

CALIFORNIA DEPARTMENT OF JUSTICE

**TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 22. CALIFORNIA PAWN AND SECONDHANDDEALER SYSTEM
(CAPSS)**

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

Beginning January 1, 2023, Assembly Bill (AB) 1969 (Chapter 185, Statutes of 2020) modifies the existing reporting requirements by exempting a seller or pledger who verifies their identity using a Matricula Consular in addition to another item of identification bearing an address from the requirements that their name and current address be included in the daily report by pawnbrokers and secondhand dealers. In such a case, no personal identifying information of the intended seller or pledger shall be reported to the CAPSS. AB 1969 requires pawnbrokers and secondhand dealers to record and maintain the name, current address, and the Matricula Consular number of the seller or pledger for three years from the date the item was reported to the CAPSS. Additionally, pawnbrokers and secondhand dealers must record and maintain a certification by the intended seller or pledger that they are the owner of the property or have the authority of the owner to sell or pledge the property, along with taking a legible fingerprint from that person.

The proposed regulations are necessary to update the existing regulations concerning the CAPSS to align with AB 1969 requirements.

BENEFITS ANTICIPATED FROM REGULATORY ACTION

By aligning the regulations concerning the CAPSS with the changes required by AB 1969, these regulations would prevent discrimination, and promote fairness and social equity by exempting a seller or pledger who verifies their identity using a Matricula Consular in addition to another item of identification bearing an address from the requirements that their name and current address be included in the daily report by pawnbrokers and secondhand dealers, and ensuring that no personal identifying information of the intended seller or pledger shall be reported to the CAPSS.

SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION

Article 1. Chapter Definitions

§999.500. Chapter Definitions.

Subdivision (e) was non-substantively amended to replace “his or her” with “their” and “he or she intends” with “they intend.” These amendments are necessary to conform to the language included in the governing statute and to ensure that these regulations are gender-inclusive. This subdivision was also non-substantively amended to remove a comma for grammatical purposes.

Subdivision (l) was non-substantively amended to italicize the “l.” This amendment is necessary to distinguish the “l.” This subdivision was also non-substantively amended remove a comma for grammatical purposes.

Subdivision (m) was non-substantively amended to remove a comma for grammatical purposes.

Subdivision (n) was non-substantively amended to remove a comma for grammatical purposes.

Article 2. License Fees

§ 999.502. License Renewal Fee.

Subdivision (e) was non-substantively amended to change “he” to “the.” This amendment is necessary to correct a typo.

Article 3. Pawn and Buy Transaction Reporting

§999.503. Property Description.

Subdivision (a) was non-substantively amended to correct the citation. This amendment is necessary for citation consistency throughout these regulations.

Subdivision (b) was non-substantively amended to correct the citation. This amendment is necessary for citation consistency throughout these regulations.

The Authority and Reference section was amended to include Financial Code section 21208. This amendment is necessary because Financial Code section 21208 requires a pawnbroker to comply with the reporting requirements imposed on secondhand dealers under Business and Professions Code division 8, chapter 9, article 4 (commencing with section 21625).

§999.504. Identification of Intended Seller or Pledger.

Subdivision (a)(1) was amended to incorporate the new exemptions included in AB 1969. Pursuant to AB 1969, a pawnbroker or secondhand dealer is exempt from providing “the name and current address of the intended seller or pledger of the property” and the “identification of the intended seller or pledger” in the Property Transaction Report when a seller or pledger verifies their identity with a Matricula Consular in addition to another item of identification bearing an address, as described in Business and Professions Code section 21628, subdivision (a)(2)(C). This amendment is necessary because this subdivision previously required identification information to be entered on the Property Transaction Report whereas AB 1969 provides an exemption for the specified circumstances.

Subdivision (a)(2) was amended to incorporate the new exemptions included in AB 1969. Pursuant to AB 1969, a pawnbroker or secondhand dealer is exempt from providing “the name and current address of the intended seller or pledger of the property” and the “identification of

the intended seller or pledger” in the Property Transaction Report when a seller or pledger verifies their identity with a Matricula Consular in addition to another item of identification bearing an address, as described in Business and Professions Code section 21628, subdivision (a)(2)(C). This amendment is necessary because this subdivision previously required identification information to be entered on the Property Transaction Report whereas AB 1969 provides an exemption for the aforementioned circumstances and these regulations need to reflect the current statutory requirements.

