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SB-300 Pawnbrokers: regulations. (2015-2016)

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Senate Bill No. 300

CHAPTER 417

An act to amend Sections 21201 and 21201.5 of, and to add Section 21201.6 to, the Financial Code, relating to pawnbrokers.

[Approved by Governor October 01, 2015. Filed with Secretary of State October 01, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 300, Mendoza. Pawnbrokers: regulations.

(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 would, instead, specify that the contract be for a minimum of 4 months.

(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.

(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, provided that the contract and transaction comply with the Uniform Electronic Transactions Act and meet certain disclosure requirements.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature to permit pawnbrokers to conduct business transactions by electronic means, except when establishing an original loan. It is further the intent of the Legislature to permit such transactions to be made in conformity with the Uniform Electronic Transactions Act, as set forth in Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code.

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

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

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

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

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

(d) If any pledged article is not redeemed during the loan period as provided herein, and the pledgor and pawnbroker do not mutually agree in writing to extend the loan period, the pawnbroker shall notify the pledgor within one month after expiration of the loan period. If the pawnbroker fails to notify the pledgor within one month after the expiration of the loan period, the pawnbroker shall not charge interest from the day after the expiration of the one-month period. The pawnbroker shall notify the pledgor at his or her last known mailing or electronic address of the termination of the loan period, 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, and extending the right of redemption, during posted business hours, for a period of 10 days from date of mailing or electronic transmission of that notice. Electronic notice of the termination of the loan period shall be valid if the pledgor has previously responded to an electronic communication sent by the pawnbroker to the pledgor's last known electronic address provided by the pledgor. Upon the initiation of each new or replacement loan, the pledgor shall affirm that the current electronic address on file with the pawnbroker is valid. The 10-day notice shall state, in substantially the same format as the following: "If the tenth day falls on a day when the pawnshop is closed, the time period is extended to the next day that the pawnshop is open."

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

(f) If any pledged article is not redeemed within the 10-day notice period, the pawnbroker shall become vested with all right, title, and interest of the pledgor, or his or her assigns, to the pledged article, to hold and dispose of as his or her own property. Any other provision of law relating to the foreclosure and sale of pledges shall not be applicable to any pledge the title to which is transferred in accordance with this section. The pawnbroker shall not sell any article of pledged property until he or she has become vested with the title to that property pursuant to this section.

(g) The sale of pledged property is a misdemeanor pursuant to Section 21209.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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