or personalized initials or inscription.

(3) All tangible personal property that the Attorney General statistically determines through the most recent Department of Justice crime data, updated pursuant to Section 13010 of the Penal Code, to constitute a significant class of stolen goods. A list of that personal property shall be supplied by the Attorney General to all local law enforcement agencies and posted on the Attorney General's Internet Web site. That list shall be updated annually by the Attorney General, beginning January 1, 2016, to ensure that it addresses current problems with stolen goods.

(c) As used in this article, "tangible personal property" does not include any new goods or merchandise purchased from a bona fide manufacturer or distributor or wholesaler of the new goods or merchandise by a secondhand dealer. For the purposes of this article, however, a secondhand dealer shall retain for one year from the date of purchase, and shall make available for inspection by any law enforcement officer, any receipt, invoice, bill of sale, or other evidence of purchase of the new goods or merchandise.

(d) As used in this article, "tangible personal property" does not include coins, monetized bullion, or commercial grade ingots of gold, silver, or other precious metals. "Commercial grade ingots" means 0.99 fine or finer ingots of gold, silver, palladium, or platinum, or 0.925 fine sterling silver art bars and medallions, provided that the ingots, art bars, and medallions are marked by the refiner or fabricator as to their assay fineness.

(e) For purposes of this article, a "significant class of stolen goods" means those items determined through the Department of Justice's most recent OpenJustice Web portal update to constitute more than 10 percent of property reported stolen in the calendar year preceding the annual posting of the list of significant classes of stolen goods.

(Amended by Stats. 2016, Ch. 418, Sec. 3. (AB 2524) Effective January 1, 2017.)

21627.5. "CAPSS" means the California Pawn and SecondhandDealer System, which is a single, statewide, uniform electronic reporting system that receives secondhand dealer reports and is operated by the Department of Justice consistent with Resolution Chapter 16 of the Statutes of 2010. The maintenance and operation of CAPSS is funded by the Secondhand Dealer and Pawnbroker Fund established pursuant to Section 21642.5.

(Added by Stats. 2016, Ch. 793, Sec. 2. (AB 1751) Effective September 29, 2016.)

21628. (a) Every secondhand dealer or coin dealer described in Section 21626 shall report daily, or no later than the next business day excluding weekends and holidays after receipt or purchase of secondhand tangible personal property, to the California Pawn and SecondhandDealer System (CAPSS), all secondhand tangible personal property, except for firearms, which they have purchased, taken in trade, taken in pawn, accepted for sale on consignment, or accepted for auctioning, in accordance with Section 21630 and this section. The report shall be legible, prepared in English, completed where applicable, and include the information specified in subparagraphs (A) to (C), inclusive, of paragraph (1), as applicable.

(1) (A) A property description. The property description shall be a complete and reasonably accurate description of the property, including, but not limited to, the following: serial number, personalized inscriptions, and other identifying marks or symbols, owner-applied numbers, the size, color, material, and, if known by the secondhand dealer, the manufacturer's pattern name. The property description shall include the brand and model name or number of the item if known to, or reasonably ascertainable by, the secondhand dealer. The property description shall include a plain text description of the item generally accepted by the secondhand industry. Watches need not be disassembled when special skill or special tools are required to obtain the required information, unless specifically requested to do so by a peace officer. A special tool does not include a penknife, caseknife, or similar instrument and disassembling a watch with a penknife, caseknife, or similar instrument does not constitute a special skill. In all instances where the required information may be obtained by removal of a watchband, then the watchband shall be removed. The cost associated with opening the watch shall be borne by the pawnbroker, secondhand dealer, or customer.

(B) A secondhand dealer shall utilize in the article field either an article field descriptor, the format of which shall be provided by the Department of Justice, or a properly spelled and non-abbreviated plain text descriptor commonly recognized and utilized by the pawn and secondhand dealer industry. The lack of an article field descriptor provided by the Department of Justice shall not be relevant to any determination as to whether the secondhand dealer has received evidence of authority to sell or pledge the

property pursuant to paragraph (1) of subdivision (b) so long as the secondhand dealer reports an article field descriptor consistent with this subdivision.

(C) In the case of the receipt or purchase of a handheld electronic device by a secondhand dealer, the serial number reported pursuant to subparagraph (A) may be the International Mobile Station Equipment Identity (IMEI), the mobile equipment identifier (MEID), or other unique identifying number assigned to that device by the device manufacturer. If none of these identifying numbers are available by the time period required for reporting pursuant to this subdivision, the report shall be updated with the IMEI, MEID, or other unique identifying number assigned to that device by the device manufacturer as soon as reasonably possible but no later than 10 working days after receipt or purchase of the handheld electronic device.

(D) For the purpose of this paragraph, "handheld electronic device" means any portable device that is capable of creating, receiving, accessing, or storing electronic data or communications and includes, but is not limited to, a cellular phone, smartphone, or tablet.

