

Introduced by Senator HillFebruary 22, 2013

An act to amend Sections 21646 and 21647 of, and to add Section 21645.1 to, the Business and Professions Code, to amend Section 21206.8 of the Financial Code, and to amend Sections 1411 and 11108.5 of the Penal Code, relating to secondhand goods, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 762, as introduced, Hill. Secondhand goods.

(1) Existing law provides for the regulation of secondhand dealers, as defined, and makes it unlawful for a person to engage in the business of a secondhand dealer without a license issued by the chief of police, the sheriff, or, where appropriate, the police commission. Existing law makes it a crime, punishable by specified fines or imprisonment, or both, if a person knowingly violates the provisions regulating secondhand dealers. Existing law authorizes the district attorney or the Attorney General to bring an action to enjoin a violation or threatened violation of the provisions regulating secondhand dealers.

This bill would require a person conducting business as a secondhand dealer to provide a valid secondhand dealer license to any peace officer upon demand. Under specified circumstances, the bill would also authorize a peace officer to impound all secondhand tangible personal property, as defined, or currency up to \$25,000 found in the possession or control of the person if a secondhand dealer license is not provided to the peace officer and the peace officer has probable cause to believe the property or currency was acquired while the person was operating as a secondhand dealer without being licensed, except as specified. The bill would require the imposition of storage charges for secondhand

tangible personal property impounded pursuant to these provisions, would authorize the property or currency to be stored up to 90 days, and would set forth requirements for the redemption, or the forfeiture or sale, of the impounded property or currency. The bill would require an impounding agency to satisfy specified requirements regarding impounded property or currency that has not been redeemed and would require the district attorney or city attorney to follow specified procedures relative to forfeiture and claims to the property or currency. The bill would establish a \$100 fee for asserting a claim to the impounded property or currency that is subject to forfeiture, would require the fee to be reimbursed to a prevailing claimant, and would, if a claimant does not prevail, require the fee to be distributed between the district attorney or city attorney filing the action and the Trial Court Trust Fund. The proceeds of any sale or forfeiture under the bill would also be disbursed in a specified manner, including, of any remaining proceeds, 10% to the Restitution Fund, a continuously appropriated fund, thereby making an appropriation.

The bill would also authorize 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 and would authorize an association that prevails in such an action to be awarded reasonable attorney's fees and costs of suit, as specified.

(2) Existing law authorizes a peace officer to place a hold on property in possession of a pawnbroker, secondhand dealer, or coin dealer if the peace officer has probable cause to believe that property is stolen, as specified, and regulates the manner in which the property is placed on hold, persons claiming the property are notified, and disputes arising out of claims for the property are adjudicated, as provided.

This bill would revise these provisions to, among other things, require a peace officer to place a hold on stolen property, as specified, limit the provisions to licensed pawnbrokers and secondhand dealers, revise notification procedures regarding lost or stolen property, and require a person claiming ownership of allegedly stolen or embezzled property to file a written statement, signed under penalty of perjury, stating the factual basis upon which they claim ownership or an interest in the property.

(3) Because a knowing violation of the bill's provisions by a person engaging in the business of a secondhand dealer would be a crime, and

because the bill would expand the crime of perjury, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21645.1 is added to the Business and
2 Professions Code, to read:

3 21645.1. (a) The Legislature hereby finds and declares that
4 an effective means of punishing and deterring the unlicensed
5 practice of dealing in secondhand tangible personal property,
6 including, but not limited to, gold jewelry, platinum jewelry, and
7 sterling silver, and to further effectuate the legislative intent of
8 Section 21625, is through the forfeiture of property acquired and
9 accumulated by a person who is required to be licensed pursuant
10 to this article but is found to be in violation of Section 21640. The
11 provisions of this section are intended to be in addition to the
12 penalty provisions of Section 21645.

13 (b) A person conducting business as a secondhand dealer, as
14 defined in Section 21626, shall provide a valid license issued under
15 this article to any peace officer upon demand.

