

21636.6. Advertising

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.

21637. Compliance with ordinances or other state law

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 Section 21208 of the Financial Code.

21638. Effect of article upon enactment, amendment or enforcement of local ordinances

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 Section 21208 of the Financial Code.

21638.5 Personal property pledged to pawnbroker; redemption by pledger

Sections 21636, 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.

21640. Secondhand dealer; requirement for license

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.

21641. Licenses; application; fee; grounds for denial; grant

(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 license renewal, shall be prescribed and provided by the Department of Justice. A fee may be charged to the applicant as specified by the Department of Justice and the local licensing authority for processing the initial license application.

(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 Article 4 (commencing with Section 21625) or Article 5 (commencing with Section 21650) of this chapter, 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 Section 12071 of the Penal Code, who is conducting business at gun shows or events pursuant to subparagraph (B) of paragraph (1) of subdivision (b) of Section 12071 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 178.100 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.

21642. License; renewal; forfeiture; grounds

(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. The Department of Justice may also charge a fee of not more than twelve dollars (\$12) but not to exceed the actual processing costs of the department. After the department establishes a fee sufficient to reimburse the department for processing

costs, the fee charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustments for the department's budget. The licensing authority shall collect the fee and transmit the fee and a copy of the renewed license to 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 Article 4 (commencing with Section 21625) or Article 5 (commencing with Section 21650) of the chapter, 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.

21643. Transactions with a minor

No transactions that require reporting under Section 21628 shall be engaged in with a minor.

21645. Violations; misdemeanor; punishment

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.

21646. Violations or threatened violations; injunction

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. Peace officer hold on property

(a) Whenever any 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 pawnbroker, secondhand dealer, or coin dealer is stolen, the peace officer may place a hold on the property for a period not to exceed 90 days. When a peace officer places a hold on the property, the peace officer shall give the pawnbroker, secondhand dealer, or coin dealer a written notice at the time the hold is placed, describing the item or items to be held. During that period the pawnbroker, secondhand dealer, or coin dealer shall not release or dispose of the property, except pursuant to a court order or upon receipt of a written authorization signed by any peace officer who is a member of the law enforcement agency of which the peace officer placing the hold on the property is a member. A pawnbroker, secondhand property dealer, or coin dealer shall not be subject to civil liability for compliance with this section.

(b) Whenever property that is in the possession of a pawnbroker, secondhand dealer, or coin dealer whether or not the property has been placed on hold, is required by a peace officer in a criminal investigation, the pawnbroker, secondhand dealer, or coin 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.

(c) Whenever a law enforcement agency has knowledge that property in the possession of a pawnbroker, secondhand dealer, or coin dealer has been reported lost or stolen, the law enforcement agency shall notify in writing the person who reported the property as lost or stolen of the following:

(1) The name, address, and telephone number of the pawnbroker, secondhand dealer, or coin 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 or stolen does not choose to participate in the prosecution of an identified alleged thief, the person shall pay the pawnbroker, secondhand dealer, or coin 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 or stolen takes no action to recover the property from the pawnbroker, secondhand dealer, or coin dealer within 60 days of the mailing of the notice, the pawnbroker, secondhand dealer, or coin dealer may treat the property as other property received in the ordinary course of business. During the 60-day notice period, the pawnbroker, secondhand dealer, or coin 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 or stolen deleted, will be mailed to the pawnbroker, secondhand dealer, or coin dealer who is in possession of the property.

(d) When property that is in the possession of a pawnbroker, secondhand dealer, or coin 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, the law enforcement agency that placed the hold on the property shall release the hold on the property. When the law enforcement agency has knowledge that the property has been reported lost or stolen, the law enforcement agency shall then make notification to the person who reported the property as lost or stolen pursuant to subdivision (c).

(e) If a pledgor seeks to redeem property that is subject to a hold, the 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 or stolen 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 pawnbroker, secondhand dealer, or coin dealer, and the property is thereafter placed on a hold pursuant to this section and 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 this section to the person who reported the property to be lost or stolen without a claim being made by that person, whichever is later, the pawnbroker, secondhand dealer, or coin 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 pawnbroker, secondhand dealer, or coin 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.

(g) Nothing in this section shall be construed to alter the authority of a peace officer to seize property pursuant to any other provision of statutory or case law.

Article 5 - RESALE OF GOODS

21650. Adequate evidence of authority to sell

As used in this article, "adequate evidence of authority to sell" is evidence from which a reasonable person would conclude that the person presenting the evidence is the owner of the item he is attempting to sell or is the agent of such owner and is authorized by the owner to sell such item.

21651. Definitions

As used in this article,

- (a) "Junk dealer" has the meaning defined in Section 21601; and
- (b) "Secondhand dealer" has the meaning defined in Section 21626.

21652. Presentation to dealer of adequate evidence of authority to sell

Every junk dealer or secondhand dealer shall, before accepting for resale from any person any finished product, new item of finished or merchandisable quality, inventory item of new materials or finished quality, or other goods and materials in such a state or condition as to show that they are neither abandoned nor scrapped, shall require that such person present adequate evidence of authority to sell. Violation of this section is a misdemeanor.

21653. Violations

Every junk dealer or secondhand dealer who resells any item acquired in violation of Section 21652 is guilty of a felony, if the value of the item exceeds four hundred dollars (\$400), and is guilty of a misdemeanor if the value of the item does not exceed four hundred dollars (\$400).

Article 6 - SWAP MEETS

21660. Legislative intent; application of article; uniform reports; ordinances and charters; land use and zoning regulations; secondhand dealers; operators and vendors

It is the intent of the Legislature in enacting this article to require the reporting of personal property exchanged, sold, or offered for sale or exchange at swap meets, flea markets, and open-air markets, and information regarding vendors selling or displaying new merchandise, for the purpose of ensuring that swap meet, open-air market, and flea market operators and vendors are in complete compliance with all state laws and regulations applicable to displaying, offering for sale, selling, and exchanging new and previously owned merchandise.

This article shall apply to operators and vendors at swap meets, flea markets, and open-air markets unless the merchandise or the transaction is specifically exempt under this article and shall not be superseded or supplanted by any provisions or ordinances or charters of any city, county, or city and county, nor supplemented by any local ordinances or charters or provisions. Nothing contained in this article shall be deemed to affect the land use and zoning regulatory power of a local agency, nor be construed to require any local agency to permit swap meets, flea markets, or open-air markets if local land use or zoning regulations prohibit those operations.

Any transaction that is regulated by this article shall not be subject to the provisions of Article 4 (commencing with Section 21625), regulating transactions in identifiable secondhand tangible personal property. No person, partnership, or corporation shall be considered a "secondhand dealer" within the meaning of Section 21626 because of activities regulated by this article.

Article 5 (commencing with Section 21650) of this chapter shall not apply to operators or vendors at swap meets, flea markets, or open-air markets.

21661. Definitions

(a) As used in this article, the term "swap meet" includes a flea market or an open-air market and means an event at which two or more persons offer merchandise for sale or exchange and that meets one of the following conditions:

- (1) A fee is charged for the privilege of offering or displaying merchandise for sale or exchange.
- (2) A fee is charged to prospective buyers for parking or for admission to the area where merchandise is offered or displayed for sale or exchange.
- (3) The event is held more than six times in any 12-month period.

(b) Notwithstanding subdivision (a), the term "swap meet," as used in this article, includes a flea market or an open-air market and means an event, regardless of the number of persons offering or displaying personal property or the absence of fees, at which used personal property is offered or displayed for sale or exchange if the event is

held more than six times in any 12-month period.

(c) The term "swap meet," as used in this article, is interchangeable and applicable to "flea markets," "indoor swap meets," "open-air markets," or other similar terms, regardless of whether these events are held either inside a building or outside in the open. The primary characteristic is that these activities involve a series of sales sufficient in number, scope, and character to constitute a regular course of business.

(d) "Operator," as used in this article, means any person, partnership, organization or corporation that controls, manages, conducts or otherwise administers a swap meet.

(e) "Vendor," as used in this article, means any person, partnership, organization or corporation who exchanges, sells, or offers for sale or exchange any merchandise at a swap meet. A swap meet vendor shall be classified according to the following categories:

(1) A "casual swap meet vendor" means a vendor who participates in a swap meet two times or less per year.

(2) A "regular swap meet vendor" means a vendor who participates in a swap meet three or more times per year.

