

CALIFORNIA DEPARTMENT OF JUSTICE

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

Through Assembly Bill (AB) 391, as subsequently amended, in part, by AB 1751, the Legislature directed the California Department of Justice (DOJ) to develop the California Pawn and Secondhand Dealer System (CAPSS), a new single, statewide, uniform electronic reporting system that receives secondhand dealer reports (Statutes of 2012, Ch. 172, section 3, amending Business and Professions Code (B&PC), section 21628). As there are no existing regulations regarding the CAPSS, these regulations are necessary in order to interpret and make specific aspects of the CAPSS enabling statutes.

BENEFITS

Because the objective of these regulations is to interpret and make specific aspects of the CAPSS enabling statutes, the benefits of these regulations largely mirror those of the underlying CAPSS legislation. CAPSS is part of a program aimed at protecting the public from the dissemination of stolen property and assisting criminal investigations in tracing and recovering stolen property. The objectives and benefits of CAPSS are more fully articulated in B&PC section 21625, which provides, in part, the following:

It is the intent of the Legislature . . . 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 . . . 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 . . . 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 . . . for the purpose of correlating these reports with other reports of city, county, and city and county law enforcement agencies and further utilizing the services of the Department of Justice to aid in tracing and recovering stolen property.

There are also benefits directly resulting from the clarity and specificity added to the authorizing statutes through the proposed regulations. For the legislation to achieve its stated goal a uniform system of reporting is required. These proposed regulations help to ensure uniformity of the reports being submitted and the mechanisms through which they are submitted. Additionally, to ensure pawnbrokers and secondhand dealers can comply with legislated reporting mandates, the requirements must be reasonably specific and unambiguous. These proposed regulations remove much of the ambiguity and generality appearing in the statutes that impose those mandates.

PURPOSE

Section 2000. Chapter Definitions.

The purpose of proposed section 2000 is to define key terms used in these regulations and/or statutory terms requiring clarification.

Section 2001. Initial License Fee.

The purpose of proposed section 2001 is to establish the initial license fee amount and explain the mechanics of how this payment is to be made by pawnbrokers and secondhand dealers.

Section 2002. License Renewal Fee.

The purpose of subdivision (a) of proposed section 2002 is to establish the license renewal fee.

The purpose of subdivision (b) of proposed section 2002 is to explain the mechanics of how this payment is to be made by pawnbrokers and secondhand dealers.

The purpose of subdivision (c) of proposed section 2002 is to explain the license term and the timing of its expiration.

The purpose of subdivisions (d) and (e) of proposed section 2002 is to explain when license renewal fees become delinquent and the consequence to pawnbrokers and secondhand dealers of delinquent license renewal fees.

Section 2003. Property Description.

The purpose of subdivision (a) of proposed section 2003 is to clarify the meaning of “property description,” as that term is used in these regulations and their authorizing statutes, to include the eleven informational components listed.

The purpose of subdivision (b) of proposed section 2003 is to describe the two acceptable entries that can be made in the “article field” of the Property Transaction Report, which serves to clarify these regulations and their authorizing statutes.

Section 2004. Identification of Intended Seller or Pledger.

The purpose of subdivision (a) of proposed section 2004 is to explain the circumstances determining whether pawnbrokers or secondhand dealers should enter the identification’s “date of issue” or its “expiration year” in the Property Transaction Report.

The purpose of subdivision (b) of proposed section 2004 is to identify the pawnbroker or secondhand dealer’s obligation to verify certain required features contained on the identification presented.

Section 2005. Fingerprint.

The purpose of subdivision (a) of proposed section 2005 is to identify the proper finger to fingerprint when performing the fingerprinting required by these regulations and their authorizing statutes.

The purpose of subdivision (b) of proposed section 2005 is to establish standards for what constitutes a “legible” fingerprint.

Section 2006. Property Transaction Report.

The purpose of subdivision (a) of proposed section 2006 is to define the “report” of receipt or purchase of secondhand tangible personal property identified in the authorizing statutes to be the “Property Transaction Report.”