(2) A report submitted by a pawnbroker or secondhand dealer shall be deemed to have been accepted by the Department of Justice if a good faith effort has been made to supply all of the required information. An error or omission on the report shall be noted, and the reporting pawnbroker or secondhand dealer shall be notified of the error or omission by the Department of Justice. A reporting pawnbroker or secondhand dealer shall have three business days from that notice to amend or correct the report before being subject to any enforcement violation.

(b) (1) When a secondhand dealer complies with this section, they shall be deemed to have received from the seller or pledger adequate evidence of authority to sell or pledge the property for all purposes included in this article, and Division 8 (commencing with Section 21000) of the Financial Code.

(2) In enacting this subdivision, it is the intent of the Legislature that its provisions shall not adversely affect the implementation of, or prosecution under, any provision of the Penal Code.

(c) Any person who conducts business as a secondhand dealer at any gun show or event, as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, or its successor, outside the jurisdiction that issued the secondhand dealer license in accordance with subdivision (d) of Section 21641, may be required to submit a duplicate of the transaction report prepared pursuant to this section to the local law enforcement agency where the gun show or event is conducted.

(d) (1) The Department of Justice shall recognize and accept the properly spelled and non-abbreviated plain text property descriptors generally accepted in the pawn and secondhand industries provided by pawnbrokers and secondhand dealers, as has been the longstanding practice of chiefs of police and sheriffs when they had received paper reports from pawnbrokers and secondhand dealers.

(2) A report required of a secondhand dealer pursuant to this section shall be transmitted by electronic means to CAPSS by the secondhand dealer.

(3) Unless specifically identified in this section, the Department of Justice, chiefs of police, and sheriffs shall not require a secondhand dealer to include any additional information concerning the seller, the pledger, or the property received by the secondhand dealer in the report required by this section.

(4) If there is a future change to the reporting requirements of CAPSS that substantively alters the reporting standards provided by this article, those changes shall be implemented and operated in compliance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). In implementing and operating a future change to CAPSS, the Department of Justice, chiefs of police, and sheriffs shall comply with Sections 21637 and 21638. Notwithstanding any other law, the Department of Justice shall not take any action with respect to the implementation, operation, or maintenance of CAPSS required by this chapter by adoption of an emergency regulation.

(5) On or before July 1, 2017, the Department of Justice shall convene a meeting with the Department of Technology to discuss issues pertaining to any proposed changes or upgrades to CAPSS required by this chapter. The Department of Technology may provide technological assistance for ongoing improvements, updates, or changes to CAPSS required by this chapter, as requested.

(6) A coin dealer shall report the information required by this section under the reporting standard described in paragraph (1) on a form developed by the Attorney General that the coin dealer shall transmit each day by facsimile transmission or by mail to the chief of police or sheriff. A transaction shall consist of not more than one item.

(7) For purposes of this subdivision, "item" shall mean any single physical article. However, with respect to a commonly accepted grouping of articles that are purchased as a set, including, but not limited to, a pair of earrings or place settings of china, silverware, or other tableware, "item" shall mean that commonly accepted grouping.

(8) This subdivision does not exempt a secondhand dealer from the fingerprinting requirement of this section.

(e) (1) Each secondhand dealer or coin dealer, as defined in Section 21626, shall record and maintain the identification of the intended seller or pledger for three years from the date the item was reported to CAPSS. The identification of the seller or pledger of the property shall be verified by the person taking the information, who may use technology, including, but not limited to, cameras or software, or both, to obtain information and verify identity remotely. The verification shall be valid if the person taking the information reasonably relies on any one of the following documents, provided that the document is currently valid or has been issued within five years and contains a photograph or description, or both, of the person named on it, and, where applicable, is signed by the person, and bears a serial or other identifying number:

(A) A passport of the United States.

(B) A driver's license issued by any state or Canada.

(C) An identification card issued by any state.

(D) An identification card issued by the United States.

(E) A passport from any other country in addition to another item of identification bearing an address.

(F) A Matricula Consular, in addition to another item of identification bearing an address.

(2) Each secondhand dealer or coin dealer, as defined in Section 21626, shall also record and maintain a certification by the intended seller or pledger that the person is the owner of the property or has the authority of the owner to sell or pledge the property, and a legible fingerprint taken from the intended seller or pledger.

(3) (A) If local law enforcement notifies the secondhand dealer or coin dealer, pursuant to Section 21647 of this code or Chapter 12 (commencing with Section 1407) of Title 10 of Part 2 of the Penal Code, that the item from the intended seller or pledger has been reported lost, stolen, or embezzled, the secondhand dealer or coin dealer shall provide law enforcement the information recorded as required by this subdivision immediately upon request or no later than the next business day.

(B) The required fields on CAPSS, which would otherwise be used to identify the intended seller or pledger of the property, shall instead be populated by "on file," and the information on that person's identity shall be recorded and maintained as required by this subdivision.