21662. Inapplicability of article

The provisions of this article shall not apply to:

(a) An event held not more than two times per calendar year which is organized for the exclusive benefit of any community chest, fund, foundation, association or corporation organized and operated for religious, educational, hospital or charitable purposes, if no part of any admission fee or parking fee charged vendors or prospective purchasers, or the gross receipts or net earnings from the sale or exchange of personal property, whether in the form of a percentage of the receipts or earnings, as salary, or otherwise, inures to the benefit of any private shareholder or person participating in the organization, or conduct of the event.

(b) An event at which all of the merchandise offered or displayed is new, and all persons selling, exchanging, offering, or displaying merchandise for sale or exchange are manufacturers or licensed retail or wholesale merchants.

(c) Any vehicle or trailer or any vehicle accessory or vehicle part usable for a motor vehicle eligible for vehicle registration under Section 5004 of the Vehicle Code, and items of memorabilia or history, or both, relating to these vehicles.

21663. Reports of property offered or displayed; contents; form

(a) Except as provided in Section 21663.1, every vendor shall report all merchandise offered or displayed for sale or exchange on a form, prescribed or approved by the California Department of Justice, containing all the following information:

(1) The name and address of the vendor.

(2) A description of the merchandise offered for sale or exchange, including serial numbers and personal identification marks, or if there is no serial number, other identification marks or symbols, if any, or a general description of the item.

(3) A certification by the vendor that to his or her knowledge and belief, the information contained on the form is true.

(4) The make, year, color, state of registration, and license number of the vehicle or vehicles in which the merchandise is transported to the swap meet.

(5) The California seller's permit number (State Board of Equalization sales tax number), if any, of the vendor.

(6) The vendor's motor vehicle driver's license number and its state of issuance or California identification card numbers.

(7) If the vendor is an agent of an individual, company, partnership or corporation, the name and business address of the principal.

(8) The dates of sale for which the report is made.

(9) A receipt number given by the operator for the dates of the sale or the space used by the vendor.

(10) A requirement that the vendor check an appropriate box that sets forth his or her permit number for sales tax purposes. If the vendor's permit number is not listed in the appropriate place on the form, the vendor shall indicate that he or she has not and does not contemplate making more than two sales of sufficient size, scope, and character within a 12-month period to require a permit.

(b) In addition to the official governmental form, consisting of an original and at least two copies, the information required may be recorded on a computerized or other similar record that contains the same information required by subdivision (a).

(c) In no case shall a swap meet owner or operator be liable or responsible for the accuracy of, or any discrepancy in, any information submitted by the vendors on the forms provided to them by the swap meet owners or operators.

21663.1. Swap meet; reporting exemptions

(a) A vendor selling or displaying new merchandise and a vendor holding a business license issued by a city, county, or city and county of this state are not required to comply with Section 21633 if the swap meet is conducted at the same location at least once per month on real property owned by the operator or leased to the operator for a period of not less than one year.

(b) A vendor meeting the conditions of subdivision (a) shall, at a minimum, provide the operator with the following information prior to offering or displaying merchandise for sale at the event:

(1) The name and address of the vendor.

(2) The vendor's California seller's permit number (State Board of Equalization sales tax number).

(3) The vendor's motor vehicle driver's license number and its state of issuance or his or her California identification card number.

(4) The vendor's business license number and its city or county of issuance, unless the vendor is operating under a business license issued to the operator.

(c) The operator shall maintain the information required by this section in written or electronic form for six months after the date of its receipt and shall make copies of the information available for inspection, upon request, to any peace officer or any authorized representative of the Board of Equalization or Department of Justice.

(d) In no case shall the operator be liable for the accuracy of, or any discrepancy in, any information submitted by a vendor.

21664. Distribution of forms to vendors; collection; submission to police chief or sheriff and to the Department of Justice; tax evasion; restricted use; vendors regularly offering or displaying property

(a) The swap meet operator shall obtain sufficient blank forms from the Department of Justice at a cost not to exceed the actual cost to the department, or shall cause to be printed and be available sufficient forms approved by the department, for the use of vendors attending the swap meet, and shall distribute them to vendors as needed. The vendor shall submit the completed form to the operator who shall note on the vendor's copy that the vendor has submitted the form. The vendor shall submit the form to the swap meet operator prior to the close of the business day on which the item is to be placed on sale. The swap meet operator shall provide this form required by subdivision (a) of Section 21663 to the chief of police, if the swap meet occurs within the territorial limits of an incorporated city, or the sheriff, if the swap meet occurs outside a city, within 24 hours, or, before the end of the first working day following the swap meet. The original shall also be available to the State Board of Equalization to permit them to detect possible sales tax evasion. The reports shall not be utilized by a chief of police, a sheriff, the Department of Justice, or any other governmental agency for the purpose

of providing a permanent record of property ownership, nor shall the information derived from these reports form the basis for any record other than reports which assist the tracing and recovering of stolen property or assist in detecting sales tax evasion.

(b) Every vendor shall submit to the swap meet operator the form disclosing the information required by subdivision (a) of Section 21663 for each swap meet at which he or she is a vendor prior to the close of the business day at which the item is to be placed on sale. Items described in reports previously submitted pursuant to paragraph (2) of subdivision (a) of Section 21663 may be omitted from the description on the forms submitted at subsequent swap meets if the vendor furnishes the swap meet operator of each subsequent swap meet with two copies of the report previously submitted, marked to indicate personal property currently being offered or displayed.

(c) A vendor who regularly offers or displays for sale or exchange any new or used personal property or merchandise shall be required to submit to the swap meet operator the form disclosing the information required by subdivision (a) of Section 21663 only once every 60 days. The vendor shall, however, submit a new report at any swap meet at which he or she is a vendor and offers or displays for sale or exchange any personal property not included by generic classification in the previously submitted report. For purposes of this subdivision, a vendor shall be deemed to regularly offer or display for sale or exchange any personal property not included by generic classification in the previously submitted report. For purposes of this subdivision, a vendor shall be deemed to regularly offer or display for sale or exchange any items of merchandise if such vendor participates for four or more days in a month at a swap meet conducted at the same location. Any vendor claiming to be a regular seller of new or used merchandise under the provisions of this subdivision shall so indicate on the bimonthly report.

(d) Every vendor shall submit to the swap meet operator the form disclosing the information required by subdivision (a) of Section 21663 for each swap meet at which he or she is a vendor prior to the business day on which the item is to be placed on sale. A vendor who regularly offers or displays merchandise for sale or exchange shall be required to submit to the swap meet operator the form disclosing the information required by subdivision (a) of Section 21663 only once every six months, provided the vendor has a written agreement with the swap meet operator for a periodic term of one month or longer. All other casual vendors shall submit the form disclosing the information required by subdivision (a) of Section 21663 on each instance of offering merchandise for sale or exchange at the swap meet.

21665. Copies of reports; retention by operators; time; inspection; vendor's copy; availability for inspection during swap meet

(a) Swap meet operators shall retain a copy of the reports collected by them for six months and shall make the copies available for inspection, upon request, by a peace officer as defined in Section 830.1 or subdivision (a) of Section 830.3 of the Penal Code, or a peace officer of the Department of the California Highway Patrol as defined in subdivision (a) of Section 830.2 of the Penal Code, when the swap meet occurs on state property, or properly identified representatives of the State Board of Equalization or Department of Justice.

(b) Vendors shall have available for inspection during the swap meet a completed copy of the report form which was submitted to the swap meet operator describing the goods offered or displayed for sale or exchange at the swap meet.

21666. Receipts for sales; prohibited personal property or merchandise; notice

(a) Upon request, a vendor shall provide the purchaser a written receipt disclosing the vendor's name and address for any items purchased which has a selling price in excess of fifteen dollars (\$15).

(b) No vendor shall offer or display at a swap meet any new or used personal property or merchandise of a kind which the swap meet operator has expressly prohibited. Every swap meet owner shall post or display in prominent places at the swap meet, or give written notice to every vendor prior to the commencement of a swap meet of the kinds of personal property or merchandise which may not be offered for sale or exchange. The swap meet owner or operator shall also post a sign at the main entrance of the swap meet which states that vendors are required to issue receipts in accordance with subdivision (a).

21667. Violations; misdemeanor; punishment

A violation of any provision of this article, except subdivision (b) of Section 21666, is a misdemeanor and may be punishable by up to six months in county jail, a fine of fifty dollars (\$50) for the first violation, one hundred dollars (\$100) for the second violation, and two hundred dollars (\$200) for the third and subsequent violations.

21668. Waiver of requirements for swap meet operators and vendors

A chief of police of a city or the sheriff of an area outside of the city may waive any requirement of this article for swap meet operators and vendors in the city or area outside of the city if the chief of police or sheriff determines it is not necessary or appropriate in the public interest to impose the requirement. If the swap meet is located in both the city and area outside of the city, the chief of police of the city has the authority to grant the waiver authorized by this section.