Subdivision (b) was non-substantively amended to replace “must” with “shall”. This amendment is necessary for language consistency throughout the regulations as the term “shall” is used most often.

The Authority and Reference section was amended to include Financial Code section 21208. This amendment is necessary because Financial Code section 21208 requires a pawnbroker to comply with the reporting requirements imposed on secondhand dealers under Business and Professions Code division 8, chapter 9, article 4 (commencing with section 21625).

§999.505. Fingerprint.

Subdivision (a)(1) was non-substantively amended to correct the citation. This amendment is necessary for citation consistency throughout these regulations.

Subdivision (a)(3) was amended to correct the citation as it referenced a section number that was previously changed. This amendment is necessary to ensure that readers can locate the information cited in this provision.

Subdivision (b) was non-substantively amended to correct the citation. This amendment is necessary for citation consistency throughout these regulations. This provision was also amended to replace “his or her” with “their.” These amendments are necessary to conform to the language included in the governing statute.

The Authority and Reference section was amended to include Financial Code section 21208. This amendment is necessary because Financial Code section 21208 requires a pawnbroker to comply with the reporting requirements imposed on secondhand dealers under Business and Professions Code division 8, chapter 9, article 4 (commencing with section 21625).

§999.506. Property Transaction Report.

Subdivision (a) was non-substantively amended to change “sections” from plural to singular. This amendment is necessary to correct a typo.

Subdivision (b)(3) was non-substantively amended to remove the acronym “API.” This amendment is necessary for grammatical purposes because “API” is not used elsewhere in the text.

Subdivision (c) was amended to reference the two new subdivisions in this section that incorporate the new exemptions included in AB 1969. Pursuant to AB 1969, a pawnbroker or secondhand dealer is exempt from providing “the name and current address of the intended seller or pledger of the property,” “identification of the intended seller or pledger,” “a certification by the intended seller or pledger that they are the owner of the property or have the authority of the owner to sell or pledge the property,” “a certification by the intended seller or pledger that to their knowledge and belief the information is true and complete,” and “a legible fingerprint taken from the intended seller or pledger” in the Property Transaction Report when a seller or pledger verifies their identity with a Matricula Consular in addition to another item of identification bearing an address, as described in Business and Professions Code section 21628, subdivision (a)(2)(C). This amendment is necessary because this subdivision previously required all of the aforementioned information to be entered on the Property Transaction Report whereas AB 1969 provides an exemption for the specified circumstances and those exemptions are outlined in the two new subdivisions, (d) and (e), of this section.

New subdivision (d) was added to incorporate the new exemptions included in AB 1969 by adding the exemption to the requirements of subdivision (c) of this section. Pursuant to AB 1969, a pawnbroker or secondhand dealer is exempt from providing “the name and current address of the intended seller or pledger of the property” and “identification of the intended seller or pledger” in the Property Transaction Report when a seller or pledger verifies their identity with a Matricula Consular in addition to another item of identification bearing an address, as described in Business and Professions Code section 21628, subdivision (a)(2)(C). This provision additionally specifies how pawnbrokers and secondhand dealers shall document a seller or pledger’s information pursuant to Business and Professions Code section 21628, when this exemption applies. This addition is necessary because subdivisions (c)(1)(A) through (c)(1)(G) currently capture the intended seller or pledger’s first name, last name, date of birth, and address in the Property Transaction Report and subdivisions (c)(2)(A) through (c)(2)(D) currently capture the intended seller or pledger’s identification document information, which includes identification type, issuing state or territory, issuing country, and identification number, and previously it was required that all of the aforementioned information be entered on the Property Transaction Report whereas AB 1969 provides an exemption for the specified circumstances. AB 1969 provides that “no personal identifying information of the intended seller or pledger shall be reported to the CAPSS,” however AB 1969 does not define “personal identifying information.” Although the following definitions are not directly related to pawnbrokers or secondhand dealers, they provided guidance to determine what type of information should be exempt. Title 2, section 200.79 of the Code of Federal Regulations defines “personally identifiable information (PII)” as “information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.” Title 2, section 200.79 of the Code of Federal Regulations further states that “this type of information is considered to be public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials.” Additionally, Penal Code section 530.55, subdivision (b), defines “personal identifying information” to include any name, address, state or federal driver’s license, or identification number, social security number, alien registration number, government passport number, date of birth, and unique biometric data including fingerprint. Given these definitions, the Department believes that the intent of AB

1969 was to prevent such information from being reported to the CAPSS when a seller or pledger that verifies their identity with their Matricula Consular in addition to another item of identification bearing an address.