(f) This section does not exempt a person licensed as a firearms dealer pursuant to Sections 26700 to 26915, inclusive, of the Penal Code from the reporting requirements for the delivery of firearms pursuant to Sections 26700 to 26915, inclusive, of the Penal Code.

(g) This section shall become operative on January 1, 2023.

(Amended (as added by Stats. 2020, Ch. 185, Sec. 2) by Stats. 2022, Ch. 723, Sec. 1. (SB 1317) Effective January 1, 2023.)

21628.2. (a) For purposes of this section, the "department" shall mean the Department of Justice.

(b) Every secondhand dealer described in Section 21626 shall, in a format prescribed by the department, and on the day of the transaction, electronically report to the department each firearm purchased, taken in trade, taken in pawn, accepted for sale on consignment, or accepted for auctioning. The secondhand dealer shall retain a copy of the report submitted to the department and make it available for inspection by the department, any peace officer, or any local law enforcement employee who is authorized by Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6 of the Penal Code to inspect a firearms transaction record.

(c) The department may retain secondhand dealer reports to determine whether a firearm taken in by a secondhand dealer has been reported lost or stolen. If the department's records indicate that the firearm is lost or stolen, the department shall notify the law enforcement agency that entered the information in the department's records and a law enforcement agency with jurisdiction over the secondhand dealer's business location about the status of the firearm. The Dealers' Record of Sale shall be retained by the department pursuant to Section 11106 of the Penal Code.

(d) All information in the secondhand dealer report of each firearm described in subdivision (a) shall be electronically provided by the department to the secure mailbox of the local law enforcement agency described in Section 21630 within one working day of receipt by the department.

(Amended (as amended by Stats. 2010, Ch. 178, Sec. 17) by Stats. 2011, Ch. 745, Sec. 1. (AB 809) Effective January 1, 2012.)

21628.3. In complying with the requirements of Section 21628, a secondhand dealer shall verify the identification of the seller or pledger for each transaction, not for each item that shall be reported.

(Added by Stats. 2015, Ch. 749, Sec. 2. (AB 1182) Effective January 1, 2016.)

21628.5. (a) Every business machine dealer shall report all used business machines which he has purchased, taken in trade, or accepted for sale or consignment, from an individual, to the chief of police or to the sheriff in accordance with the provisions of Section 21628 and Section 21630.

Every business machine dealer shall report all used business machines which he has repaired, if required to do so by the chief of police or the sheriff in accordance with the provisions of Section 21628 and Section 21630.

No report of repair shall be required from a dealer servicing or repairing a machine in the possession of the owner to whom that dealer sold that machine when it was new.

(b) As used in this section, the term "business machines" includes, but is not limited to, typewriters, adding machines, check-writing devices, cash registers, calculators, addressing machines, copying and accounting equipment, letter-sorting and folding devices, and recording equipment, but does not include office furniture or fixtures.

(Amended by Stats. 1976, Ch. 1344.)

21629. The provisions of this article shall not apply to any tangible personal property which has been:

(a) Acquired from another secondhand dealer; provided the secondhand dealer selling or trading the tangible personal property states in writing under penalty of perjury, along with a description of the property, on an interdealer transfer form or an itemized bill of sale, that the report or reports required by this article have been properly made and submitted by that dealer. A copy of the form or the itemized bill of sale shall be delivered to the acquiring dealer at the time the transaction occurs. Interdealer transfer forms shall be provided at actual cost by the Department of Justice.

The dealers involved in the transaction shall retain their copy of the interdealer transfer form or itemized bill of sale for a period of three years as a matter of record, and shall make them available for inspection by any law enforcement officer.

(b) Acquired in a nonjudicial sale, transfer, assignment, assignment for the benefit of creditors, or consignment of the assets or stock in trade, in bulk, or a substantial part thereof, of an industrial or commercial enterprise for purposes of voluntary dissolution or liquidation of the seller's business, or for the purpose of disposing of an excessive quantity of personal property; or which has been acquired in a nonjudicial sale or transfer from an owner of his or her entire household of personal property, or a substantial part thereof; provided, the secondhand dealer retains in his or her place of business for a period of three years a copy of the bill of sale, receipt, inventory list, or other transfer document as a matter of record which shall be made available for inspection by any law enforcement officer; and provided further, that the secondhand dealer notifies the chief of police or the sheriff that exemption from reporting is being claimed under this subdivision. "Industrial or commercial enterprise" and "owner" as used in this subdivision do not include a secondhand dealer;

(c) Acquired in a sale made by any public officer in his or her official capacity, trustee in bankruptcy, executor, administrator, receiver, or public official acting under judicial process or authority, or which has been acquired in a sale made upon the execution of, or by virtue of, any process issued by a court, or under the provisions of Division 7 (commencing with Section 7101) of the Commercial Code;

(d) Acquired as the surplus property of the United States government or of a state, city, county, city and county, municipal corporation, or public district and which after requisition or acquisition by the United States government or by a state, city, county, city and county, municipal corporation, or public district has never thereafter been sold at retail; and

(e) Reported by a secondhand dealer as an acquisition or a purchase, or which has been reported as destroyed or otherwise disposed of, (1) to a state agency by the authority of any other law of this State; or (2) to a city, county, or city and county officer or agency by the authority of any other law of this State or a city, county, or city and county ordinance.