21669. Swap meets conducted on government premises; procedures; operation by government entities for profit

(a) All swap meets which are conducted two or more times per calendar year on any premises or property owned or leased by any city, county, city and county, state, or any other local governmental agency, entity, or board, shall comply with all of the following procedures:

(1) The swap meet operator shall have a valid business license.

(2) The swap meet operator shall have a valid California seller's permit number (State Board of Equalization sales tax number), if applicable.

(3) The swap meet operator shall provide the state or local governmental entities described in this subdivision upon whose property the swap meet is being held, a certificate of insurance certifying that the swap meet operator maintains public liability and property damage insurance for the operation of the swap meet of at least two million dollars (\$2,000,000), and that the policy names that governmental entity as an additional insured under the policy.

(4) The swap meet operator shall provide the state or local governmental entity a hold harmless and indemnification agreement for his or her operation of the swap meet and activities and acts arising from that swap meet.

(5) The swap meet operator shall comply with all other provisions of this article relating to swap meets.

(b) State or local governmental entities shall not operate or manage a swap meet for profit in direct competition to a private enterprise, unless they comply with subdivision (a) of Section 21662.

21669.1. Swap meets on government property; average daily attendance of 10,000 or more; requirements

(a) In addition to the requirements specified in subdivision (a) of Section 21669, all swap meets conducted on the premises or property of a state or local governmental entity which has or expects to have an average daily attendance of 10,000 or more persons shall provide all of the following:

(1) A statement of ownership, including the identity of individuals holding a financial interest of 5 percent or more.

(2) A sworn statement that no individuals who have a financial interest of 5 percent or more in the swap meet have been convicted of any crime involving dishonesty or moral turpitude.

(3) A financial statement showing the operator's financial capability to operate a major swap meet and to meet any financial obligations to the lessor and subcontractors.

(4) A statement that the operator is not knowingly delinquent in any payments owed to a state or local governmental entity and that he or she is not knowingly in violation of any state or local law or ordinance related to public health or safety standards.

(5) Evidence that the operator has a minimum of five years of experience in the management and operation of a swap meet for profit with an average daily attendance of 5,000 or more.

(6) A plan for operations, including security, crowd control, sanitation, and emergency medical response.

Article 7 - SPORTS TRADING CARDS**21670. Definitions**

For purposes of this article, the following definitions apply:

(a) "Altered or refurbished" means repair work which has been performed to enhance the value of the sports trading card as a collectible. This work includes, but is not limited to, filling in holes, building new corners, ironing out creases, or touching up the pictures or borders on the sports trading card.

(b) "Legitimate sports trading card" means any card produced for use in commerce, that contains a company name or team logo, or both, and an image, representation, or facsimile of one or more players or other team member or members in any pose, and is produced pursuant to an appropriate licensing agreement.

(c) "Counterfeit sports trading card" means any card, produced for use in commerce, without appropriate licensing authority, which is a forgery, copy, or imitation of a legitimate sports trading card, produced without authority or right, and with the intention of passing the card for that which is original or genuine.

(d) "Unlicensed sports trading card" means any card that is produced for use in commerce, without proper licensing authority. This definition specifically excludes cards which are bound in publications.

(e) "Appropriate licensing authority" means express, written permission to manufacture, produce, distribute, and sell the sports trading card, as granted by the valid owner or owners of the licensing rights of any image, work, term, name, symbol, logo, or insignia that appears on the sports trading card.

21671. Alterations or refurbishments; certificates; violations; penalties

(a) Any sports trading card that is altered or refurbished shall be accompanied by a certificate stating that exact work done to the sports trading card, the date the work was performed, the cost of that work, and the name, phone number, and address of the person who performed the work.

(b) Any person or agent thereof, who knowingly sells or trades a sports card in violation of subdivision (a), shall both:

(1) Refund to the buyer the full amount paid for the altered or refurbished sports trading card or the full retail value of any nonmonetary consideration received in exchange for the altered or refurbished sports trading card, or both.

(2) Be liable to the buyer for a civil penalty not to exceed five thousand dollars (\$5,000) for each violation. Each card sold represents a separate and distinct violation.

21672. Unlicensed or counterfeit sports trading cards; manufacture, production, distribution, or sale, violations; penalties

(a) Any person, or agent thereof, who knowingly manufactures, produces, or distributes unlicensed or counterfeit sports trading cards with the intent to deceive, injure, or defraud another, is guilty of a misdemeanor.

Any person, or agent thereof, who violates this subdivision shall do both of the following:

(1) Refund to the buyer the full amount paid for the unlicensed or counterfeit sports trading card or the full retail value of any nonmonetary consideration received in exchange for the unlicensed or counterfeit sports trading card, or both.

(2) Be liable to the buyer for a civil penalty not to exceed five thousand dollars (\$5,000) for each violation. Each card sold represents a separate and distinct violation.

(b) Any person who knowingly sells a cut, unlicensed sports trading card that has been produced by cutting the card from a publication in which unlicensed sports trading cards are bound, without disclosing the source and the means of producing the card, with the intent to deceive, injure, or defraud another, is guilty of a misdemeanor. Any person who violates this subdivision shall do both of the following:

(1) Refund to the buyer the full consideration paid or furnished for the cut, unlicensed sports trading card.

(2) Be liable to the buyer for a civil penalty not to exceed five thousand dollars (\$5,000) for each violation. Each card sold represents a separate and distinct violation.

This provision does not apply to a sports trading card that is excluded from the definition of "unlicensed sports trading card" pursuant to subdivision (d) of Section 21670 of the Business and Professions Code by reason of being bound in a publication.

**DIVISION 8
PAWNBROKERS
CHAPTER 1. GENERAL PROVISIONS**

21000. Pawnbroker

Every person engaged in the business of receiving goods, including motor vehicles, in pledge as security for a loan is a pawnbroker within the meaning of this division.

21000.7. Receiving goods as security for a loan

As used in this division "receiving goods as security for a loan" does not include a good faith purchase of goods.

21001. Compensation

"Compensation" includes expenses, interest, disbursements, storage charges, and all other charges of any nature in connection with a loan or forbearance.

21002. Pledged property; vested property

(a) As used in this division, "pledged property" is property held as security for a loan, the title to which remains with the pledgor and has not passed to the pawnbroker pursuant to Section 21201.

(b) "Vested property" is property the title to which has been transferred from the pledgor to the pawnbroker pursuant to Section 21201. Vested property is not pledged property.

21050. Exempt persons

This division does not apply to any of the following:

(a) Any corporation organized for the purpose of securing credit from any federal intermediate credit bank organized and existing pursuant to the provisions of an act of Congress entitled "Agricultural Credits Act of 1923."

(b) Any nonprofit cooperative corporation or association with or without capital stock, organized or existing pursuant to the provisions of Chapter 4, Division 6 of the Agricultural Code.

(c) Any person, corporation, association, syndicate, joint stock company, or partnership, engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, livestock, poultry, and bee products on a cooperative nonprofit basis.

21051. Loans of \$2,500 or more

(a) The limitations with respect to rates and charges set forth in Sections 21200 and 21200.5 do not apply to any loan of a bona fide principal amount of two thousand five hundred dollars (\$2,500) or more if this section is not used for the purpose of evading this division.

(b) In determining whether a loan is a loan of the principal amount of two thousand five hundred dollars (\$2,500), Section 22054 shall apply.

CHAPTER 2. PAWNBROKER REGULATIONS

21200. Maximum compensation

(a) Except as otherwise provided in this chapter, no pawnbroker shall charge or receive compensation at a rate exceeding the sum of the following:

(1) Two and one-half percent (2 ½%) per month on that portion of the unpaid principal balance of any loan up to, including, but not in excess of two hundred twenty-five dollars (\$225).

(2) Two percent (2%) per month on that portion of the unpaid principal balance of the loan in excess of two hundred twenty-five dollars (\$225) up to, including, but not exceeding nine hundred dollars (\$900).

(3) One and one-half percent (1 ½%) per month on that part of the unpaid principal balance in excess of nine hundred dollars (\$900) up to and including, but not in excess of, one thousand six hundred fifty dollars (\$1,650).

(4) One percent (1%) per month on any remainder of such unpaid principal balance in excess of one thousand six hundred fifty dollars (\$1,650).

(5) A charge not exceeding one dollar (\$1) a month on any loan when the monthly charge permitted by this section would otherwise be less than such minimum charge.