16 (c) (1) If a person, after being convicted of operating an
17 unlicensed secondhand business at any time within the preceding
18 five years or after being issued a written warning within the
19 preceding 12 months that the business must be licensed under this
20 article, is found buying secondhand tangible personal property
21 from the public and is unable to provide a valid secondhand dealer
22 license issued under this article on the demand of a peace officer
23 as required by subdivision (b), the peace officer may impound all
24 secondhand tangible personal property and any currency in an
25 amount not to exceed twenty-five thousand dollars (\$25,000) found
26 in the possession or under the control of the person if, upon
27 examination, the peace officer has probable cause to believe the
28 secondhand tangible personal property or currency was acquired

1 while the person was operating as a secondhand dealer without
2 being licensed, unless the peace officer is reasonably able, by other
3 means, to verify that the person was properly licensed at the time
4 the person acquired the secondhand tangible personal property or
5 currency.

6 (2) A peace officer shall not impound the secondhand tangible
7 personal property or any currency pursuant to this subdivision if
8 there is credible evidence establishing all of the following:

9 (A) The person conducting business as a secondhand dealer
10 provides documentation indicating that he or she held a valid
11 secondhand dealer license for that location at any time within the
12 preceding 90 days, unless the license was terminated by the issuing
13 agency and the person was provided notice of termination.

14 (B) The person required to be licensed pursuant to this article
15 recorded and reported the acquisition of secondhand tangible
16 personal property pursuant to Section 21628.

17 (3) A peace officer may exercise discretion with respect to
18 impoundment under this subdivision if the person can establish
19 that he or she is an employee of a person required to be licensed
20 under this article, the employer is not present, and the person
21 conducting business as a secondhand dealer does not have
22 management or control of, or a financial interest in, the business
23 for which a secondhand dealer license is required under this article.

24 (4) A peace officer shall serve the person from whom
25 secondhand tangible personal property or currency is taken
26 pursuant to this subdivision with a notice specifying the
27 requirements set forth in subdivision (d), the right of the
28 impounding agency to sell the secondhand tangible personal
29 property and forfeit the currency if the requirements of subdivision
30 (d) are not met within the statutory time, and the right of the person
31 from whom the secondhand tangible personal property or currency
32 is taken to challenge any sale or forfeiture following service of the
33 notice of forfeiture required under subdivision (g). Within five
34 days after the impoundment, the peace officer shall also serve on
35 the person from whom the secondhand tangible personal property
36 or currency is taken, and any secured creditor, a notice advising
37 those parties that they are entitled to a postimpoundment hearing
38 before the impounding agency within 30 days after the service of
39 the postimpoundment hearing notice. A person from whom
40 secondhand tangible personal property or currency is taken may

1 challenge the results of the postimpoundment hearing in the
2 appropriate court.

3 (d) Any secondhand tangible personal property or currency
4 impounded pursuant to subdivision (c) shall be stored for a period
5 not exceeding 90 days by the impounding officer, and shall be
6 available to be redeemed when both of the following conditions
7 have been satisfied:

8 (1) The person from whom the secondhand tangible personal
9 property or currency was taken has obtained or otherwise produced
10 a valid secondhand dealer license for the business as required under
11 this article.

12 (2) The reports of acquisition of secondhand tangible personal
13 property as required by Section 21628 have been completed for
14 all of the secondhand tangible personal property that was
15 impounded.

16 (e) Storage charges shall be imposed for the secondhand tangible
17 personal property impounded under this section in accordance with
18 Section 21200.6 of the Financial Code.

19 (f) If after 60 days from the date of the impoundment the person
20 from whom the secondhand tangible personal property or currency
21 was taken has failed to satisfy the requirements of subdivision (d),
22 the impounding agency shall do all of the following:

23 (1) If the name of the seller, seller's identification, and
24 description of the secondhand tangible personal property is known,
25 the agency shall prepare the report of acquisition of secondhand
26 tangible personal property for all impounded property as required
27 by Section 21628 or verify that the report was duly transmitted to
28 the Department of Justice.

29 (2) Notify the district attorney or city attorney of the
30 impoundment and request a notice of forfeiture.