(f) Acquired by persons, firms, partnerships, or corporations who buy, sell, or trade precious metals, whether in the form of coins or commercial grade ingots, who: (1) are designated contract markets by or registered with the Commodity Futures Trading Commission under the Federal Commodities Exchange Act and acting pursuant thereto; or (2) infrequently conduct their business directly with members of the general public. As used in this subdivision, "infrequently" means occasional and without regularity.

(Amended by Stats. 1982, Ch. 1229, Sec. 2. Effective September 22, 1982.)

21629.5. Notwithstanding Section 21629, the provisions of this article shall apply to any tangible personal property which has been acquired by a secondhand dealer with the understanding or expectation that such property would later be reacquired by the transferor or an agent thereof.

(Added by Stats. 1980, Ch. 499, Sec. 5.)

21630. (a) A secondhand dealer or coin dealer shall electronically transmit to CAPSS no later than the next business day after the date of transaction excluding weekends and holidays or, if not then possible due to an electrical, telecommunications, or other malfunction, as soon as reasonable thereafter, the report of acquisition of tangible personal property as required by Section 21628.

(b) Notwithstanding Section 21628, submission of a tangible property acquisition report is not required if the report of an acquisition of the same property from the same customer has been submitted within the preceding 12 months.

(Repealed and added by Stats. 2016, Ch. 793, Sec. 6. (AB 1751) Effective September 29, 2016.)

21631. Notwithstanding any other provisions of law, all tangible personal property that is found in the shop of a pawnbroker, secondhand dealer, or coin dealer, doing business under a California secondhand dealer's license, shall be reported as required under subdivisions (c) and (d) of Section 21628, including any additional information required by Section 21628 that is known by the reporting person, and shall be held as required under Section 21636 on forms as required under Section 21633. If no claim is made for the property for a period of 60 days after it is reported, the pawnbroker, secondhand dealer, or coin dealer may treat the property as property regularly acquired in the due course of business.

(Added by Stats. 1992, Ch. 647, Sec. 2. Effective January 1, 1993.)

21634. The chief of police or the sheriff who receives a report on a form filed pursuant to the provisions of this article shall daily submit the original to the Department of Justice.

(Amended by Stats. 1972, Ch. 1377.)

21636. (a) Every secondhand dealer and coin dealer shall retain in his or her possession for a period of 30 days all firearms reported under Section 21628.2. The 30-day holding period with respect to firearms shall commence with the date the report of its acquisition was made electronically to the Department of Justice by the secondhand dealer and coin dealer. The Department of Justice may for good cause authorize prior disposition of any firearms described in a specific report, provided that a secondhand dealer who disposes of firearms pursuant to that authorization shall report the sale thereof to the Department of Justice.

(b) During the 30-day holding period specified in subdivision (a), every secondhand dealer and coin dealer shall produce any firearm reported under Section 21628.2 for inspection by any peace officer or employee designated by the Department of Justice.

(c) Firearms subject to inspection as specified in subdivision (b) and firearms held in pawn that are stored off the business premises of the licensee shall, upon request for inspection, be produced at the licensee's business premises within one business day of a request.

(d) Any person who conducts business as a secondhand dealer at any gun show or event, as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, or its successor, outside the jurisdiction that issued the secondhand dealer license in accordance with subdivision (d) of Section 21641, may be required to submit for inspection, as specified in subdivision (b), any firearm acquired at a gun show or event within 48 hours of the request of the local law enforcement agency in the jurisdiction where the gun show or event was conducted at a location specified by the local law enforcement agency.

(Amended by Stats. 2018, Ch. 184, Sec. 1. (AB 1993) Effective January 1, 2019.)

21636.1. (a) Every secondhand dealer and coin dealer shall retain in his or her possession for a period of seven days all tangible personal property, as defined in Section 21627, reported pursuant to Sections 21628 and 21630. The seven-day holding period with respect to tangible personal property shall commence with the date the report of its acquisition was made to CAPSS.

(b) During the seven-day holding period specified in subdivision (a), every secondhand dealer and coin dealer shall produce any tangible personal property reported pursuant to Sections 21628 and 21630 for inspection by any peace officer or employee designated by the local licensing authority or the Department of Justice.

