

Date of Hearing: June 22, 2015

ASSEMBLY COMMITTEE ON BANKING AND FINANCE  
Matthew Dababneh, Chair  
SB 300 (Mendoza) – As Amended June 11, 2015

**SENATE VOTE:** 39-0

**SUBJECT:** Pawnbrokers: regulations

**SUMMARY:** Authorizes electronic pawn transactions. Specifically, **this bill:**

- 1) Provides, beginning January 1, 2017 that the requirement for a written pawn contract signed by a borrower can be met electronically, if all of the following conditions are met:
  - a) The contract and transaction comply with the provisions of the Uniform Electronic Transactions Act (Civil Code Section 1633.1 et seq.);
  - b) Any written disclosures required to be set forth in a specified minimum type size are conspicuously presented to the borrower prior to his or her execution of the electronic contract;
  - c) The pawnbroker discloses the rates and fees applicable to the loan before the borrower executes the electronic contract; and
  - d) The pawnbroker electronically deposits the loan proceeds into a deposit account held in the name of the borrower at a depository institution located in the United States.
- 2) Applies all of the following to a replacement loan contract:
  - a) The loan must be processed as and deemed to be a new loan subject to the fees and charges permitted on new loans under the pawnbroker law;
  - b) The unpaid balance of the prior loan must be debited to the replacement loan when the same article or articles are pledged;
  - c) The borrower's consent to the terms of a replacement loan is deemed given, as follows:
    - i) When the borrower requests the replacement loan in person or electronically, his or her consent to the terms of the replacement loan are deemed given when he or she signs the written replacement loan contract in person or electronically in conformance with the rules for electronic pawn loans.
    - ii) When the borrower requests the replacement loan by mail or through a personal representative, the borrower's consent to the terms of the replacement loan are deemed given when all required charges from the prior loan due are paid in a form acceptable to the pawnbroker; and,

- d) The principal amount of a replacement loan is not constrained, if the replacement loan is requested in person or electronically. The principal amount of a replacement loan must be equal to or less than the principal amount of the prior loan, if the replacement loan is requested by mail or through a personal representative.
- 3) Authorizes a pawnbroker to notify a borrower electronically regarding the termination of the borrower's loan period, as specified, if such method of notice is acceptable to the borrower.
- 4) Authorizes a pawnbroker to notify a borrower electronically regarding the termination of the borrower's loan period, as specified, if such method of notice is acceptable to the borrower.
- 5) Removes, in an electronic pawn transaction, the requirement that the pawnbroker collect the fingerprint of the pledger.

**EXISTING LAW:**

- 1) Defines a pawnbroker as any person engaged in the business of receiving goods, including motor vehicles, in pledge as security for a loan, and defines pledged property as property held as security for a loan, the title to which remains with the pledgor (i.e., borrower) and not the pawnbroker (Financial Code Sections 21000 and 21002).
- 2) Requires every pawn loan to be evidenced by a written contract, a copy of which must be furnished to the borrower (Financial Code Section 21201).
- 3) Requires a pawnbroker to notify a borrower in writing, at his or her last known address, regarding the termination of the borrower's loan period, by a means for which verification of mailing can be provided by the pawnbroker (Financial Code Section 21201).
- 4) Allows a borrower to request, and a pawnbroker to consent, to a replacement loan to take effect before title to the pawned property passes to the pawnbroker. To obtain a replacement loan, the borrower must pay all charges and interest due under the original loan. The principal amount of the replacement loan may be lower than, the same as, or higher than the loan being replaced (Financial Code Section 21201.5).

**FISCAL EFFECT:** Unknown**COMMENTS:**

Need for the bill as stated by the author:

*Under current California law, a California-based pawnbroker providing a loan must obtain and submit to law enforcement the thumbprint of the person pledging property as collateral for the loan. Out-of-state pawnbrokers conducting business inside of California via the internet are exempt from this, and other, requirements. This places California-based pawnbrokers at a competitive disadvantage and prevents the DOJ from regulating internet-based pawn transactions. Additionally, consumers are subject to higher loan fees and less consumer protections because of the DOJ's lack of jurisdiction over out-of-state, online pawnbrokers.*

### Internet Pawn.

Several states allow electronic pawn transactions including: Colorado, Florida, Texas, New York, Georgia, New Hampshire, Hawaii and Arizona. Here's how it works: Customers fill out a form describing the item they wish to pawn. The online pawn shop then sends the customer an initial estimate and a pre-paid shipping label to mail in the item, which is insured. Once the item is fully appraised, customers receive a final offer. The money is either wired to a customer's bank account or in other states is sent to the customer via a pre-paid debit card.

The significant obstacle to internet pawn activity in California is the requirement that the pawn broker collect the thumbprint of the pledger. The committee is unaware of any evidence that this requirement has led to any criminal convictions or prevents criminal activity. Among law enforcement officials it is believed that the requirement to give a thumbprint may act as a deterrent for criminals to pawn stolen goods. Rather than require a thumbprint for an electronic transaction, which may be practically impossible, SB 300 requires that the loan proceeds must be deposited into a deposit account in the name of the pledger.

### Arguments in support.

*CAPA is sponsoring this bill to help California pawnbrokers compete with pawnbrokers in other states that transact pawn loans over the Internet. If enacted, this bill will not only allow California pawnbrokers to compete with pawnbrokers in other states, it may allow California's pawnbrokers to dominate the internet pawn market. California's pawn loan interest rates and fees are among the lowest in the United States (currently 48th out of 51 states and the District of Columbia; 47th out of 51, if SB 285 [Block] is enacted). Borrowers seeking to pawn items are likely to be attracted to these relatively low charges.*

*CAPA also believes that California law enforcement will benefit, if this bill is enacted. At present, Californians seeking to pawn items over the Internet are using pawnbrokers in other states – thus depriving California law enforcement of the information it receives and of the 30-day period in which to inspect pawned property when items are pawned in California. If this bill is enacted, that trend should reverse. California law enforcement will not only receive property reports and be able to inspect items pawned over the Internet by California residents, but will receive these reports and be able to inspect items pawned over the Internet by borrowers located in other states.*

### Arguments in opposition.

The California Police Chiefs Association writes in opposition:

*Under existing law, secondhand dealers are required to report all tangible personal property which they have taken in pawn to law enforcement. The reports include a legible thumbprint taken from the intended seller or pledger.*

*Unfortunately, by allowing for electronic transactions, SB 300 removes the requirement for individuals to provide a thumbprint in connection with the item they are pawning. Instead, SB 300 would require a pawnbroker who has issued a loan electronically to electronically deposit the loan proceeds into a deposit account held in the name of the pledger. However, SB 300 does not require the pawnbroker to report the pledger's account credentials to law enforcement.*

*Under SB 300, a law enforcement officer or detective investigating potential fraudulent behavior would have to write a search warrant in order to obtain the identity of the person who has ownership of the bank account used in the transaction.*

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Pawnbrokers Association (Sponsor)  
National Federation of Independent Business (NFIB)

**Opposition**

California Police Chiefs Association

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