31 (g) The district attorney or city attorney shall serve on the person
32 from whom the secondhand tangible personal property or currency
33 was taken and on any secured creditor a notice of forfeiture for all
34 or part of the secondhand tangible personal property or currency.
35 The notice shall be issued by registered mail on or after the 65th
36 day following the impoundment. The notice shall state that the
37 person served with the notice of forfeiture has 15 calendar days
38 from the date of the mailing of the notice to file a claim. A secured
39 creditor located outside the State of California shall be allowed an
40 additional five days to file a claim. The notice shall identify the

1 name and address of the district attorney or city attorney who is
2 authorized to prosecute the forfeiture action and to receive
3 objections. If no claim has been received after service of the notice
4 of forfeiture, the impounding agency may sell the secondhand
5 tangible personal property to the highest bidder at a noticed, public
6 sale.

7 (h) If the district attorney or city attorney issuing the notice of
8 forfeiture does not receive a claim within the time limit provided
9 in subdivision (g), the district attorney or city attorney shall sign
10 and record with the county recorder a notice of forfeiture. A written
11 declaration of forfeiture by the district attorney or city attorney
12 shall be deemed to provide good and sufficient title to the forfeited
13 property or currency. Any property or currency impounded but
14 not forfeited shall be returned to the person from whom it was
15 taken within 90 days of the impoundment.

16 (i) (1) If the district attorney or city attorney receives a timely
17 claim, the district attorney or city attorney shall file a petition for
18 forfeiture within 10 days of receiving the claim with the appropriate
19 court hearing any criminal action brought under Section 21640 or
20 21645. The district attorney or city attorney shall establish an
21 expedited hearing date in accordance with instructions from the
22 court and the court shall hear the matter without delay. A fee of
23 one hundred dollars (\$100) shall be paid by any claimant but shall
24 be reimbursed by the impounding agency if the claimant prevails.
25 To the extent practicable, the civil and criminal cases, if a criminal
26 complaint is filed against the person who is accused of operating
27 as an unlicensed secondhand dealer, shall be heard at the same
28 time in an expedited, consolidated proceeding. A proceeding in
29 the civil case is a limited civil case.

30 (2) The fee shall be distributed equally between the district
31 attorney or city attorney filing the action and the Trial Court Trust
32 Fund.

33 (3) The burden of proof in the civil case shall be on the person
34 from whom the secondhand tangible personal property or currency
35 was taken to prove by a preponderance of the evidence that the
36 secondhand tangible personal property or currency has been
37 acquired when the person from whom it was seized was properly
38 licensed under this article and that the acquisition of the
39 secondhand tangible personal property or currency was duly
40 reported pursuant to Section 21628. All questions that may arise

1 shall be decided and all other proceedings shall be conducted as
2 in an ordinary civil action.

3 (4) A judgment of forfeiture does not require as a condition
4 precedent the conviction of a defendant of an offense under this
5 article.

6 (5) The filing of a claim within the time limit specified in
7 subdivision (g) is a jurisdictional prerequisite for the availing of
8 the action authorized by that subdivision.

9 (j) All right, title, and interest in the secondhand tangible
10 personal property or currency shall vest in the impounding agency
11 upon commission of the act giving rise to the forfeiture. However,
12 the secondhand tangible personal property or currency shall not
13 be subject to forfeiture or sale until all court challenges are
14 resolved.

15 (k) Any secondhand tangible personal property that is not
16 redeemed pursuant to subdivision (d) and is subsequently forfeited
17 pursuant to a notice of forfeiture or a judgment of forfeiture shall
18 be sold to the highest bidder at a noticed, public sale. The notice
19 shall be published in a local paper of general jurisdiction nearest
20 the impounding agency within 10 days after that agency receives
21 the notice or judgment of forfeiture.

22 (l) The proceeds of any sale provided for pursuant to subdivision
23 (k) or the forfeiture of currency shall be distributed in the following
24 order:

25 (1) First to the impounding agency to satisfy the storage charge
26 provided in subdivision (e), if any.

27 (2) Second, to any secured creditor to satisfy the indebtedness
28 of the person from whom the secondhand tangible personal
29 property or currency was taken.

30 (3) Third, funds shall be made available to pay any local agency
31 and court costs that are reasonably related to the implementation
32 of this section and that remain unsatisfied.

33 (4) Of the remaining proceeds, 10 percent shall be deposited
34 into the Restitution Fund, 45 percent into the general fund of the
35 city or county or city and county that instituted the forfeiture, and
36 45 percent into the county or city and county in which the forfeiture
37 occurred.