The purpose of subdivision (b) of proposed section 2006 is to identify the three methods by which pawnbrokers or secondhand dealers may submit the required Property Transaction Reports.

The purpose of subdivision (c) of proposed section 2006 is to identify the required information that Property Transaction Reports must contain.

The purpose of subdivision (d) of proposed section 2006 is to explain the identification certification made by pawnbrokers or secondhand dealers when submitting a Property Transaction Report.

The purpose of subdivision (e) of proposed section 2006 is to explain the information that pawnbrokers or secondhand dealers must convey to intended sellers or pledgers about the certifications made by the use of an intended seller or pledger’s electronic signature.

NECESSITY

Section 2000. Chapter Definitions.

Proposed section 2000 is necessary to ensure that pawnbrokers and secondhand dealers understand the terms used in these regulations and/or their authorizing statutes.

Section 2001. Initial License Fee.

The statutes authorizing these regulations instruct the DOJ to establish an initial license fee. These statutes provide a “not to exceed” rate, but fail to set a specific fee, which is to be based upon actual fees incurred by the DOJ. Subdivision (a) of this proposed section establishes the initial license fee. Subdivision (b) provides instructions on paying the fee.

Section 2002. License Renewal Fee.

The statutes authorizing this proposed section instruct the DOJ to establish a license renewal fee. These statutes provide a “not to exceed” rate, but fail to set a specific fee, which is to be based upon actual fees incurred by the DOJ. Subdivision (a) of this proposed section establishes the license renewal fee. Subdivision (b) provides instructions on paying the fee.

The statutes authorizing this proposed section also provide that the license shall be renewable “the second year from the date of issue, and every other year thereafter. . . .” Subdivision (c) is necessary to clarify this language by stating the exact length of the license term, including the day upon which the term is deemed to have expired. Subdivision (d) is necessary to establish a deadline by which the license renewal fee must be paid, after which it becomes delinquent, while subdivision (e) describes the consequence to a pawnbroker or secondhand dealer for having delinquent fees.

Section 2003. Property Description.

B&PC section 21628, subdivision (a), paragraph (3), states that the Property Transaction Report must include a “property description.” Subparagraph (A) broadly defines a “property description” to be “a complete and reasonably accurate description of the property, including, but not limited to, the following. . . .” The remainder of subparagraphs (A) and (B) list information that falls within the meaning of “property description.”

However, because this definition of “property description” is non-exhaustive (see “but not limited to”), a more complete definition is needed to ensure that pawnbrokers and secondhand dealers understand the reporting requirements they must meet. Subdivision (a) of this proposed section addresses this need by providing a comprehensive list of required (or situationally required) information that pawnbrokers and secondhand dealers must include in their Property Transaction Reports. Subdivision (b) is necessary to clarify the two acceptable entries that can be made in the “article field” of the Property Transaction Report.

Section 2004. Identification of Intended Seller or Pledger.

B&PC section 21628, subdivision (a), paragraph (2), addresses the identification of the intended seller or pledger, and lists specific identification documents that shall be relied upon by pawnbrokers and secondhand dealers in performing this verification. It also sets forth conditions on the acceptability of the identification documents, including the requirement that the document “is currently valid” or “has been issued in the past five years. . . .” This creates a situation where an expired document could be acceptable if it was issued within the past five years. In such a situation, the expiration year of the document would be of no probative value in determining its suitability; instead, the issue date would be needed. Subdivision (a) of this proposed section is necessary to instruct pawnbrokers and secondhand dealers to enter the “date of issue” of the document into the Property Transaction Report when the document is expired or no expiration date is evidenced. If the document is currently valid, subdivision (a) of this proposed section permits pawnbrokers and secondhand dealers to enter either the date of issue or expiration year of the document.

The statute also requires that the document contain “a photograph or description, or both, of the person named on it. . . .” Subdivision (b) of proposed section 2004 is necessary to clarify that the pawnbrokers and secondhand dealers are responsible for verifying that either or both features appear on the document presented.