(c) Tangible personal property subject to inspection as specified in subdivision (b) and all tangible personal property held in pawn that is stored off the business premises of the licensee shall, upon request for inspection, be produced at the licensee's business premises within one business day of a request by the local licensing authority or the Department of Justice.

(d) (1) If 5 days have elapsed since the transmission of the report of acquisition pursuant to Section 21628 or 21630, the remainder of the seven-day hold specified in subdivision (a) shall not apply to any tangible personal property sold by the secondhand dealer or coin dealer when the following are present:

(A) The secondhand dealer or coin dealer has recorded the sale in its book of records.

(B) The record of sale includes:

(i) The name of buyer to whom the tangible personal property was sold.

(ii) The buyer's address.

(iii) 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.

(2) In documenting the record of sale as set forth in paragraph (1), the secondhand dealer or coin dealer shall record the information provided by the buyer and shall not have any duty to verify the accuracy of the information provided by the buyer.

(3) The information collected pursuant to this subdivision shall be retained by the secondhand dealer or coin dealer for 21 days following the date of sale of the property by the secondhand dealer or coin dealer and shall be available for inspection by a local law enforcement agency during this period.

(4) If a sale of property is made pursuant to this subdivision, 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.

(Added by Stats. 2018, Ch. 184, Sec. 2. (AB 1993) Effective January 1, 2019.)

21636.5. No secondhand dealer or coin dealer shall promise a seller of tangible property that the seller may repurchase property sold to the secondhand dealer or coin dealer.

(Added by Stats. 1989, Ch. 884, Sec. 4.)

21636.6. It is unlawful for any person, who is required to be licensed under Section 21640, to publicly advertise any matter relating to the business for which the license is required without including the license number.

(Added by Stats. 1992, Ch. 647, Sec. 3. Effective January 1, 1993.)

21637. Nothing herein contained shall be deemed to excuse compliance with the provisions of any city, county, or city and county ordinance or any other state law pertaining to or covering the reporting, holding, or releasing of tangible personal property, not inconsistent with the provisions of this article, except that no city, county, or city and county or any other state agency shall adopt the following:

(a) Holding, reporting, or identification requirements for transactions involving coins, monetized bullion, or commercial grade ingots of gold, silver, or other precious metals.

(b) Identification, holding, or reporting requirements for the acquisition of tangible personal property, in the ordinary course of business, by pawnbrokers and secondhand dealers, other than as set forth in Sections 21628, 21630, 21633, and 21636 of this code, and commencing July 1, 2010, Section 21628.2 of this code, and Section 21208 of the Financial Code.

(Amended by Stats. 2009, Ch. 335, Sec. 7. (SB 449) Effective January 1, 2010.)

21638. The provisions of this article shall not prohibit enactment, amendment, or enforcement by any city, county, or city and county of any local ordinance relating to a secondhand dealer or coin dealer which is not inconsistent with the provisions of this article, except that no city, county, or city and county, or any other state agency shall adopt the following:

(a) Holding, reporting, or identification requirements for transactions involving coins, monetized bullion, or commercial grade ingots of gold, silver, or other precious metals.

(b) Identification, holding, or reporting requirements for the acquisition of tangible personal property, in the ordinary course of business, by pawnbrokers and secondhand dealers, other than as set forth in Sections 21628, 21630, 21633, and 21636 of this code, and commencing July 1, 2010, Section 21628.2 of this code, and Section 21208 of the Financial Code.

(Amended by Stats. 2009, Ch. 335, Sec. 8. (SB 449) Effective January 1, 2010.)

21638.5. Sections 21636, 21636.1, 21637, and 21638, insofar as they apply to holding periods for personal property, are not applicable to personal property pledged to a pawnbroker with respect to the redemption of personal property by the pledgor.

(Amended by Stats. 2023, Ch. 510, Sec. 91. (SB 887) Effective January 1, 2024.)

21640. It is unlawful for any person to engage in the business of secondhand dealer, as defined in Section 21626, without being licensed as provided in this article.

(Added by Stats. 1980, Ch. 499, Sec. 13.)

21641. (a) The chief of police, the sheriff, or, where appropriate, the police commission, shall accept an application for and grant a license permitting the licensee to engage in the business of secondhand dealer, as defined in Section 21626, to an applicant who has not been convicted of an attempt to receive stolen property or any other offense involving stolen property. Prior to the granting of a license, the licensing authority shall submit the application to the Department of Justice. If the Department of Justice does not comment on the application within 30 days thereafter, the licensing authority may grant the applicant a license. All forms for application and licensure, and license renewal, shall be prescribed and provided by the Department of Justice. A fee shall be charged to the applicant by the Department of Justice as specified in Section 21642.5. The licensing authority shall collect the fee and transmit the fee to the Department of Justice. In addition, the police chief, the sheriff, or, where appropriate, the police commission, may charge a fee to the applicant not to exceed the actual costs incurred to process the application and to collect and transmit the fee charged by the Department of Justice.