38 (m) For purposes of this section, “secondhand tangible personal
39 property” shall mean and refer to gold, silver, platinum, palladium,
40 and jewelry made of gold, silver, platinum, palladium, or having

1 any diamond, ruby, emerald, or other precious stone, or any item
 2 containing sterling or fine silver.

3 SEC. 2. Section 21646 of the Business and Professions Code
 4 is amended to read:

5 21646. The district attorney or the Attorney General, in the
 6 name of the people of the State of California, may bring an action
 7 to enjoin the violation or the threatened violation of any provision
 8 of this article or of any regulation made pertaining to the provisions
 9 of this article. *A nonprofit association composed of 50 or more*
 10 *licensed pawnbrokers or secondhand dealers may bring an action*
 11 *to enjoin a person from conducting business as a secondhand*
 12 *dealer without being licensed as provided in this article. Any*
 13 *proceeding brought hereunder shall be governed in all respects by*
 14 *the provisions of Chapter 3 (commencing with Section 525) of*
 15 *Title 7 of Part 2 of the Code of Civil Procedure. In the case of a*
 16 *nonprofit association bringing an action to enjoin a person from*
 17 *conducting business as a secondhand dealer without being*
 18 *licensed, if the association prevails and confers a public benefit*
 19 *by receiving an injunction, it shall be awarded its reasonable*
 20 *attorney's fees and costs of suit.*

21 SEC. 3. Section 21647 of the Business and Professions Code
 22 is amended to read:

23 21647. (a) Whenever any peace officer has probable cause to
 24 believe that property, except coins, monetized bullion, or
 25 “commercial grade ingots” as defined in subdivision (d) of Section
 26 21627, in the possession of a ~~pawnbroker, secondhand dealer, or~~
 27 ~~coin dealer~~ *licensed pawnbroker or secondhand dealer* is stolen,
 28 the peace officer ~~may~~ *shall* place a hold on the property for a period
 29 not to exceed 90 days. When a peace officer places a hold on the
 30 property, the peace officer shall give the ~~pawnbroker, secondhand~~
 31 ~~dealer, or coin dealer~~ *licensed pawnbroker or secondhand dealer*
 32 a written notice at the time the hold is placed, describing the item
 33 or items to be held. During that period the ~~pawnbroker, secondhand~~
 34 ~~dealer, or coin dealer~~ *licensed pawnbroker or secondhand dealer*
 35 shall not release or dispose of the property, except pursuant to a
 36 court order or upon receipt of a written authorization signed by
 37 any peace officer who is a member of the law enforcement agency
 38 of which the peace officer placing the hold on the property is a
 39 member. A ~~pawnbroker, secondhand property dealer, or coin dealer~~

1 *licensed pawnbroker or secondhand dealer* shall not be subject to
2 civil liability for compliance with this section.

3 (b) (1) Whenever property that is in the possession of a
4 ~~pawnbroker, secondhand dealer, or coin dealer, whether or not the~~
5 ~~property has been placed on hold, licensed pawnbroker or~~
6 ~~secondhand dealer, and that has been placed on hold pursuant to~~
7 *this section*, is required by a peace officer in a criminal
8 investigation, the ~~pawnbroker, secondhand dealer, or coin dealer,~~
9 *licensed pawnbroker or secondhand dealer*, upon reasonable
10 notice, shall produce the property at reasonable times and places
11 or may deliver the property to the peace officer upon the request
12 of any peace officer. ~~ff~~

13 (2) *If property placed on hold pursuant to this section is*
14 *physically surrendered or delivered to law enforcement during the*
15 *period of the hold, the hold and the pawnbroker's lien against the*
16 *property shall continue. Upon termination of criminal proceedings*
17 *for which the property was placed on hold, the property shall be*
18 *returned to the pawnbroker from whom it was taken for disposition*
19 *provided under subdivision (d).*

20 (c) Whenever a law enforcement agency has knowledge that
21 property in the possession of a ~~pawnbroker, secondhand dealer,~~
22 ~~or coin dealer licensed pawnbroker or secondhand dealer~~ has been
23 reported as lost or stolen, the law enforcement agency shall, *within*
24 *two business days after placing the hold on the property pursuant*
25 *to this section*, notify in writing the person who reported the
26 property as lost or stolen of the following:

27 (1) The name, address, and telephone number of the ~~pawnbroker,~~
28 ~~secondhand dealer, or coin dealer licensed pawnbroker or~~
29 *secondhand dealer* who reported the acquisition of the property.

