

Date of Hearing: May 21, 2020

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 1969 (Blanca Rubio) – As Introduced January 21, 2020

**SUBJECT:** Secondhand goods: tangible personal property: reporting requirements.

**SUMMARY:** Eliminates the requirement that the name and address of a seller or pledger of secondhand goods be reported to law enforcement when the seller or pledger verifies their identity with a Matricula Consular, and requires the state's database of secondhand property transactions to direct law enforcement to the dealer to obtain the seller or pledger's identity.

**EXISTING LAW:**

- 1) States that 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 persons whose principal business is the buying, selling, trading, auctioning, or taking in pawn of tangible personal property. (Business and Professions Code (BPC) § 21625)
- 2) Defines "secondhand dealer" to mean 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, excluding coin dealers or participants at gun shows. (BPC § 21626(a))
- 3) Defines "coin dealer" as any person, firm, partnership, or corporation whose principal business is the buying, selling, and trading of coins, monetized bullion, or commercial grade ingots of gold, or silver, or other precious metals. (BPC § 21626(b))
- 4) Excludes from the definition of "secondhand dealer" any persons who perform the services of an auctioneer and any person whose business is limited to the reconditioning and selling of major household appliances, under certain conditions. (BPC § 21626.5)
- 5) Defines "tangible personal property" as all secondhand tangible personal property that bears or appears to have once beared a serial number or personalized initials or inscription and that is purchased by a secondhand dealer or a pawnbroker. Additionally defines "tangible personal property" as property received in pledge as security for a loan by a pawnbroker and property determined by the Attorney General to constitute a significant class of stolen goods according to the most recent property crime data. (BPC § 21627)
- 6) Establishes the California Pawn and SecondhandDealer System (CAPSS), which is a single, statewide, uniform electronic reporting system that receives secondhand dealer reports and is operated by the Department of Justice (DOJ). (BPC § 21627.5)
- 7) Requires secondhand dealers and coin dealers to report all secondhand tangible personal property acquisitions to CAPSS within one business day, which includes information relating to the seller of the property and a description of the property. (BPC § 21628)
- 8) Provides for the licensure of secondhand dealers by local law enforcement. (BPC § 21641)

**THIS BILL:**

- 1) Provides that the requirement that the name and current address of the intended seller or pledger of secondhand property be reported to CAPSS does not apply to sellers or pledgers who verify their identity with a Matricula Consular. Prohibits the personal identifying information of an intended seller or pledger who verifies their identity with a Matricula Consular from being reported to CAPSS.
- 2) Requires the identity of the seller or pledger of secondhand property who verifies their identity with a Matricula Consular to be verified by the dealer, recorded, and maintained for three years from the date the item was reported to CAPSS, and requires the dealer to provide the seller or pledger's identity to law enforcement in the event that the item has been reported lost, stolen, or embezzled.
- 3) States that for sellers and pledgers whose identity has been exempted from reporting to CAPSS, the database entry for the sold or pawned item shall read that the identity is "on file" and available directly from the dealer.

**FISCAL EFFECT:** Unknown; this bill has been keyed fiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the **California Pawnbrokers Association**. According to the author:

Regrettably, California has been the subject of increased ICE raids since 2016. The Department of Justice has adhered to its mission to keep this law enforcement database closed and secure. However, it is possible that one or more agencies are making the legal use of the Matricula Consular in common purchases, known to ICE. The obligation to capture and retain all the required information remains as it is in current law however we must continue to protect advocate for our communities that are under a constant state of stress from threats of deportation. AB 1969 ensures that the necessary information required for purchases using the Matricula Consular through the California Pawn and Secondhand-Dealer System (CAPSS) is safely retained while preventing the passing of information specifically name and residence to outside agencies.

**Background.**

*California Pawn and Secondhand Dealer System (CAPSS).* California has long regulated sellers of secondhand goods. In 1937, a law was enacted to require secondhand dealers to report new acquisitions of property to local law enforcement so that these items could potentially be matched with stolen goods. In 1959, this requirement was combined with a requirement that secondhand dealers wait 30 days before selling an item in order to provide law enforcement with time to investigate possible matches. The reporting requirement was also modified that year to consist of a daily paper report to both local law enforcement agencies and the DOJ.

In 2000, legislation was passed establishing a framework for secondhand dealers to make their required reports electronically; however, this system was not funded for over a decade. In the meantime, secondhand dealers submitted paper works on a form referred to as the JUS 123, which would typically be delivered to local law enforcement and was considered an inefficient

way of investigating stolen property crimes. Legislation in 2012 ultimately funded a new statewide electronic system known as CAPSS, operated by the DOJ and paid for through increased licensing fees obtained from secondhand dealers who were willing to contribute to the cost of a more streamlined electronic reporting system.

Upon completion of the CAPSS database, a number of secondhand dealers complained that the system was overly prescriptive in terms of how an item must be described. The intent of the DOJ's policy was to more effectively link secondhand dealers' goods to the automated property system containing records of stolen goods; however, a number of stores had difficulty reporting to the database through a batch upload process. As a result, the Attorney General negotiated modifications to statute to allow secondhand dealers more flexibility in the language used to describe an item. Virtually all secondhand dealers falling under the property reporting requirements now do so electronically through CAPSS, making it significantly easier for law enforcement to identify stolen property through an interjurisdictional electronic database.