(b) For the purposes of this section, "convicted" means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(c) Notwithstanding subdivisions (a) and (b), no person shall be denied a secondhand dealer's license solely on the grounds that he or she violated any provision contained in this article or Article 5 (commencing with Section 21650), or any provision contained in Chapter 2 (commencing with Section 21200) of Division 8 of the Financial Code, unless the violation demonstrates a pattern of conduct.

(d) Any person licensed as a firearms dealer pursuant to Sections 26700 to 26915, inclusive, of the Penal Code, who is conducting business at gun shows or events pursuant to subdivision (b) of Section 26805 of the Penal Code, and who has a valid secondhand dealer license granted by the appropriate local authorities in the jurisdiction where the firearms dealer license has been granted, shall be authorized to conduct business as a secondhand dealer at any gun show or event, as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, or its successor, without regard to the jurisdiction within this state that issued the secondhand dealer license pursuant to subdivision (a) of this section. No additional fees or separate secondhand dealer license shall be required by any agency having jurisdiction over the locality where the gun show or event is conducted. However, the person shall otherwise be subject to, and comply with, the requirements of this article when he or she acts as a secondhand dealer at the gun show or event to the same extent as if he or she were licensed as a secondhand dealer in the jurisdiction in which the gun show or event is being conducted.

(Amended by Stats. 2012, Ch. 172, Sec. 4. (AB 391) Effective August 17, 2012.)

21642. (a) A license granted pursuant to Section 21641 shall be renewable the second year from the date of issue, and every other year thereafter, upon the filing of a renewal application and the payment of a license renewal fee specified by the licensing authority, as described in this subdivision. The Department of Justice shall also charge a fee, as specified in Section 21642.5. The licensing authority shall collect the fee and transmit the fee and a copy of the renewed license to the Department of Justice. The police chief, sheriff, or, where appropriate, the police commission may charge a fee not to exceed the actual costs incurred to process the renewal application of the licensee and to collect and transmit the fee charged by the Department of Justice.

(b) The license shall be subject to forfeiture by the licensing authority and the licensee's activities as a secondhand dealer shall be subject to being enjoined pursuant to Section 21646 for breach of any of the following conditions:

(1) The business shall be carried on only at the location designated on the license. The license shall designate all locations where property belonging to the business is stored. Property of the business may be stored at locations not designated on the license only with the written consent of the local licensing authority.

(2) The license or a copy thereof, certified by the licensing authority, shall be displayed on the premises in plain view of the public.

(3) The licensee shall not engage in any act which the licensee knows to be in violation of this article.

(4) The licensee shall not be convicted of an attempt to receive stolen property or any other offense involving stolen property. For the purposes of this paragraph, "convicted" means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the chief of police, the sheriff, or, where appropriate, the police commission is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(c) Notwithstanding subdivisions (a) and (b), no person shall have his or her renewal application for a secondhand dealer's license denied, nor shall his or her secondhand dealer's license be forfeited solely on the grounds that he or she violated any provision contained in this article or Article 5 (commencing with Section 21650), or any provision contained in Chapter 2 (commencing with Section 21200) of Division 8 of the Financial Code, unless the violation demonstrates a pattern of conduct.

(Amended by Stats. 2012, Ch. 172, Sec. 5. (AB 391) Effective August 17, 2012.)

21642.5. (a) The Department of Justice shall require each applicant for an initial license under Section 21641 of this code or Section 21300 of the Financial Code and each applicant for renewal of a license under Section 21642 of this code or Section 21301 of the Financial Code to pay a fee not to exceed three hundred dollars (\$300), but in no event exceeding the costs described in subdivision (b), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations.

(b) The fees assessed pursuant to subdivision (a) shall be no more than necessary to cover the reasonable regulatory costs to the department of doing all of the following:

(1) Processing initial license applications under Section 21641 of this code and Section 21300 of the Financial Code.

(2) Processing renewal applications under Section 21642 of this code and Section 21301 of the Financial Code.

(3) Implementing, operating, and maintaining CAPSS described in Section 21627.5.

(c) All licensees holding a license issued before the effective date of the act adding this section pursuant to Section 21641 or 21642 of this code or Section 21300 or 21301 of the Financial Code shall, within 120 days after enactment of the act adding this section in the 2011–12 Regular Session, in addition to any fee required under subdivision (a), pay a fee not to exceed two hundred eighty-eight dollars (\$288) to the Department of Justice.

(d) The fees paid pursuant to subdivisions (a) and (c) shall be deposited in the Secondhand Dealer and Pawnbroker Fund, which is hereby established in the State Treasury. The revenue in the fund shall, upon appropriation by the Legislature, be used by the Department of Justice for the purpose of paying for the costs described in paragraphs (1) to (3), inclusive, of subdivision (b), except that the revenue received pursuant to subdivision (c) shall, upon appropriation by the Legislature, be used by the Department of Justice for the purpose of paying for the costs described in paragraph (3) of subdivision (b).