Section 2005. Fingerprint.

B&PC section 21628, subdivision (a), paragraph (6), provides that “[a] legible fingerprint taken from the intended seller or pledger, as prescribed by the Department of Justice.” Ambiguities within this requirement must be clarified to ensure that pawnbrokers and secondhand dealers understand the reporting requirements they must meet.

Subdivision (a) of this proposed section is necessary to instruct pawnbrokers and secondhand dealers on the proper finger to fingerprint, and, in the absence of that finger, or any fingers, how to proceed. Subdivision (b) of this proposed section is necessary to establish standards for what constitutes a “legible” fingerprint, as required by the authorizing statute.

Section 2006. Property Transaction Report.

CAPSS is a reporting system. Secondhand tangible personal property reports are submitted to the DOJ pursuant to B&PC section 21628, subdivision (a), containing all information required by paragraphs (1) through (7). Subdivision (a) of this proposed section is necessary to bridge the terminology gap between “report,” as used in the authorizing statutes, and Property Transaction Report, as used in these regulations.

The authorizing statutes do not describe the means by which these reports are to be transmitted, except to say that they are electronic. Subdivision (b) of this proposed section is necessary to explain the DOJ-authorized methods of transmitting Property Transaction Reports.

Subdivision (c) of proposed section 2006 is necessary to identify and clarify the required information that Property Transaction Reports must contain. Moreover, to the extent the authorizing statute is not deemed to be self-executing in this regard, subdivision (c) establishes the mandatory form fields for the Property Transaction Report.

B&PC section 21628, subdivision (a), paragraphs (1) and (2), require, in part, that pawnbrokers and secondhand dealers identify the intended seller or pledger. Subdivision (d) of proposed section 2006 is necessary to ensure pawnbrokers and secondhand dealers understand that the act of submitting a Property Transaction Report constitutes a certification that they have identified the intended seller or pledger in accordance with these regulations and their authorizing statute.

B&PC section 21628, subdivision (a), paragraphs (4) and (5), require that intended sellers or pledgers make a certification about their authority to sell or pawn tangible personal property, and that the information they provide is true and correct. Subdivision (e) of proposed section 2006 is necessary to ensure pawnbrokers and secondhand dealers understand that they must convey to

intended sellers or pledgers the two certifications the intended sellers or pledgers are making by the use of their electronic signature.

ECONOMIC IMPACT ASSESSMENT

In assessing the economic impact of the proposed regulations, it is important to distinguish between the impact of the authorizing statutes and the impact of these proposed regulations. AB 391, as subsequently amended, in part, by AB 1751, imposes the single, statewide, uniform electronic reporting system, known as CAPSS, and corresponding reporting mandates. Because CAPSS and the reporting mandates are engendered by the authorizing statutes, not the proposed regulations, their economic impact is appropriately excluded from this assessment.

The economic impacts relevant to this assessment are exclusively those which would not occur but for the proposed regulations. Only one impact arguably falls within this description—that which results from the licensing fees. This is arguable because the initial and renewal licensing fees are expressly authorized by statute. In fact, the authorizing statute mandates that the DOJ impose these fees to recover its actual costs. B&PC section 21642.5, subdivision (a), provides the following:

The Department of Justice shall require each applicant for an initial license under Section 21641 of this code or Section 21300 of the Financial Code and each applicant for renewal of a license under Section 21642 of this code or Section 21301 of the Financial Code to pay a fee not to exceed three hundred dollars (\$300), but in no event exceeding the costs described in subdivision (b). . . .

While the authorizing statutes require the imposition of both fees, establish the criteria for determining the fees, and designate a cap, they do not set the fee amounts. The amounts are to be established by the DOJ in conformance with the statutorily imposed constraints.