(b) One month's interest may be charged for any part of the month in which pawned property is redeemed.

21200.1. Loan setup fee

A loan setup fee not to exceed three dollars (\$3) may be charged for each loan up to and including fifty dollars (\$50). A loan setup fee of five dollars (\$5) may be charged for loans in excess of fifty dollars (\$50). Loan setup fees are in addition to any other allowed charges.

21200.5. Schedule of charges; posting

A pawnbroker may charge as prescribed in the following schedule:

Schedule of Charges

(a) A charge not exceeding one dollar (\$1) may be made on any loan for not more than 30 days which does not exceed fourteen dollars and ninety-nine cents (\$14.99).

(b) A charge not exceeding three dollars (\$3) may be made on any loan for not more than 90 days of fifteen dollars (\$15) or more, but not exceeding nineteen dollars and ninety-nine cents (\$19.99).

(c) A charge not exceeding four dollars (\$4) may be made on any loan for not more than 90 days of twenty dollars (\$20) or more, but not exceeding twenty-four dollars and ninety-nine cents (\$24.99).

(d) A charge not exceeding five dollars (\$5) may be made on any loan for not more than 90 days of twenty-five dollars (\$25) or more, but not exceeding thirty-nine dollars and ninety-nine cents (\$39.99).

(e) A charge not exceeding six dollars (\$6) may be made on any loan for not more than 90 days of forty dollars (\$40) or more, but not exceeding forty-nine dollars and ninety-nine cents (\$49.99).

(f) A charge not exceeding seven dollars and fifty cents (\$7.50) may be made on any loan for not more than 90 days on any loan of fifty dollars (\$50) or more, but not exceeding sixty-four dollars and ninety-nine cents (\$64.99).

(g) A charge not exceeding eight dollars and fifty cents (\$8.50) may be made on any loan for not more than 90 days of sixty-five dollars (\$65) or more, but not exceeding seventy-four dollars and ninety-nine cents (\$74.99).

(h) A charge not exceeding ten dollars (\$10) may be made on any loan for not more than 90 days of seventy-five dollars (\$75) or more, but not exceeding ninety-nine dollars and ninety-nine cents (\$99.99).

(i) A charge not exceeding twelve dollars and fifty cents (\$12.50) may be made on any loan for not more than 90 days of one hundred dollars (\$100) or more, but not exceeding one hundred twenty-four dollars and ninety-nine cents (\$124.99).

(j) A charge not exceeding thirteen dollars and fifty cents (\$13.50) may be made on any loan for not more than 90 days of one hundred twenty-five dollars (\$125) or more, but not exceeding one hundred forty-nine dollars and ninety-nine cents (\$149.99).

(k) A charge not exceeding fifteen dollars (\$15) may be made on any loan for not more than 90 days of one hundred fifty dollars (\$150) or more, but not exceeding two hundred twenty-four dollars and ninety-nine cents (\$224.99).

(l) A charge not exceeding twenty dollars (\$20) may be made on any loan for not more than 90 days of two hundred twenty-five dollars (\$225) or more, but not exceeding three hundred twenty-four dollars and ninety-nine cents (\$324.99).

(m) A charge not exceeding twenty-five dollars (\$25) may be made on any loan for not more than 90 days of three hundred twenty-five dollars (\$325) or more, but not exceeding four hundred forty-nine dollars and ninety-nine cents (\$449.99).

(n) A charge not exceeding thirty-five dollars (\$35) may be made on any loan for not more than 90 days of four hundred fifty dollars (\$450) or more, but not exceeding five hundred ninety-nine dollars and ninety-nine cents (\$599.99).

(o) A charge not exceeding forty-five dollars (\$45) may be made on any loan for not more than 90 days of six hundred dollars (\$600) or more, but not exceeding seven hundred ninety-nine dollars and ninety-nine cents (\$799.99).

(p) A charge not exceeding fifty-five dollars (\$55) may be made on any loan for not more than 90 days of eight hundred dollars (\$800) or more, but not exceeding nine hundred ninety-nine dollars and ninety-nine cents (\$999.99).

(q) A charge not exceeding seventy dollars (\$70) may be made in any loan for not more than 90 days of one thousand dollars (\$1,000) or more, but not exceeding eleven hundred ninety-nine dollars and ninety-nine cents (\$1,199.99).

(r) A charge not exceeding eighty-five dollars (\$85) may be made on any loan for not more than 90 days of twelve hundred dollars (\$1,200) or more, but not exceeding fourteen hundred dollars and ninety-nine cents (\$1,499.99).

(s) A charge not exceeding one hundred dollars (\$100) may be made on any loan for not more than 90 days of fifteen hundred dollars (\$1,500) or more, but not exceeding seventeen hundred ninety-nine dollars and ninety-nine cents (\$1,799.99).

(t) A charge not exceeding one hundred twenty dollars (\$120) may be made on any loan for not more than 90 days of eighteen hundred dollars (\$1,800) or more, but not exceeding two thousand dollars and ninety-nine cents (\$2,099.99).

(u) A charge not exceeding one hundred forty dollars (\$140) may be made on any loan for not more than 90 days of twenty-one hundred dollars (\$2,100) or more, but not exceeding twenty-four hundred ninety-nine dollars and ninety-nine cents (\$2,499.99).

(v) The charge for any extension or renewal of a loan covered by this section shall be computed in accordance with the provisions of Section 21200.

The schedule of charges prescribed by this section shall be posted in a place clearly visible to the general public.

21200.6. Handling and storage charges

(a) In addition to other allowed charges, at the time property is redeemed a pawnbroker may collect a handling and storage charge for certain pawned articles. Irrespective of the duration of the loan, the maximum amount that may be charged pursuant to this section is in accordance with the following schedule:

(1) Five dollars (\$5) for any article that cannot be contained within one cubic foot.

(2) Ten dollars (\$10) for any article that cannot be contained within three cubic feet.

(3) Twenty dollars (\$20) for any article that cannot be contained within six

cubic feet and one dollar (\$1) for each additional cubic foot in excess of six cubic feet.

(b) No storage charge is allowed for any article that can be contained within one cubic foot.

(c) For purposes of this section, cubic feet shall be determined by multiplying the width of an article, at its greatest width, by the depth of an article, at its greatest depth, by the height of an article, at its greatest height.

21200.7. Posting of maximum compensation

The maximum charge of compensation charged by a pawnbroker pursuant to the authority of Section 21200 shall be posted in a place clearly visible to the general public.

21200.8. Processing charge for firearms

In addition to other allowed charges, a pawnbroker may collect a processing charge of four dollars (\$4) for each firearm pawned.

21200.9. Repurchase of property; no promise by pawnbroker to seller

No licensed pawnbroker shall promise any seller of tangible personal property that the seller may repurchase property sold to the pawnbroker.

21201. Written contract to be furnished borrower; contents; notice retention and redemption of pledged articles; foreclosure; sale of pledged property

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 borrower. The loan contract shall provide a four-month loan period, shall set forth the loan period and the date on which is due and payable, and shall clearly inform the borrower of his or her right to redeem the pledge during the loan period.

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 borrower's signature:

"You may redeem the property you have pledged at any time until the close of business on _____ (fill in date 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."

Every pawnbroker shall retain in his or her possession every article pledged to him or her for a period of four months. During such period the borrower may redeem the articles upon payment of the amount of the loan and the applicable charges. If the borrower 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 consumer the next calendar day when both the

pawnbroker's store and the storage facility are open, not to exceed two business days.

If any pledged article is not redeemed during the four-month loan period as provided herein, and the borrower and pawnbroker do not mutually agree in writing to extend the loan period, the pawnbroker shall notify the borrower within 30 days after expiration of the loan period. If the pawnbroker fails to notify the borrower within 30 days after the expiration of the loan period, the pawnbroker shall not charge interest from the day after the expiration of the 30-day period. The pawnbroker shall 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 extending the right of redemption, during posted business hours, for a period of 10 days from date of mailing of that notice. The 10-day notice shall include a statement that: "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."

However, the posted schedule of charges required pursuant to Section 21200.5 shall contain a notice informing the borrower 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. 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. The sale of pledged property is a misdemeanor pursuant to Section 21209.

21201.1. Loss of pawn ticket; verification of claimant; fee

Whenever a pledger, or his or her assignee, loses a pawn ticket, a fee of not to exceed ten dollars (\$10) may be charged for services of verifying the identification of the claimant, fingerprinting the claimant, and having the claimant execute a declaration under penalty of perjury.