30 (2) That the law neither requires nor prohibits payment of a fee
31 or any other condition in return for the surrender of the property,
32 except that when the person who reported the property lost or
33 stolen does not choose to participate in the prosecution of an
34 identified alleged thief, the person shall pay the ~~pawnbroker,~~
35 ~~secondhand dealer, or coin dealer licensed pawnbroker or~~
36 *secondhand dealer* the “out-of-pocket” expenses paid in the
37 acquisition of the property in return for the surrender of the
38 property.

39 (3) That if the person who reported the property as lost or stolen
40 takes no action to recover the property from the ~~pawnbroker,~~

1 ~~secondhand dealer, or coin dealer~~ *licensed pawnbroker or*
2 *secondhand dealer* within 60 days of the mailing of the notice, the
3 ~~pawnbroker, secondhand dealer, or coin dealer~~ *licensed pawnbroker*
4 *or secondhand dealer* may treat the property as other property
5 received in the ordinary course of business. During the 60-day
6 notice period, the ~~pawnbroker, secondhand dealer, or coin dealer~~
7 *licensed pawnbroker or secondhand dealer* may not release the
8 property to any other person.

9 (4) That a copy of the notice, with the address of the person
10 who reported the property as lost or stolen deleted, will be mailed
11 to the ~~pawnbroker, secondhand dealer, or coin dealer~~ *licensed*
12 *pawnbroker or secondhand dealer* who is in possession of the
13 property.

14 (d) When property that is in the possession of a ~~pawnbroker,~~
15 ~~secondhand dealer, or coin dealer~~ *licensed pawnbroker or*
16 *secondhand dealer* is subject to a hold as provided in subdivision
17 (a), and the property is no longer required for the purpose of a
18 criminal investigation, the law enforcement agency that placed the
19 hold on the property shall release the hold on the property. When
20 the law enforcement agency has knowledge that the property has
21 been reported lost or stolen, the law enforcement agency shall then
22 make notification to the person who reported the property as lost
23 or stolen pursuant to subdivision (c).

24 (e) If a pledgor seeks to redeem property that is subject to a
25 hold, the pawnbroker shall advise the pledgor of the name of the
26 peace officer who placed the hold on the property and the name
27 of the law enforcement agency of which the officer is a member.
28 If the property is not required to be held pursuant to a criminal
29 prosecution the hold shall be released.

30 (f) Whenever information regarding allegedly lost or stolen
31 property is entered into the Department of Justice automated
32 property system or automated firearms system, and the property
33 is thereafter identified and found to be in the possession of a
34 ~~pawnbroker, secondhand dealer, or coin dealer, and the property~~
35 ~~is thereafter placed on a hold pursuant to this section and the~~
36 *licensed pawnbroker or secondhand dealer, the property shall be*
37 *placed on a hold pursuant to this section and Section 11108.5 of*
38 *the Penal Code.*

39 (g) *If the* hold, including any additional hold, is allowed to lapse,
40 or 60 days elapse following the delivery of the notice required to

1 be given by *subdivision (c)* of this section to the person who
2 reported the property to be lost or stolen without a claim being
3 made by that person, whichever is later, the ~~pawnbroker,~~
4 ~~secondhand dealer, or coin dealer~~ *licensed pawnbroker or*
5 *secondhand dealer* may mail under a Certificate of Mailing issued
6 by the United States Post Office, addressed to the law enforcement
7 agency that placed the property on hold, a written request to delete
8 the property listing from the Department of Justice automated
9 property system or automated firearms system, as is applicable.
10 Within 30 days after the request has been mailed, the law
11 enforcement agency shall either cause the property listing to be
12 deleted as requested or place a hold on the property. If no law
13 enforcement agency takes any further action with respect to the
14 property within 45 days after the mailing of the request, the
15 ~~pawnbroker, secondhand dealer, or coin dealer~~ *licensed pawnbroker*
16 *or secondhand dealer* may presume that the property listing has
17 been deleted as requested and may thereafter deal with the property
18 accordingly, and shall not be subject to liability arising from the
19 failure of the removal of the property listing from the Department
20 of Justice automated property system or automated firearms system.