(e) Applicants described in subdivision (a) shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purposes of obtaining information as to the existence and contents of a record of state convictions and state arrests and information as to the existence and contents of a record of state arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(1) The Department of Justice shall prepare a state-level response pursuant to paragraph (1) of subdivision (l) of Section 11105 of the Penal Code.

(2) The Department of Justice shall provide subsequent notification service pursuant to Section 11105.2 of the Penal Code for applicants described in this subdivision.

(3) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this subdivision. The fee revenues shall be deposited in the Fingerprint Fee Account and shall, upon appropriation by the Legislature, be used by the department for the purposes of paying the costs associated with this subdivision.

(Amended by Stats. 2016, Ch. 793, Sec. 8. (AB 1751) Effective September 29, 2016.)

21643. No transactions that require reporting under Section 21628, or commencing July 1, 2010, Section 21628.2, shall be engaged in with a minor.

(Amended by Stats. 2009, Ch. 335, Sec. 9. (SB 449) Effective January 1, 2010.)

21645. A violation of any provision of this article under circumstances where a person knows or should have known that a violation was being committed is a misdemeanor punishable as follows:

(a) For the first offense, a fine of up to one thousand five hundred dollars (\$1,500) or imprisonment in the county jail up to two months, or both.

(b) For the second offense, a fine of up to five thousand dollars (\$5,000) or imprisonment in the county jail up to four months, or both.

(c) For the third, and any subsequent offense, a fine of up to twenty-five thousand dollars (\$25,000) or imprisonment in the county jail up to six months, or both.

(Amended by Stats. 1986, Ch. 826, Sec. 5.)

21646. The district attorney or the Attorney General, in the name of the people of the State of California, may bring an action to enjoin the violation or the threatened violation of any provision of this article or of any regulation made pertaining to the provisions of this article. Any proceeding brought hereunder shall be governed in all respects by the provisions of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

21647. (a) (1) If a peace officer has probable cause to believe that property, except coins, monetized bullion, or “commercial grade ingots” as defined in subdivision (d) of Section 21627, in the possession of a licensed pawnbroker or secondhand dealer is lost, stolen, or embezzled, the peace officer may place a hold on the property for a period not to exceed 90 days.

(2) A 90-day hold issued pursuant to this section:

(A) Is created upon the receipt by a licensed pawnbroker or secondhand dealer of a written notice by a peace officer that contains the following:

(i) An accurate description of the property being placed on the 90-day hold.

(ii) An acknowledgment that the property is being placed on hold pursuant to this section and denoting whether physical possession will remain with the licensed pawnbroker or secondhand dealer or will be taken by the law enforcement agency instituting the 90-day hold.

(iii) The law enforcement agency's police report or department record number, if issued, for which the property is needed as evidence.

(iv) The date the notice was delivered to the licensed pawnbroker or secondhand dealer that shall initiate the notification period set forth in subdivisions (c) and (g).

(B) Shall not exceed a period of 90 calendar days, but may be renewed as provided in subparagraph (C).

(C) May be renewed as often as is required for a criminal investigation or criminal proceeding by any peace officer who is a member of the same law enforcement agency as the peace officer placing the hold on the property.

(D) Permits a peace officer to either take physical possession of the property as evidence, consistent with a peace officer's right to a plain view seizure for a criminal investigation or criminal proceeding, or to leave the property in the possession of the licensed pawnbroker or secondhand dealer as a custodian on behalf of the law enforcement agency.

(E) Requires the licensed pawnbroker or secondhand dealer to maintain physical possession of the property placed on hold and prohibits the property's release or disposal, except pursuant to the written authorization signed by a peace officer who is a member of the same law enforcement agency as the peace officer placing the hold on the property.

(F) Terminates when the property is no longer needed as evidence in a criminal investigation or criminal proceeding, at which time the property shall be disposed of pursuant to subdivision (d).

(G) Shall not be applicable to secure lost, stolen, or embezzled property found in the possession of an unlicensed pawnbroker or secondhand dealer that has not duly and correctly reported the acquisition pursuant to Section 21628. In such a circumstance, a peace officer, having probable cause to believe the property found in the possession of an unlicensed pawnbroker or secondhand dealer is lost, stolen, or embezzled, may seize the item or items consistent with the authority granted the peace officer under the Penal Code or any other law.

(b) (1) Whenever property that is in the possession of a licensed pawnbroker or secondhand dealer, and that has been placed on hold pursuant to this section, is required by a peace officer in a criminal investigation, the licensed pawnbroker or secondhand dealer, upon reasonable notice, shall produce the property at reasonable times and places or may deliver the property to the peace officer upon the request of any peace officer.

(2) If property placed on hold pursuant to this section is physically surrendered or delivered to a law enforcement agency during the period of the hold, the hold and the pawnbroker's lien against the property shall continue.