21201.2. Notice of expiration of redemption; fee

If the pledgor fails to redeem any pawned item during the loan period, thereby obliging the pawnbroker to mail the notice required under Section 21201, the pawnbroker may charge a fee of up to three dollars (\$3) for services and costs pertaining to the preparation of the notice, in addition to any other allowed charges.

21201.3. Written contract, item storage provision; insurance of items; violation; penalty

(a) The written contract required pursuant to Section 21201 shall contain a provision in 8-point type stating whether the item or items pledged are to be stored at the business premises of the pawnbroker and adjacent to this provision, the following disclosure shall be made: "We must return your property within two business days if

your property is stored off premises.”

(b) Every pawnbroker shall display a sign at his or her premises indicating whether or not pawned items are insured.

(c) If a pawnbroker stores pledged property at a location other than the pawnshop, the pawnbroker shall post a conspicuous sign stating that pawned items may be stored off premises with the consent of the pledgor and that following the redemption of a loan, property is required to be returned the next calendar day upon which both the pawnbroker’s store and the storage facility are open, not to exceed two business days.

(d) Notwithstanding Section 21209, a violation of this section is an infraction.

(e) This section shall become operative July 1, 1995.

21201.4. Determination of charges

Charges for the first 90 days of any loan made pursuant to the written contract required by Section 21201 shall be determined by the application of the schedule of charges contained in Section 21200.5. Charges for any period of time following the first 90 days of the loan shall be determined by application of the schedule of maximum compensation contained in Section 21200.

21201.5. New loan on pledged property

A pledgor may request, and a pawnbroker may consent to, a new loan to take effect upon or at any time after the expiration of the loan period stated in the original loan contract delivered to the pledgor under Section 21201. The pledgor shall pay in cash or another form acceptable to the pawnbroker all of the charges and interest due under the original loan, and the remaining unpaid balance of the actual amount borrowed under the original loan shall be debited to the new loan on which the same article or articles are pledged. The loan to which the debit is applied shall be processed as a new loan and shall be deemed to be a new loan subject to loan origination fees, storage fees, and other fees permitted by this chapter, when applicable. The new loan contract required by Section 21201 shall disclose the amount of the original loan that is debited to the new loan.

21202. Pawn loan records; delivery of copy to pledgor

Every pawnbroker shall enter at the time of the transaction, in records of loans and pledges kept by him for that purpose, the date, duration, amount, and rate of interest or charges of every loan made by him, a reasonably accurate description of the property pledge, the name and residence address of the pledgor. Every pawnbroker shall deliver to the pledgor a written copy of such entry. Such written copy need not include the name and address of the pledgor.

21203. Loan redemption; return of property

Any property held in pawn which is not subject to a hold pursuant to Section 21647 of the Business and Professions Code shall be returned to the pledgor immediately upon redemption of the loan. However, if the property is stored off the business premises of the pawnbroker, following the redemption of the loan the property shall be returned the next calendar day when both the pawnbroker's store and the storage facility are open, not to exceed two business days.

21204. Loan redemption; fees and charges

Every pawnbroker, upon redemption of a loan contract, shall provide the borrower with a receipt that correctly states in detail all of the fees, charges and compensation paid by the borrower to the pawnbroker.

21206. Inspection of records and accounts

Every pawnbroker shall produce his or her records of loans and all pledged property for inspection by the following persons:

- (a) Any officer holding a warrant authorizing him or her to search for personal property.
- (b) Any peace officer or employee designated by the chief of police or sheriff.
- (c) Any officer holding a court order directing him or her to examine such records or pledged property.

21206.7. Receipt upon seizure of property alleged to be stolen

Whenever any property is taken from a pawnbroker by a peace officer which is alleged to be stolen property, the police officer shall give the pawnbroker a receipt for the property which shall contain a description of the property, the reason for seizure, and the names of the pawnbroker and the officer.

21206.8. Disposal of property stolen or embezzled; notice; time; liability of pawnbroker

(a) Notwithstanding the provisions of Chapter 12 (commencing with Section 1407) of Title 10 of Part 2 of the Penal Code, whenever property alleged to have been stolen or embezzled is taken from a pawnbroker, the peace officer, magistrate, court, clerk, or other person having custody of the property shall not deliver the property to any person claiming ownership unless the provisions of this section are complied with.

(b)(1) If any person makes a claim of ownership, the person having custody of the property shall notify the pawnbroker.

(2) If the pawnbroker makes no claim with respect to the property within 10 days of such notification, the property may be disposed of as otherwise provided by law.

(c) If property alleged to have been stolen or embezzled is taken from a pawnbroker, prior to any disposal of the property pursuant to Section 1411 of the Penal Code, the notice to be given to the owner and owner of a security interest pursuant to Section 1411 shall be given to the pawnbroker. Such property shall not be disposed of pursuant to Section 1411 until three months after such notice has been given.

(d) A pawnbroker shall not be liable to any person for any property seized from the pawnbroker on account of the pawnbroker's inability to return the property to that person because of the seizure.

21207. Pledges of minors

No pawnbroker shall receive anything in pledge from any person who is a minor.

21208. Reports to law enforcement

Every pawnbroker shall report daily or on the first working day after receipt or purchase, all descriptions of all property received in pledge or purchased as tangible personal property, as defined in Section 21627 of the Business and Professions Code, in whatever quantity received, including property purchased as tangible personal property at wholesale, tangible personal property taken in for sale or possessed on consignment for sale, and tangible personal property taken in trade.

If the transaction took place within the territorial limits of an incorporated city, the report shall be submitted to the police chief executive of the city or his or her designee, by mail unless otherwise agreed upon by the pawnbroker and the police chief executive or his or her designee. If the transaction took place outside the territorial limits of an incorporated city, the report shall be submitted to the sheriff of the county or his or her designee, by mail unless otherwise agreed upon by the pawnbroker and the sheriff or his or her designee.

All reports shall be on forms approved or provided at actual cost by the Department of Justice. The police chief executive or sheriff who receives a report on a form filed pursuant to the provisions of this section shall daily submit a legible copy of the transactions to the Department of Justice.

21209. Violations; misdemeanor

The violation of any provision of this chapter under circumstances where a person knows or should have known that a violation was being committed is a misdemeanor.

CHAPTER 3. LICENSURE

21300. Application for license; requirements; fees

(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 pawnbroker, as defined in Section 21000, at the address indicated on the application, to an applicant who has complied with the requirements of Sections 21303, 21304, and 21305 and 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 shall 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 not to exceed the actual processing costs to the Department of Justice and the chief of police, the sheriff, or where appropriate, the police commission may be charged to the applicant for processing the initial license application.

(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 pawnbroker's license solely on the grounds that he or she violated any provision contained in Chapter 1 (commencing with Section 21000) or Chapter 2 (commencing with Section 21200) of this division or Article 4 (commencing with Section 21625) or Article 5 (commencing with Section 21650) of Chapter 9 of Division 8 of the Business and Professions Code unless the violation demonstrates a pattern of conduct.

21300.1 Unlicensed persons acting as pawnbroker

It is unlawful for any person who is not duly licensed under this section to act as a pawnbroker or represent himself, herself, or a business entity to be a pawnbroker or a pawnbroker business entity.

21301. Renewal; grounds for forfeiture

(a) A license granted pursuant to Section 21300 shall be renewable the second year from the date of issue, and every other year thereafter, upon the filing of a renewal application and compliance with the requirements of Section 21303. The Department of Justice and the chief of police, the sheriff, or, where appropriate, the police commission may charge a fee for the license renewal not to exceed the actual processing costs. The licensing authority shall collect the fee and transmit the fee and a copy of the renewed license to the Department of Justice.

(b) The license shall be subject to forfeiture by the licensing authority, and the licensee's activities as a pawnbroker shall be subject to being enjoined pursuant to Section 21302, 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 that 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 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 that the chief of police, the sheriff, or, where appropriate, the police commission, is permitted to take following that conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(c) Notwithstanding subdivisions (a) and (b), no renewal application for a pawnbroker's license may be denied, nor may his or her pawnbroker's license be forfeited, solely on the grounds that the applicant violated any provision contained in Chapter 1 (commencing with Section 21000), Chapter 2 (commencing with Section 21200) of this division, or Article 4 (commencing with Section 21625) or Article 5 (commencing with Section 21650) of Chapter 9 of Division 8 of the Business and Professions Code unless the violation demonstrates a pattern of conduct.

21301.1 Unlawful act; advertising without license number

It is unlawful for any person to advertise his or her services as a pawnbroker, or to use any words or parts of words in any advertisements that connote a transaction involving the taking of tangible personal property as security for a loan unless the pawnbroker's license number is clearly displayed in the advertisement.