New subdivision (d)(1) was added to incorporate the new exemptions in AB 1969 to specify how personal identifying information shall be maintained in place of being reported to the CAPSS pursuant to AB 1969. Pursuant to AB 1969, when a seller or pledger who verifies their identity with a Matricula Consular in addition to another item of identification bearing an address no personal identifying information shall be reported to the CAPSS. Although AB 1969 does not define “personal identifying information,” the following definitions provide guidance to determine which type of information should be exempt, even though they are not directly related to pawnbrokers or secondhand dealers. Title 2, section 200.79 of the Code of Federal Regulations defines PII as “information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.” Additionally, Penal Code section 530.55, subdivision (b) defines “personal identifying information” to include any name, address, state or federal driver’s license, or identification number, social security number, alien registration number, government passport number, date of birth, and unique biometric data including fingerprint. This addition is necessary because when an intended seller or pledger identifies with their Matricula Consular in addition to another item of identification bearing an address, their personal identifying information shall no longer be reported to the CAPSS. Instead, the secondhand dealer or coin dealer shall record and maintain a legible fingerprint along with a certificate by the intended seller or pledger that the person is the owner of the property or has the authority of the owner to sell or pledge the property which shall be recorded and maintained for three years. Furthermore, the secondhand dealer or coin dealer shall provide law enforcement agencies the collected identity information from the seller or pledger if the item from the intended seller or pledger has been reported lost, stolen, or embezzled pursuant to AB 1969. The language in this subdivision duplicates statute and is necessary for clarity purposes so that secondhand dealers and pawnbrokers can review all of the reporting requirements in one place. Without the duplication of statute in these regulations, secondhand dealers and pawnbrokers may not comply with the reporting requirements pursuant to AB 1969.

New subdivision (d)(2) was added to incorporate the new exemptions in AB 1969 by adding the exemption to the requirements of subdivision (c) of this section and to specify how the information shall be maintained in place of being reported to the CAPSS pursuant to AB 1969. Pursuant to AB 1969, when a seller or pledger verifies their identity with a Matricula Consular in addition to another item of identification bearing an address, the fields listed in subdivision (c)(1)(A) through (c)(1)(G) and (c)(2)(D), shall instead be populated as “on file,” and the information on that person’s identity shall be recorded and maintained pursuant to Business and Professions Code section 21628, subdivision (e). Although the following definitions are not directly related to pawnbrokers or secondhand dealers, they provided guidance to determine what type of information should be exempt. Title 2, section 200.79 of the Code of Federal Regulations defines “personally identifiable information (PII)” as “information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.” Title 2, section 200.79 of the Code of Federal Regulations further states that “this type of information is

considered to be public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials.” Additionally, Penal Code section 530.55, subdivision (b), defines “personal identifying information” to include any name, address, state or federal driver’s license, or identification number, social security number, alien registration number, government passport number, date of birth, and unique biometric data including fingerprint. This addition is necessary because the fields listed in these subdivisions capture: first name, last name, date of birth, address, city, US state, or territory, postal code, and identification document identification number, which can all be interpreted as personal identifying information, and they should therefore be populated as “on file” pursuant to AB 1969. In addition, the secondhand dealer or coin dealer shall record and maintain a legible fingerprint along with a certificate by the intended seller or pledger that the person is the owner of the property or has the authority of the owner to sell or pledge the property which shall be recorded and maintained for three years. Furthermore, the secondhand dealer or coin dealer shall provide law enforcement agencies the collected identity information from the seller or pledger if the item from the intended seller or pledger has been reported lost, stolen, or embezzled pursuant to AB 1969.