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

24 *(h) A licensed pawnbroker or secondhand dealer shall not refuse*
25 *a request to place property in their possession on hold pursuant*
26 *to this section when a peace officer has probable cause to believe*
27 *the property is stolen. If a licensed pawnbroker or secondhand*
28 *dealer refuses a request to place property on hold pursuant to this*
29 *section, after being provided written notice of the provisions of*
30 *this section, the property may be seized with or without a warrant.*
31 *The peace officer shall issue a receipt as described in Section*
32 *21206.7 of the Financial Code, left with the licensed pawnbroker*
33 *or secondhand dealer. The property shall be disposed of pursuant*
34 *to procedures set forth in Section 21206.8 of the Financial Code,*
35 *which shall apply to both licensed pawnbrokers and secondhand*
36 *dealers under this section.*

37 *(i) A search warrant shall not be issued for the search of the*
38 *business of a licensed pawnbroker or secondhand dealer, unless*
39 *the application by the peace officer discloses the peace officer's*
40 *prior efforts taken to utilize the hold procedures set forth in this*

1 *section and establishes to the issuing magistrate's satisfaction that*
2 *the licensed pawnbroker or secondhand dealer has refused to*
3 *voluntarily surrender the stolen or embezzled property, or that*
4 *there is probable cause to believe that the stolen or embezzled*
5 *property is willfully being concealed by the licensed pawnbroker*
6 *or secondhand dealer and that any notice required by this section*
7 *would frustrate the criminal investigation of the licensed*
8 *pawnbroker or secondhand dealer.*

9 *(j) If a civil or criminal court is called upon to adjudicate the*
10 *competing claims of a licensed pawnbroker or secondhand dealer*
11 *and another party claiming ownership or an interest in the property*
12 *that is or was subject to a hold pursuant to this section, the court*
13 *shall award possession of the property only after due consideration*
14 *is given to the effect of Section 2403 of the Commercial Code.*

15 SEC. 4. Section 21206.8 of the Financial Code is amended to
16 read:

17 21206.8. (a) Notwithstanding the provisions of Chapter 12
18 (commencing with Section 1407) of Title 10 of Part 2 of the Penal
19 Code, whenever property alleged to have been *lost*, stolen, or
20 embezzled is taken from a pawnbroker, the peace officer,
21 magistrate, court, clerk, or other person having custody of the
22 property shall not deliver the property to any person claiming
23 ownership unless the provisions of this section are complied with.

24 (b) (1) If any person makes a claim of ownership, the person
25 *shall file a written statement, signed under penalty of perjury,*
26 *stating the factual basis upon which they claim ownership or an*
27 *interest in the property with the person having custody of the*
28 *property, and the person having custody of the property shall notify*
29 *the pawnbroker of the claim by providing a true and correct copy*
30 *of the claim to the pawnbroker.*

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

34 (3) *In adjudicating the competing claims of a pawnbroker and*
35 *a person claiming ownership or an interest in the property seized*
36 *from a pawnbroker, the magistrate or the person having custody*
37 *of the property shall give due consideration to the effect Section*
38 *2403 of the Commercial Code may have on the claims.*

39 (4) *At least 30 calendar days before any hearing adjudicating*
40 *any competing claims of a pawnbroker and a person claiming*

1 *ownership or an interest in the property, the person having custody*
2 *of the property shall deliver to the pawnbroker a true and correct*
3 *copy of the police report substantiating the basis of the seizure of*
4 *the property from the pawnbroker.*

