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AB-1969 Secondhand goods: tangible personal property: reporting requirements. (2019-2020)

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Assembly Bill No. 1969

CHAPTER 185

An act to amend, repeal, and add Section 21628 of the Business and Professions Code, relating to secondhand goods.

[Approved by Governor September 27, 2020. Filed with Secretary of State September 27, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1969, Blanca Rubio. Secondhand goods: tangible personal property: reporting requirements.

Existing law requires every secondhand dealer and coin dealer to report daily the receipt of all secondhand tangible personal property, except for firearms, which they have purchased, taken in trade or pawn, or accepted for sale on consignment or for auctioning, in accordance with certain provisions, to the statewide uniform electronic reporting system known as the California Pawn and SecondhandDealer System (CAPSS), operated by the Department of Justice. Existing law requires the report to contain specified information, including the name and current address of the intended seller or pledger, and a form of identification for that person, which may include a Matricula Consular, in addition to another item of identification bearing an address. Existing law makes it a crime to commit perjury and also imposes various criminal penalties for violations of the secondhand goods provisions.

This bill would, beginning January 1, 2023, exempt a seller or pledger who verifies their identity using a Matricula Consular from the requirements that their name and current address be included in the report. The bill would specify that in these cases no personal identifying information would be reported to CAPSS. The bill would instead require each secondhand dealer or coin dealer to record and maintain the name, current address, and the Matricula Consular number of the seller or pledger for 3 years from the date the item was reported to CAPSS, and to also record and maintain a certification by the intended seller or pledger that they are the owner of the property or have the authority of the owner to sell or pledge the property, along with taking a legible fingerprint from that person. The bill would also require each secondhand dealer or coin dealer, upon receiving notification from local law enforcement that the item has been reported lost, stolen, or embezzled, to provide law enforcement with the information collected from the identification used by the intended seller or pledger. By expanding the scope of existing crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

SECTION 1. Section 21628 of the Business and Professions Code is amended to read:

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 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 the provisions of Section 21630 and subdivision (d). The report shall be legible, prepared in English, completed where applicable, and include only the following information:

(1) The name and current address of the intended seller or pledger of the property.

(2) The identification of the intended seller or pledger. 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.

(3) (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.

(4) A certification by the intended seller or pledger that they are the owner of the property or has the authority of the owner to sell or pledge the property.

(5) A certification by the intended seller or pledger that to their knowledge and belief the information is true and complete.

(6) A legible fingerprint taken from the intended seller or pledger, as prescribed by the Department of Justice. This requirement does not apply to a coin dealer, unless required pursuant to local regulation.

(7) 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 all of the provisions of 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) Nothing in this subdivision shall be construed as excepting a secondhand dealer from the fingerprinting requirement of paragraph (6) of subdivision (a).

(e) Nothing in this section shall be construed to 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.

(f) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

SEC. 2. Section 21628 is added to the Business and Professions Code, to read:

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 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 the provisions of Section 21630 and this section. The report shall be legible, prepared in English, completed where applicable, and include only the following information:

(1) (A) The name and current address of the intended seller or pledger of the property.

(B) Subparagraph (A) shall not apply to a seller or pledger who verifies their identity with a Matricula Consular in addition to another item of identification, as described in clause (vi) of subparagraph (C) of paragraph (2). In such a case, no personal identifying information of the intended seller or pledger shall be reported to CAPSS. Instead, the personal identifying information of the intended seller or pledger shall be recorded and maintained pursuant to subdivision (e).

(2) (A) The identification of the intended seller or pledger. 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.

(B) Subparagraph (A) shall not apply to a seller or pledger who verifies their identity with a Matricula Consular in addition to another item of identification, as described in clause (vi) of subparagraph (C). The required fields on CAPSS, which would otherwise be used to identify a person in this protected class, shall instead be populated by "on file," and the information on that person's identity shall be recorded and maintained pursuant to subdivision (e).

(C) 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:

(i) A passport of the United States.

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

(iii) An identification card issued by any state.

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

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

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

(3) (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.

(4) (A) A certification by the intended seller or pledger that they are the owner of the property or have the authority of the owner to sell or pledge the property.

(B) Subparagraph (A) shall not apply to a seller or pledger who verifies their identity with a Matricula Consular in addition to another item of identification, as described in clause (vi) of subparagraph (C) of paragraph (2). The required fields on CAPSS, which would otherwise be used to identify a person in this protected class, shall instead be populated by "on file," and the information on that person's identity shall be recorded and maintained pursuant to subdivision (e).

(5) (A) A certification by the intended seller or pledger that to their knowledge and belief the information is true and complete.

(B) Subparagraph (A) shall not apply to a seller or pledger who verifies their identity with a Matricula Consular in addition to another item of identification, as described in clause (vi) of subparagraph (C) of paragraph (2). The required fields on CAPSS, which would otherwise be used to identify a person in this protected class, shall instead be populated by "on file," and the information on that person's identity shall be recorded and maintained pursuant to subdivision (e).

(6) (A) A legible fingerprint taken from the intended seller or pledger, as prescribed by the Department of Justice.

(B) The requirement in subparagraph (A) shall not apply to any of the following:

(i) A seller or pledger who verifies their identity with a Matricula Consular in addition to another item of identification, as described in clause (vi) of subparagraph (C) of paragraph (2). The required fields on CAPSS, which would otherwise be used to identify a person in this protected class, shall instead be populated by "on file," and the information on that person's identity shall be recorded and maintained pursuant to subdivision (e).

(ii) A coin dealer, except as set forth in clause (i), or unless required pursuant to local regulation.

(7) 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 all of the provisions of 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) Nothing in this subdivision shall be construed as excepting a secondhand dealer from the fingerprinting requirement of paragraph (6) of subdivision (a).

(e) Each secondhand dealer or coin dealer, as defined in Section 21626, shall record and maintain the name, current address, and the Matricula Consular number of the seller or pledger for three years from the date the item was reported to CAPSS. Each secondhand dealer or coin dealer 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. 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 collected from the identification used by the intended seller or pledger.

(f) Nothing in this section shall be construed to 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.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.