(c) Whenever a law enforcement agency has knowledge that property in the possession of a licensed pawnbroker or secondhand dealer has been reported as lost, stolen, or embezzled, the law enforcement agency shall, within two business days after placing the hold on the property pursuant to this section, notify in writing the person who reported the property as lost, stolen, or embezzled of the following:

(1) The name, address, and telephone number of the licensed pawnbroker or secondhand dealer who reported the acquisition of the property.

(2) That the law neither requires nor prohibits payment of a fee or any other condition in return for the surrender of the property, except that when the person who reported the property lost, stolen, or embezzled does not choose to participate in the prosecution of an identified alleged thief, the person shall pay the licensed pawnbroker or secondhand dealer the "out-of-pocket" expenses paid in the acquisition of the property in return for the surrender of the property.

(3) That if the person who reported the property as lost, stolen, or embezzled takes no action to recover the property from the licensed pawnbroker or secondhand dealer within 60 days of the mailing of the notice, the licensed pawnbroker or secondhand dealer may treat the property as other property received in the ordinary course of business. During the 60-day notice period, the licensed pawnbroker or secondhand dealer may not release the property to any other person.

(4) That a copy of the notice, with the address of the person who reported the property as lost, stolen, or embezzled deleted, will be mailed to the licensed pawnbroker or secondhand dealer who is in possession of the property.

(d) When property that is in the possession of a licensed pawnbroker or secondhand dealer is subject to a hold as provided in subdivision (a), and the property is no longer required for the purpose of a criminal investigation or criminal proceeding, the law enforcement agency that placed the hold on the property shall release the hold on the property and return the property to the licensed pawnbroker or secondhand dealer from which it was taken if the law enforcement agency took physical possession of the property.

(e) If a pledgor seeks to redeem property that is subject to a hold, the licensed pawnbroker shall advise the pledgor of the name of the peace officer who placed the hold on the property and the name of the law enforcement agency of which the officer is a member. If the property is not required to be held pursuant to a criminal prosecution the hold shall be released.

(f) Whenever information regarding allegedly lost, stolen, or embezzled property is entered into the Department of Justice automated property system or automated firearms system, and the property is thereafter identified and found to be in the possession of a licensed pawnbroker or secondhand dealer, the property shall be placed on a hold pursuant to this section and Section 11108.5 of the Penal Code.

(g) If the hold, including any additional hold, is allowed to lapse, or 60 days elapse following the delivery of the notice required to be given by subdivision (c) to the person who reported the property to be lost, stolen, or embezzled without a claim being made by that person, whichever is later, the licensed pawnbroker or secondhand dealer may mail under a certificate of mailing issued by the United States Post Office, addressed to the law enforcement agency that placed the property on hold, a written request to delete the property listing from the Department of Justice automated property system or automated firearms system, as is applicable. Within 30 days after the request has been mailed, the law enforcement agency shall either cause the property listing to be deleted as requested or place a hold on the property. If no law enforcement agency takes any further action with respect to the property within 45 days after the mailing of the request, the licensed pawnbroker or secondhand dealer may presume that the property listing has been deleted as requested and may thereafter deal with the property accordingly, and shall not be subject to liability arising from the failure of the removal of the property listing from the Department of Justice automated property system or automated firearms system.

(h) A licensed pawnbroker or secondhand dealer shall not refuse a request to place property in their possession on hold pursuant to this section when a peace officer has probable cause to believe the property is lost, stolen, or embezzled. If a licensed pawnbroker or secondhand dealer refuses a request to place property on hold pursuant to this section, the property may be seized with or without a warrant. The peace officer shall issue a receipt, as described in Section 21206.7 of the Financial Code, left with the licensed pawnbroker or secondhand dealer. The property shall be disposed of pursuant to procedures set forth in Section 21206.8 of the Financial Code, which shall apply to both licensed pawnbrokers and secondhand dealers under this section.

(i) If a search warrant is issued for the search of the business of a licensed pawnbroker or secondhand dealer to secure lost, stolen, or embezzled property that has been placed on hold, the hold shall continue for the duration that the property remains subject to the court's jurisdiction. Notwithstanding any other law, when the use of the property seized for a criminal investigation or criminal proceeding has concluded, the property shall be disposed of pursuant to subdivision (d).

(j) If a civil or criminal court is called upon to adjudicate the competing claims of a licensed pawnbroker or secondhand dealer and another party claiming ownership or an interest in the property that is or was subject to a hold pursuant to this section, the court shall award possession of the property only after due consideration is given to the effect of Section 2403 of the Commercial Code.

(k) A licensed pawnbroker or secondhand dealer is not subject to civil liability for compliance with this section.

(Amended by Stats. 2013, Ch. 318, Sec. 1. (SB 762) Effective January 1, 2014.)