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

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

16 SEC. 5. Section 1411 of the Penal Code is amended to read:

17 1411. (a) If the ownership of the property stolen or embezzled
18 and the address of the owner, and the address of the owner of a
19 security interest therein, can be reasonably ascertained, the peace
20 officer who took custody of the property shall notify the owner,
21 and a person having a security interest therein, by letter of the
22 location of the property and the method by which the owner may
23 obtain it. This notice shall be given upon the conviction of a person
24 for an offense involving the theft, embezzlement, or possession of
25 the property, or if a conviction was not obtained, upon the making
26 of a decision by the district attorney not to file the case or upon
27 the termination of the proceedings in the case. Except as provided
28 in Section 217 of the Welfare and Institutions Code, if the property
29 stolen or embezzled is not claimed by the owner before the
30 expiration of three months after the giving of this notice, or, in any
31 case in which such a notice is not given, before the expiration of
32 six months from the conviction of a person for an offense involving
33 the theft, embezzlement, or possession of the property, or if a
34 conviction was not obtained, then from the time the property came
35 into the possession of the peace officer or the case involving the
36 person from whom it was obtained is disposed of, whichever is
37 later, the magistrate or other officer having it in custody may, on
38 the payment of the necessary expenses incurred in its preservation,
39 deliver it to the county treasurer or other proper county officer, by
40 whom it shall be sold and the proceeds paid into the county

1 treasury. However, ~~notwithstanding any other provision of law~~, if
2 the person from whom custody of the property was taken is a
3 secondhand dealer or licensed pawnbroker and reasonable but
4 unsuccessful efforts have been made to notify the owner of the
5 property and the property is no longer needed for the criminal
6 proceeding, the property shall be returned to the secondhand dealer
7 or pawnbroker who had custody of the property and be treated as
8 regularly acquired property. If the property is transferred to the
9 county purchasing agent it may be sold in the manner provided by
10 Article 7 (commencing with Section 25500) of Chapter 5 of Part
11 2 of Division 2 of Title 3 of the Government Code for the sale of
12 surplus personal property. If the county officer determines that
13 any of the property transferred to him or her for sale is needed for
14 a public use, the property may be retained by the county and need
15 not be sold. The magistrate or other officer having the property in
16 custody may, however, provide for the sale of the property in the
17 manner provided for the sale of unclaimed property which has
18 been held for at least three months pursuant to Section 2080.4 of
19 the Civil Code.

20 *(b) This section shall not govern the disposition of property*
21 *placed on hold pursuant to Section 21647 of the Business and*
22 *Professions Code, notwithstanding the current custodial status of*
23 *the property, unless the licensed pawnbroker or secondhand dealer,*
24 *after receipt of the written advisement required by subdivision (h)*
25 *of Section 21647 of the Business and Professions Code, willfully*
26 *refuses to consent to a statutory hold as provided by Section 21647*
27 *of the Business and Professions Code or a search warrant for the*
28 *business of the licensed pawnbroker or secondhand dealer has*
29 *resulted in the seizure of the property subject to this section.*

30 SEC. 6. Section 11108.5 of the Penal Code is amended to read:

31 11108.5. (a) If a law enforcement agency identifies serialized
32 property *or any property reported pursuant to Section 21628 of*
33 *the Business and Professions Code* that has been reported lost or
34 stolen by the owner or a person entitled to possession of the
35 property and the property has been entered into the appropriate
36 Department of Justice automated property system pursuant to
37 Section 11108, the agency shall notify the owner or person
38 *claiming to be* entitled to possession of the property of the location
39 of the property within 15 days of making the identification. If the
40 location of the property was reported by a licensed pawnbroker or

1 secondhand dealer pursuant to Section 21630 of the Business and
2 Professions Code, *notwithstanding the method by which the*
3 *property was identified*, notice shall be given to the party who
4 reported the property lost or stolen pursuant to Section 21647 of
5 the Business and Professions Code.

6 (b) If the property is in the custody of the law enforcement
7 agency and it is determined that the property is no longer required
8 for use as evidence in a criminal case, the property shall be made
9 available to the person entitled to possession pursuant to Section
10 1417.5 *or if the property was found in the possession of a licensed*
11 *pawnbroker or secondhand dealer, pursuant to Section 21647 of*
12 *the Business and Professions Code.*

13 (c) Subdivision (a) shall not apply to the return to an owner of
14 a lost or stolen vehicle, as defined in Section 670 of the Vehicle
15 Code.

16 SEC. 7. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.