21302. Injunctions

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 regulation made pertaining to the provisions contained in Chapter 1 (commencing with Section 21000) or Chapter 2 (commencing with Section 21200) of this division or Article 4 (commencing with Section 21625) or Article 5 (commencing with Section 21650) of Chapter 9 of Division 8 of the Business and Professions Code.

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.

21303. Surety bond

(a) As a condition precedent to the issuance or renewal of a pawnbroker's license the applicant shall file a pawnbroker's two-year nonrevocable surety bond with the issuing authority, in the sum of twenty thousand dollars (\$20,000). The pawnbroker's bond required by this article shall be executed by an admitted surety in favor of the State of California and shall be filed by the applicant with the licensing authority.

(b) As a condition precedent to the issuance or renewal of a pawnbroker's license the applicant shall file a pawnbroker's two-year nonrevocable surety bond with the issuing authority, in the sum of twenty thousand dollars (\$20,000). The pawnbroker's bond required by this article shall be executed by an admitted surety in favor of the State of California and shall be filed by the applicant with the licensing authority.

(b) The bond shall be for the benefit of pledgors of pledged property when the property is not available for redemption, due to the criminal negligence, criminal malfeasance, or other criminal conduct of the pawnbroker, and the pledgor has complied with the conditions precedent to redemption under the terms of the loan contract. The pledgor has the burden of establishing by clear and convincing evidence that all conditions precedent to redemption under the terms of the loan contract have been performed.

21304. Financial statement; liquid assets; application of section

(a) As a condition precedent to the issuing of a pawnbroker's license, the applicant shall file with the issuing authority a financial statement confirming that the applicant has at least one hundred thousand dollars (\$100,000) in the form of liquid assets readily available for use in each licensed business for which the application is made, not including real property, or, in the absence of one hundred thousand dollars (\$100,000), an applicant may post a nonrevocable surety bond in the amount of one hundred thousand dollars (\$100,000) or the applicant may, in lieu of posting a surety bond, deposit money, certificates, accounts, bonds, or notes, as provided in Section 995.710 of the Code of Civil Procedure. The financial statement shall be filed by the applicant under penalty of perjury and signed by a California certified public accountant verifying that he or she has reviewed the financial statement.

(b) This section does not apply to any person holding a secondhand dealers license pursuant to Section 21641 or 21642 of the Business and Professions Code who is actively engaged as a pawnbroker on the effective date of this section.

21305. Transfer or assignment

A license issued pursuant to this chapter shall not be transferred or assigned.

21306. Exemption; secondhand dealer license

A pawnbroker licensed under Section 21300 is exempt from the licensing requirements under Sections 21641 and 21642 of the Business and Professions Code and may engage in any transaction involving tangible personal property for which a secondhand dealers license is required under Sections 21641 and 21642 of the Business and Professions Code. Pawnbrokers operating under this license exemption are required to conform to all other requirements of secondhand dealers for which a license is required under Sections 21641 and 21642 of the Business and Professions Code.

21307. Violations; penalties

Except as otherwise specifically provided, the violation of any provision of this chapter under circumstances where a person knows or should have known that a violation was being committed is a misdemeanor.

PENAL CODE
TITLE 10
MISCELLANEOUS PROCEEDINGS

CHAPTER 12 - DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED

1407. Property in custody of peace officer; holding subject to provisions of chapter

When property, alleged to have been stolen or embezzled, comes into the custody of a peace officer, he shall hold it subject to the provisions of this chapter relating to the disposal thereof.

1408. Property in custody of peace officer; order for delivery to owner; payment of expenses

On the application of the owner and on satisfactory proof of his ownership of the property, after reasonable notice and opportunity to be heard has been given to the person from whom custody of the property was taken and any other person as required by the magistrate, the magistrate before whom the complaint is laid, or who examines the charge against the person accused of stealing or embezzling it, shall order it to be delivered, without prejudice to the state, to the owner, on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

1409. Property in custody of magistrate; delivery to owner; proof of title; payment of expenses

If property stolen or embezzled comes into the custody of the magistrate, it shall be delivered, without prejudice to the state, to the owner upon his application to the court and on satisfactory proof of his title, after reasonable notice and opportunity to be heard has been given to the person from whom custody of the property was taken and any other person as required by the magistrate, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

1410. Property not delivered to owner; proof of title; order for restoration by trial court

If the property stolen or embezzled has not been delivered to the owner, the court before which a trial is had for stealing and embezzling it, upon the application of the owner to the court and on proof of his title, after reasonable notice and opportunity to be heard has been given to the person from whom custody of the property was taken and any other person as required by the court, may order it to be restored to the owner without prejudice to the state.

1411. Unclaimed property delivered to county officer; notice to owner or holder of security interest; failure to claim; disposition

If the ownership of the property stolen or embezzled and the address of the owner, and address of the owner of a security interest therein, can be reasonably ascertained, the peace officer who took custody of the property shall notify the owner, and a person having a security interest therein, by letter of the location of the property and the method by which the owner may obtain it. This notice shall be given upon the conviction of a person for an offense involving the theft, embezzlement or possession of the property, or if a conviction was not obtained, upon the making of a decision by the district attorney not to file the case or upon the termination of the proceedings in the case. Except as provided in Section 217 of the Welfare and Institutions Code, if the property stolen or embezzled is not claimed by the owner before the expiration of three months after the giving of this notice, or, in any case in which such a notice is not given, before the expiration of six months from the conviction of a person for an offense involving the theft, embezzlement, or possession of the property, or if a conviction was not obtained, then from the time the property came into the possession of the peace officer or the case involving the person from whom it was obtained is disposed of, whichever is later, the magistrate or other officer having it in custody may, on the payment of the necessary expenses incurred in its preservation, deliver it to the county treasurer or other proper county officer, by whom it shall be sold and the proceeds paid into the county treasury. However, notwithstanding any other provision of law, if the person from whom custody of the property was taken a secondhand dealer or licensed pawnbroker and reasonable but unsuccessful efforts have been made to notify the owner of the property and the property is no longer needed for the criminal proceeding, the property shall be returned to the secondhand dealer or pawnbroker who had custody of the property and be treated as regularly acquired property. If the property is transferred to the county purchasing agent it may be sold in the manner provided by Article 7 (commencing with Section 25500) of Chapter 5 of Part 2 of Division 2 of Title 3 of the Government Code for the sale of surplus personal property. If the county officer determines that any of the property transferred to him or her for sale is needed for a public use, the property may be retained by the county and need not be sold. The magistrate or other officer having the property in custody may, however, provide for the sale of the property in the manner provided for the sale of unclaimed property which has been held for at least three months pursuant to Section 2080.4 of the Civil Code.

1412. Money or property taken from defendant on arrest; duplicate receipts; filing or delivery of receipts

When money or other property is taken from a defendant, arrested upon a charge of a public offense, the officer taking it must at the time give duplicate receipts therefor, specifying particularly the amount of money or the kind of property taken; one of which receipts he must deliver to the defendant and the other of which he must forthwith file with the clerk of the court to which the depositions and statement are to be sent. When such property is taken by a police officer of any incorporated city or town, he must deliver one of the receipts to the defendant, and one with the property, at once to the clerk or other person in charge of the police officer in such city or town.

1413. Person in charge of property section; record of property allegedly stolen or embezzled; delivery to owner; review by magistrate; liability

(a) The clerk or person having charge of the property section for any police department in any incorporated city or town, or for any sheriff's department in any county, shall enter in a suitable book a description of every article of property alleged to be stolen or embezzled, and brought into the office or taken from the person of a prisoner, and shall attach a number to each article, and make a corresponding entry thereof. He may engrave or imbed an identification number in property described in Section 537e for the purposes thereof.

(b) The clerk or person in charge of the property section may, upon satisfactory proof of the ownership of property held pursuant to Section 1407, and upon presentation of proper personal identification, deliver it to the owner. Such delivery shall be without prejudice to the state or to the person from whom custody of the property was taken or to any other person who may have a claim against the property. Prior to such delivery such clerk or person in charge of the property section shall make and retain a complete photographic record of such property. The person to whom property is delivered shall sign, under penalty of perjury, a declaration of ownership, which shall be retained by the clerk or person in charge of the property section. This subdivision shall not apply to any property subject to forfeiture under any provision of law. This subdivision shall not apply unless the clerk or person in charge of the property section has served upon the person from whom custody of the property was taken a notice of a claim of ownership and a copy of the satisfactory proof of ownership tendered and has allowed such person reasonable opportunity to be heard as to why the property should not be delivered to the person claiming ownership.