These regulations set the initial license fee and license renewal fee both at three hundred dollars (\$300), as determined by a budgetary analysis of actual costs incurred by the DOJ to implement, operate, and maintain CAPSS, and process initial and renewal license applications. The renewal license fee is due every other year. Apportioned annually (for purposes of this assessment), this constitutes a one hundred and fifty dollar (\$150) fee. The economic impacts of these fees are concurrently addressed in the Economic and Fiscal Impact Statement (STD. 399) that accompanies this document.

The DOJ has concluded that even if these statutorily mandated fees are construed to be an economic impact attributable to these regulations, the fee will not have a significant statewide adverse economic impact on businesses. More specifically, the DOJ concludes that:

- (1) the proposed regulations are unlikely to create jobs within California.
- (2) the proposed regulations are unlikely to eliminate jobs within California.
- (3) the proposed regulations are unlikely to create new businesses within California.
- (4) the proposed regulations are unlikely to eliminate existing businesses within California.

- (5) the proposed regulations are unlikely to expand businesses currently doing business within California.

In terms of the benefits of the regulation to the health and welfare of California residents, the DOJ concludes as follows:

By clarifying and making specific aspects of the single, statewide, uniform electronic reporting system known as CAPSS and corresponding reporting mandates, these proposed regulations further the objectives of the authorizing legislation, which includes protecting the public from the dissemination of stolen property and assisting criminal investigations in tracing and recovering stolen property. The benefits of the proposed regulations are further detailed in the “BENEFITS” section of this document, located at page one.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR SIMILAR DOCUMENTS

The DOJ did not rely upon any technical, theoretical, or empirical study, report, or similar document in developing and proposing these regulations.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY’S REASONS FOR REJECTING THOSE ALTERNATIVES

The DOJ considered taking no action, and not adopting regulations interpreting and making specific AB 391, as subsequently amended in part by AB 1751. The absence of regulations has been the status quo following approval and codification of AB 391 and, more recently, AB 1751. The statutory mandates introduced by the aforementioned bills are largely self-executing.

A substantial number of pawnbrokers and secondhand dealers disagree, and through their association initiated legal proceedings against the DOJ (among other defendants), in which it was alleged that, as implemented, “CAPSS constitutes an unlawful and unenforceable regulation” and that “all CAPSS requirements are void and/or otherwise unenforceable.” This legal action preceded AB 1751, but the changes ushered in by AB 1751 do not address the full scope of these legal allegations.

Without addressing the merit of these sweeping legal allegations, the DOJ has complied with the demand of pawnbrokers and secondhand dealers by promulgating these proposed regulations. The DOJ does, however, agree that these proposed regulations are appropriate for clarifying and making specific certain aspects of the mandates and ancillary statutory language.

No reasonable alternative to the regulatory proposal would be less burdensome and equally effective in achieving the purposes of the regulations in a manner that ensures uniformity of the reports being submitted and the mechanisms through which they are submitted, thus guaranteeing pawnbrokers and secondhand dealers can comply with legislated reporting mandates. The DOJ determined the proposed regulations will not have a statewide adverse impact on small business, and therefore no alternatives that would lessen the impact were considered.

PRESCRIPTIVE STANDARDS

These proposed regulations mandate prescriptive standards for two reasons. First, the authorizing statutes that these regulations are interpreting and making specific are prescriptive in nature. For example, B&PC section 21628, subdivision (a), lists specific information that must be reported by pawnbrokers and secondhand dealers. While a regulation can be used to clarify and make specific its authorizing statutory language, it cannot be used to broaden it. Second, the authorizing statutes mandate use of a single, statewide, uniform electronic reporting system. The prescriptive standards are necessary to ensure uniformity of the reports being submitted and the mechanism(s) through which they are submitted.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The DOJ has determined that the proposed regulations will not have a significant, statewide, adverse economic impact affecting business for the reasons explained in the preceding section. Furthermore, to the extent there is any economic impact, it is arguably the result of the authorizing statutes that require the DOJ to recover its costs through the assessment of fees.

REGULATIONS MANDATED BY FEDERAL LAW

The proposed regulatory action does not adopt or amend a regulation mandated by federal law or regulations.