New subdivision (e) was added to incorporate the new exemptions included in AB 1969 by adding the exemption to the requirements of subdivision (c) of this section. Pursuant to AB 1969, a pawnbroker or secondhand dealer is exempt from providing “a certification by the intended seller or pledger that they are the owner of the property or have the authority of the owner to sell or pledge the property,” “a certification by the intended seller or pledger that to their knowledge and belief the information is true and complete,” and “a legible fingerprint taken from the intended seller or pledger” in the Property Transaction Report when a seller or pledger verifies their identity with a Matrícula Consular in addition to another item of identification bearing an address, as described in Business and Professions Code section 21628, subdivision (a)(2)(C). Furthermore, this provision specifies how pawnbrokers and secondhand dealers shall document a seller’s or pledger’s information pursuant to Business and Professions Code section 21628, when this exemption applies. This addition is necessary because subdivision (c)(5) previously required this information to be entered on the Property Transaction Report whereas AB 1969 provides an exemption for the aforementioned circumstances. The language in this subdivision duplicates statute and is necessary for clarity purposes so that secondhand dealers and pawnbrokers can review all of the reporting requirements in one place. Without the duplication of statute in these regulations, secondhand dealers and pawnbrokers may not comply with the reporting requirements pursuant to AB 1969. Subdivision (c)(5) currently captures the intended seller or pledger’s electronic signature and fingerprint information. It is necessary to include these exemptions in this subdivision because the aforementioned subdivision is considered personal identifying information, and although the following definitions for personal identifying information are not directly related to pawnbrokers or secondhand dealers, they provided guidance to determine what type of information should be exempt. Title 2, section 200.79 of the Code of Federal Regulations defines PII as “information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.” Title 2, section 200.79 of the Code of Federal Regulations further states that “this type of information is considered to be public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials.” Additionally,

Penal Code section 530.55, subdivision (b) defines “personal identifying information” to include any name, address, state or federal driver’s license, or identification number, social security number, alien registration number, government passport number, date of birth, and unique biometric data including fingerprint

Subdivision (f) (formerly subdivision (d)) was amended to correct the lettering due to the addition of the new subdivisions (d) and (e) to this section.

Subdivision (g) (formerly subdivision (e)) was amended to correct the lettering due to the addition of the new subdivisions (d) and (e) to this section.

Subdivision (g)(1) was amended to replace “[h]e or she” with “[t]hey are” and “has” with “have.” These amendments are necessary to conform to the language included in the governing statute.

Subdivision (g)(2) was amended to replace “his or her” with “their” and “he or she” with “they.” These amendments are necessary to conform to the language included in the governing statute.

The Authority and Reference section was amended to include Financial Code section 21208. This amendment is necessary because Financial Code section 21208 requires a pawnbroker to comply with the reporting requirements imposed on secondhand dealers under Business and Professions Code division 8, chapter 9, article 4 (commencing with section 21625).

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department concludes:

(1) It is unlikely that the proposal would create or eliminate jobs within the state because these regulations only update the existing regulations regarding the CAPSS to codify the requirements listed in AB 1969 along with additional non-substantive changes.

(2) It is unlikely that the proposal would create new businesses or eliminate existing businesses within the state for the reason identified above.

(3) It is unlikely that the proposal would result in the expansion of businesses for the reason identified above.

The Department also concludes that:

(1) By aligning the regulations concerning the CAPSS with the changes required by AB 1969, these regulations would benefit the health and safety of California residents by preventing discrimination, and promoting fairness and social equity by exempting a seller or pledger who verifies their identity using a Matricula Consular in addition to another item of identification bearing an address from the requirements that their name and current address be included in the daily report by a pawnbroker or secondhand dealer.

(2) The proposal would not benefit worker safety.

(3) Although the proposal would not have a benefit to the state's environment, it would have a benefit to the state's quality of life for the reason identified above by promoting fairness and social equity.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR SIMILAR DOCUMENTS RELIED UPON

The Department did not rely on any technical, theoretical, or empirical studies, reports or similar documents in proposing these regulations.

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

The Department has made an initial determination that the proposed action would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

This determination is based on the proposed regulations affecting only those individuals currently subject to the provisions of Business and Professions Code section 21628, et seq.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Department has determined that this proposed action will have no significant economic impact on small businesses because the proposed regulations affect only those individuals currently subject to the provisions of Business and Professions Code section 21628, et seq.

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION AND THE AGENCY'S REASON FOR REJECTING THOSE ALTERNATIVES

The Department finds that no alternatives were presented to, or considered by, the Department that would be more effective in carrying out the purpose of these proposed regulations or would be as effective and less burdensome to affected private persons than these proposed regulations.

Performance Standard as Alternative:

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, Business and Professions Code 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.