If the person upon whom a notice of claim and proof of ownership has been served does not respond asserting a claim to the property within 15 days from the date of receipt of the service, the property may be disposed of in a manner not inconsistent with the provisions of this section.

(c) The magistrate before whom the complaint is laid, or who examines the charge against the person accused of stealing or embezzling the property, or the court before which a trial is had for stealing or embezzling it, shall upon application by the person from whom custody of the property was taken, review the determination of the clerk or person in charge of the property section, and may order the property taken into custody of the court upon a finding that the person to whom the property was delivered is not entitled thereto. Such court shall make its determination in the same manner as a determination is made when the matter is before the court pursuant to Sections 1408 to 1410, inclusive.

(d) The clerk or person in charge of the property section is not liable in damages for any official action performed hereunder in good faith.

PENAL CODE
TITLE 13
OF CRIME AGAINST PROPERTY
CHAPTER 5 - LARCENY (THEFT)

484.1 Pawnbrokers or secondhand dealer; false information or false verification of ownership of property to receive money or valuable consideration; restitution

(a) Any person who knowingly gives false information or provides false verification as to the person's true identity or as to the person's ownership interest in property or the person's authority to sell property in order to receive money or other valuable consideration from a pawnbroker or secondhand dealer and who receives money or other valuable consideration from the pawnbroker or secondhand dealer is guilty of theft.

(b) Upon conviction of the offense described in subdivision (a), the court may require, in addition to any sentence or fine imposed, that the defendant make restitution to the pawnbroker or secondhand dealer in an amount not exceeding the actual losses sustained pursuant to the provisions of subdivision (c) of Section 13967 of the Government Code, as operative on or before September 28, 1994, if the defendant is denied probation, or Section 1203.04, as operative on or before August 2, 1995, if the defendant is granted probation or Section 1202.4.

(c) Upon the setting of a court hearing date for sentencing of any person convicted under this section, the probation officer, if one is assigned, shall notify the pawnbroker or secondhand dealer or coin dealer of the time and place of the hearing.

496. Receiving stolen property; knowledge; concealment; punishment.

(a) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a state prison, or in a county jail for not more than one year. However, if the district attorney or the grand jury determines that this action would be in the interests of justice, the district attorney or the grand jury, as the case may be, may, if the value of the property does not exceed four hundred dollars (\$400), specify in the accusatory pleading that the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year.

A principal in the actual theft of the property may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property.

(b) Every swap meet vendor as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee or representative of that person, who buys or receives any property of value in excess of four hundred dollars (\$400) that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be punished by imprisonment in state prison, or in a county jail for not more than one year.

Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or representative of that person, who buys or receives any property of a value of four hundred dollars (\$400) or less that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be guilty of a misdemeanor.

(c) Any person who has been injured by a violation of subdivision (a) or (b) may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees.

(d) Notwithstanding Section 664, any attempt to commit any act prohibited by this section, except an offense specified in the accusatory pleading as a misdemeanor, is punishable by imprisonment in the state prison, or in county jail for not more than one year.

496a. Junk and secondhand dealers; purchasing metals used in transportation or public utility service; determination of seller's right; punishment; record of transaction

(a) Every person who, being a dealer in or collector of junk, metals or secondhand materials, or the agent, employee, or representative of such dealer or collector, buys or receives any wire, cable, copper, lead, solder, mercury, iron or brass which he knows or reasonably should know is ordinarily used by or ordinarily belongs to a railroad or other transportation, telephone, telegraph, gas, water or electric light company or county, city, city and county or other political subdivision of this state engaged in furnishing public utility service without using due diligence to ascertain that the person selling or delivering the same has a legal right to do so, is guilty of criminally receiving such property, and is punishable, by imprisonment in a state prison, or in a county jail for not more than one year, or by a fine of not more than two hundred fifty dollars (\$250), or by both such fine and imprisonment.

(b) Any person buying or receiving material pursuant to subdivision (a) shall obtain evidence of his identity from the seller including, but not limited to, such person's full name, signature, address, driver's license number, vehicle license number, and the license number of the vehicle delivering the material.

The record of the transaction shall include an appropriate description of the material purchased and such record shall be maintained pursuant to Section 21607 of the Business and Professions Code.

537e. Articles from which serial numbers or identification marks have been removed; purchase, sale, possession; disposition by peace officers; exceptions

(a) Any person who knowingly buys, sells, receives, disposes of, conceals, or has in his or her possession any personal property from which the manufacturer's serial number, identification number, electronic serial number, or any other distinguishing number or identification mark has been removed, defaced, covered, altered, or destroyed, is guilty of a public offense, punishable as follows:

(1) If the value of the property does not exceed four hundred dollars (\$400), by imprisonment in the county jail not exceeding six months.

(2) If the value of the property exceeds four hundred dollars (\$400), by imprisonment in the county jail not exceeding one year.

(3) If the property is an integrated computer chip or panel of a value of four hundred dollars (\$400) or more, by imprisonment in the state prison for 16 months, or 2 or 3 years or by imprisonment in a county jail not exceeding one year.

For purposes of this subdivision, "personal property" includes, but is not limited to, the following:

(1) Any television, radio, recorder, phonograph, telephone, piano, or any other musical instrument or sound equipment.

(2) Any washing machine, sewing machine, vacuum cleaner, or other household appliance or furnishings.

(3) Any typewriter, adding machine, dictaphone, or any other office equipment or furnishings.

(4) Any computer, printed circuit, integrated chip or panel, or other part of a computer.

(5) Any tool or similar device, including any technical or scientific equipment.

(6) Any bicycle, exercise equipment, or any other entertainment or recreational equipment.

(7) Any electrical or mechanical equipment, contrivance, material, or piece of apparatus or equipment.

(8) Any clock, watch, watch case, or watch movement.

(9) Any vehicle or vessel, or any component part thereof.

(b) When property described in subdivision (a) comes into the custody of a peace officer it shall become subject to the provision of Chapter 12 (commencing with Section 1407), Title 10 of Part 2, relating to the disposal of stolen or embezzled property. Property subject to this section shall be considered stolen or embezzled property for the purposes of that chapter, and prior to being disposed of, shall have an identification mark imbedded or engraved in, or permanently affixed to it.

(c) This section does not apply to those cases or instances where any of the changes or alterations enumerated in subdivision (a) have been customarily made or done as an established practice in the ordinary and regular conduct of business, by the original manufacturer, or by his or her duly appointed direct representative, or under specific authorization from the original manufacturer.

E.

Attorney Generals Opinion - Additional Definition of
Secondhand Dealer

OFFICE OF THE ATTORNEY GENERAL
State of California

BILL LOCKYER
Attorney General

OPINION	:	No. 04-1001
	:	
of	:	April 6, 2005
	:	
BILL LOCKYER	:	
Attorney General	:	
	:	
SUSAN DUNCAN LEE	:	
Deputy Attorney General	:	
	:	

THE HONORABLE VIRGINIA GENNARO, CITY PROSECUTING ATTORNEY, CITY OF BAKERSFIELD, has requested an opinion on the following question:

Is a person required to hold a license as a “secondhand dealer” if (1) he or she owns a “drop-off” store located within the state where secondhand tangible personal property is accepted for sale to be conducted on an internet auction website, (2) the property is held for display or in storage at the store or off the premises, (3) the property is advertised and sold by an internet auction website, (4) the store owner arranges for payment and delivery of the property sold, and (5) he or she charges the seller a fee for services rendered?

A person is required to hold a license as a “secondhand dealer” if (1) he or she owns a “drop-off” store located within the state where secondhand tangible personal property is accepted for sale to be conducted on an internet auction website, (2) the property is held for display or in storage at the store or off the premises, (3) the property is advertised and sold by an internet auction website, (4) the store owner arranges for payment and delivery of the property sold, and (5) he or she charges the seller a fee for services rendered.

ANALYSIS

The Legislature has enacted a comprehensive statutory scheme, the Secondhand Goods Law (Bus. & Prof. Code, §§ 21500-21672; “Act”)¹ to regulate the sale or other disposition of secondhand goods. (See *Malish v. City of San Diego* (2000) 84 Cal.App.4th 725, 728; 79 Ops.Cal.Atty.Gen. 103 (1996); see also Fin. Code §§ 21000-21307 [pawnbrokers]; Pen. Code, §§ 12070-12094 [firearms sales].) A secondhand dealer must be licensed by the local chief of police or sheriff (§§ 21640-21642), report daily to the chief of police or sheriff information concerning “all tangible personal property which he or she has purchased, taken in trade, taken in pawn, accepted for sale on consignment, or accepted for auctioning” (§ 21628), including “[a] legible fingerprint taken from the intended seller or pledger” (§ 21628, subd. (g)), and “retain in his or her possession for a period of 30 days all tangible personal property reported . . .” (§ 21636, subd. (a)).² Section 21626, subdivision (a), generally defines a “secondhand dealer” as follows:

“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. . . .”