*Undocumented Sellers and Pledgers.* As part of their report to CAPSS, secondhand dealers are required to provide the name and address of the seller or pledger of the property. The identity of the seller or pledger must have been verified by the dealer. Documents confirming the identity of the seller or pledger may include any of the following documents, provided they are currently valid or have been issued within five years and contains a photograph or description of the person named on it, and, where applicable, is signed by the person, and bears a serial or other identifying number:

1. A passport of the United States.
2. A driver's license issued by any state or Canada.
3. An identification card issued by any state.
4. An identification card issued by the United States.
5. A passport from any other country in addition to another item of identification bearing an address.
6. A Matricula Consular in addition to another item of identification bearing an address.

Because CAPSS is made widely available to law enforcement agencies, it is conceivable that sworn officers employed by the federal agency Immigration and Customs Enforcement (ICE) would be authorized to perform queries and obtain reports from the system. According to the author, there is some anecdotal evidence that ICE agents have used CAPSS reports to identify potential subjects of interest in immigration enforcement activities, since many undocumented communities rely on a Matricula Consular to prove their identities.

Senate Bill 54 (the California Values Act) of 2017 presumably already prohibits this information from being shared with federal immigration agencies. Nevertheless, the author argues that sellers and pledgers of secondhand property who verify their identity using a Matricula Consular should have their personally identifying information removed from CAPSS altogether to eliminate the risk of the database being used for immigration enforcement investigations. This bill would still make that information available to California law enforcement agencies upon request, but would prevent identities from being directly harvested from CAPSS.

**Prior Related Legislation.** AB 1993 (Gipson, Chapter 184, Statutes of 2018) replaced the prior 30 day period of time in which a secondhand dealer and coin dealer may not sell tangible personal property upon reporting the acquisition to a database that identifies possible matches to stolen property with a requirement that secondhand dealers and coin dealers may not sell an item within five days of reporting the acquisition and then must collect and retain buyer information if the property is sold within the following two days.

SB 54 (De León, Chapter 495, Statutes of 2017) limited the involvement of state and local law enforcement agencies in federal immigration enforcement.

AB 1751 (Low, Chapter 793, Statutes of 2016) clarified what descriptive categories may be required by the DOJ for secondhand goods reported by dealers through CAPSS.

AB 1182 (Santiago, Chapter 749, Statutes of 2015) narrowed the definition of “tangible personal property” and required the DOJ to annually update the list of items which represent a significant class of stolen goods.

AB 632 (Eggman, Chapter 169, Statutes of 2015) would authorized specified unique identifying numbers to be used as the serial number reported for handheld electronic devices.

SB 782 (Hill, Chapter 318, Statutes of 2013) clarified the interests of licensed pawnbrokers and secondhand dealers relating to the seizure and disposition of property during a criminal investigation or case.

AB 391 (Pan, Chapter 172, Statutes of 2012) required secondhand dealers and coin dealers to report certain information to the DOJ through CAPSS and instituted a new \$30 license fee.

AB 704 (Ma) of 2011 would have required that a person conducting business as a secondhand dealer provide specified information to any peace officer upon demand and allow for the storage of the item for up to 90 days, required an impounding agency to satisfy specified requirements regarding impounded property and further would have authorized a nonprofit association composed of 50 or more licensed secondhand dealers to bring an action to enjoin a person from conducting business as a secondhand dealer without being licensed. *This bill was held in the Assembly Judiciary Committee.*

SB 1520 (Schiff, Chapter 994, Statutes of 2000) created a framework for the DOJ to develop a new electronic reporting system that would eventually be CAPSS.

#### **ARGUMENTS IN SUPPORT:**

The **California Pawnbrokers Association (CAPA)** is sponsoring this bill. According to CAPA, “AB 1969 is a very important measure that seeks to keep personal information for individuals who use a Matricula Consular as a form of identification during a secondhand/pawn transaction confidential, unless law enforcement has a legitimate need for that information through a CAPSS reported property transaction.”

#### **ARGUMENTS IN OPPOSITION:**

The **California State Sheriffs’ Association (CSSA)** opposes this bill. The CSSA argues that the bill “creates additional work for California law enforcement who are addressing state crime

issues related to the property or transaction in question. California sheriffs have no desire to enforce immigration law, but by requiring a secondary process to ascertain information about certain property and transactions that would be electronically available but for this proposed requirement, AB 1969 creates new burdens on California law enforcement officers and agencies that are investigating crimes.”

The **California Police Chiefs Association (CPCA)** also opposes this bill, echoing the concerns expressed by the CSSA.

#### **IMPLEMENTATION ISSUES:**

It is likely that the changes to statute made by this bill would require the Department of Justice to both technologically modify the CAPSS database and update its regulations governing use of the system by law enforcement and secondhand dealers. While protecting undocumented communities is a priority for the state, it is possible that both time and expense may be incurred in the effectuation of this bill. The author should consult with the Attorney General and other law enforcement stakeholders to ensure a smooth implementation prior to this bill going into effect.

#### **REGISTERED SUPPORT:**

California Pawnbrokers Association (Sponsor)

#### **REGISTERED OPPOSITION:**

California Police Chiefs Association  
California State Sheriffs Association

**Analysis Prepared by:** Robert Sumner / B. & P. / (916) 319-3301