We are asked whether a person meets the definition of a “secondhand dealer” for purposes of the Act if (1) he or she owns a “drop-off” store located within the state where secondhand tangible personal property is accepted for sale to be conducted on an internet

¹ All further statutory references are to the Business and Professions Code, unless otherwise indicated.

² Property stored off the premises must “be produced at the licensee’s business premises within one business day of a request” by the chief of police or sheriff. (§ 21636, subd. (c).) With respect to the 30-day holding period, “[t]he chief of police or the sheriff may for good cause . . . authorize prior disposition of any property . . .” (§ 21636, subd. (a).)

1 auction website, (2) the property is held for display or in storage at the store or off the
2 premises, (3) the property is advertised and sold by an internet auction website, (4) the store
3 owner arranges for payment and delivery of the property sold, and (5) he or she charges the
4 seller a fee for services rendered. We conclude that the store owner would be required to be
5 licensed as a secondhand dealer in order to operate such a business in this state.

6 The type of business in question has come into existence in response to the
7 rising popularity of online marketplace websites. Sales on these internet sites may be
8 conducted either at a fixed price or through an auction. Using such websites as a venue,
9 sellers create a listing of items to be sold, including a description of the items; set a fixed
10 sales price for each or a minimum price for bidding; specify terms for payment and delivery;
11 and, if the sales are to be conducted in an auction format, specify terms of the auction such
12 as its duration and a reserve price. Buyers may browse through the items offered for sale,
13 buy or bid on the items, and communicate with the sellers to arrange for payment and
14 delivery. (See 86 Ops.Cal.Atty.Gen. 48, 49 (2003).)

15 When a sale is conducted by way of an auction, the actual bidding process is
16 administered by use of proprietary software programs designed to recognize bids, alert
17 bidders of the current bidding status, and notify the buyer and seller of the winning bid at the
18 close of the auction period. Some programs also post bids automatically as a proxy for a
19 would-be buyer, according to the buyer's specifications. (See 86 Ops.Cal.Atty.Gen., *supra*,
20 at p. 52; Mackey, *Limiting Exposure for Internet Vendors: Separating the Wheat from the
21 Chaff* (2003) 21 J. Marshall J. Computer & Info. L. 207, 222-223 [discussing use of
22 "electronic agents," permitted under Uniform Electronic Transactions Act]; Korybut, *Online
23 Auctions of Repossessed Collateral Under Article 9* (1999) 31 Rutgers L.J. 29, 100-112
24 [discussing differences between professional auctioneers and "virtual auctioneers"].)

25 The owner of a drop-off store provides a service to sellers by receiving items
26 to be sold, consulting with the sellers about listing prices, photographing the items, creating
27 written descriptions and selecting listing categories designed to attract buyers,
28 communicating with the internet auction websites and prospective buyers as necessary,
29 receiving payments, and arranging deliveries. In exchange for providing these services, the
30 store owner receives a fee from the seller upon the sale of any item.

31 Returning to the language of section 21626, we have little doubt that the store
32 owner falls within the definition of a "secondhand dealer." As described herein, the
33 business arrangement between a prospective seller and the store owner amounts to
34 "accepting for sale on consignment," thus bringing the business within the scope of section
35 21626. "A true consignment constitutes an agency or bailment relationship between the
36 consignor and consignee. The consignor, as principal retains the ownership, may recall the
37 goods, and sets the sale price. The consignee (agent) receives a commission and not the

profits of the sale.’” (*Consolidated Accessories Corp. v. Franchise Tax Board* (1984) 161 Cal.App.3d 1036, 1040; see *Jackson v. Department of Justice* (2001) 85 Cal.App.4th 1334, 1350-1351; *Bank of California v. Thornton-Blue Pacific, Inc.* (1997) 53 Cal.App.4th 841, 847; *Reiter v. Anderson* (1927) 87 Cal.App. 642, 649; see also Cal. U. Com. Code, § 2326, subd. (4); 3 Witkin, Summary of Cal. Law (9th ed. 1987) Sales, § 2.)

While the distinction between a sale and a consignment may at times be subtle (see *Consolidated Accessories Corp. v. Franchise Tax Board, supra*, 161 Cal.App.3d at pp. 1040-1041; *Reiter v. Anderson, supra*, 87 Cal.App. at pp. 648-649), for our purposes, the distinction is one without a difference. Section 21626 defines a secondhand dealer not only to include businesses that operate on consignment, but also to those that engage in sales, purchases, purchases in pawn, trades, and auctions of tangible personal property. Therefore, regardless of the details of the agreements between the prospective sellers and the store owner, we believe that the Act applies to anyone whose business includes accepting secondhand tangible property for sale to be conducted on an internet auction website, storing the property on or off the store premises, arranging for the sale of the property online, and charging a fee for the services rendered.

We reject the suggestion that the store owner would be exempt from the Act’s requirements under the statutory exception for “auctioneers.” Section 21626.5 provides:

“ ‘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.

“.....”

The term “auctioneer” is not specifically defined for purposes of the Act. It is, however, defined in Civil Code section 1812.601, which is part of a statutory scheme (Civ. Code,

§§ 1812.600-1812.609) regulating auctioneers and auction companies.³ Civil Code section

³ Among other requirements, auctioneers and auction companies are required to maintain a \$20,000 bond with the Secretary of State (Civ. Code, § 1812.600); abide by certain ethical requirements (Civ. Code,

“ ‘Auctioneer’ means any individual who is engaged in, or who by advertising or otherwise holds himself or herself out as being available to engage in, the calling for, the recognition of, and the acceptance of, offers for the purchase of goods at an auction.”⁴

A person who owns a drop-off store cannot reasonably be said to “recognize” bids as they are made in the course of an online auction. Instead, that function is customarily performed by proprietary software owned by the online marketplace website. (See 86 Ops.Cal.Atty.Gen., *supra*, at p. 52; see also Civ. Code, § 1812.601, subd. (b).) A business of the type we are contemplating thus does not “perform the services of an auctioneer” within the meaning of section 21626.5, subdivision (a), and consequently a store owner would not be exempt from the Act’s requirements as an “auctioneer.”

Finally, we reject the further suggestion that the Act should not be applied to drop-off store owners because such application would not serve to further the purposes of the Act. Section 21625 describes the Legislature’s purposes in regulating secondhand dealers as follows:

“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

§ 1812.605); make certain disclosures in auction advertisements, at the entrance to each auction, and to the audience of the auction (Civ. Code, § 1812.607); and conform their contracts to specific requirements (Civ. Code, § 1812.608).

⁴ When two statutes deal with the same subject, as here, “the interpretation of similar sentences or phrases in one controls the interpretation of virtually the same phrases or sentences in the other.” (*In re Marriage of Pinto* (1972) 28 Cal.App.3d 86, 89; see *In re Phyle* (1947) 30 Cal.2d 838, 845.)

agencies and further utilizing the services of the Department of Justice to aid in tracing and recovering stolen property.

“.....”

On the one hand, the online format may deter some criminals from attempting to sell stolen property over the internet where it can be readily identified by its owner, and some online auction websites may conduct their own aggressive efforts to detect and deter trade in stolen property. On the other hand, criminals may be attracted to using an internet drop-off store if it is exempt from the Act's requirements, particularly the requirements of providing of fingerprints and giving notice of the property to law enforcement officials. These conflicting considerations are best evaluated by the Legislature in establishing the scope of the Act's provisions. We believe that subjecting the operation of drop-off stores to the requirements of the Act serves the general legislative purposes of "tracing and recovering stolen property." (§ 21625.)

We conclude that a person is required to hold a license as a "secondhand dealer" if (1) he or she owns a "drop-off" store located within the state where secondhand tangible personal property is accepted for sale to be conducted on an internet auction website, (2) the property is held for display or in storage at the store or off the premises, (3) the property is advertised and sold by an internet auction website, (4) the store owner arranges for payment and delivery of the property sold, and (5) he or she charges the seller a fee for services rendered.

F.

Secondhand Dealer and Pawnbroker Process Flowchart

Secondhand Dealer/Pawnbroker (SHD-PB) Application Process

Business & Professions Code section 21641 & Financial Code section 21300

Law Enforcement Agency (Issuing Agency) approves final licensing determination

