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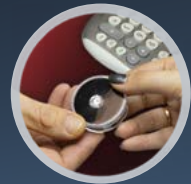
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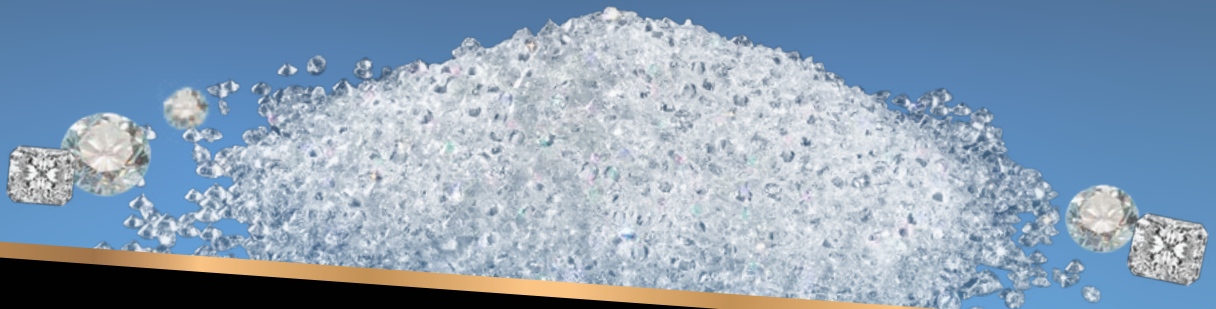
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# CAPA

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Jan Schneider

## CAPA's Future is Here

**A**fter so many years of planning, strategizing and hard work by so many dedicated pawnbrokers, benefits to our industry and individual businesses that were only ideas and dreams are finally realities. Just look at what

**SUCCESSFUL FEE INCREASES EVERY 5 YEARS SINCE JANUARY 1<sup>ST</sup>, 2000 AND MORE!**

This year, at our annual convention, we will be rolling out our in-person Continuing Education, better known as CE. At the fabulous Omni Resort and Spa in beautiful Rancho Mirage, for the first time ever our CAPA members will be able to take part in live CE seminars and receive the credits needed to renew their state license. This, along with our usual assortment of educational opportunities, our faithful vendors and many new ones and a weekend to network with the state's most knowledgeable and successful pawnbrokers.

We will be presenting the Bill Duplissee Community Service Award to a very deserving, longtime CAPA Family Member and I will be stepping down as your CAPA President and turning over the gavel to Jesse Farmerie. This year's CAPA Con is not to be missed.

We are expecting record numbers this year, so make sure to register early. Thank you all for your support and I look forward to seeing all of you in Rancho Mirage in October.

*Jan Schneider*  
President ■

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# Capitol Report

## CAPA Lobby Day 2025

Following the November 2024 general election, and the February 2025 special elections, 14 new members have entered the Senate, and 24 new members have started their first term in the Assembly. With nearly a third of the Legislature changing hands, CAPA and our lobbyists made this year's Lobby Day a high priority for building relationships with these new leaders and educating them about our industry. In addition, lobby day is a time to reconnect with old and new friends to thank them for being supportive of our issues.



CAPA's lobby days were Monday March 3 and Tuesday March 4 where CAPA members visited Legislators and staff in 32 offices. Our visits were made to 23 Assemblymembers and 9 Senators:

(\* indicates new member)

### Assemblymembers & Staff

Patrick Ahrens\*  
 Juan Alanis  
 Jasmeet Bains  
 Rebecca Bauer-Kahan  
 Marc Berman  
 Jessica Caloza  
 Phillip Chen  
 Sade Elhawary\*  
 Mike Gipson  
 Mark Gonzalez\*  
 John Harabedian\*  
 Ash Kalra  
 Josh Lowenthal  
 Darshana Patel\*  
 Gail Pellerin  
 Alexandra Macedo\*  
 Stephanie Nguyen  
 Michelle Rodriguez\*  
 Chris Rogers  
 Dr. LaShae Sharp-Collins\*  
 Catherine Stefani\*  
 Greg Wallis  
 Lori Wilson

### Senators & Staff

Bob Archuleta  
 Angelique Ashby  
 Tim Grayson  
 Roger Niello  
 Rosilicie Ochoa Bogh  
 Sasha Renee Perez\*  
 Tom Umberg  
 Suzette Valladares\*  
 Akilah Weber

In addition, CAPA had the opportunity to visit with new Senator Laura Richardson, and CAPA's longtime friends Senator Anna Caballero, and former Assemblymember, now Sheriff for Sacramento County, Jim Cooper at our Lobby day reception Monday evening.

## Continuing Education

CAPA has made significant strides in developing the new curriculum for pre-licensure education and continuing education for pawnbrokers to meet the requirements

of Assembly Bill (AB 2231) effective January 1, 2026. The new law requires mandatory education for all pawnbrokers before receiving licensure, and continuing education (CE) every two years for those who are currently licensed which shall coincide with the pawnbroker's license renewal.

Here is what you need to know:

- As of January 1, 2026, new applicants for licensure as pawnbrokers and existing licensees seeking renewal shall complete at least eight hours of CE approved by the California "Pawnbroker Education Council."
- The California "Pawnbroker Education Council" will begin offering education courses to new applicants and existing licensees in the Fall of 2025.
- A link to the "education portal" will be available on the websites for the "California Pawnbroker Education Council" and CAPA in the Fall of 2025.
- Proof of course completion will be issued by the Council and shall be submitted by pawnbrokers to the local licensing authority along with the normal application for licensure or renewal.

CAPA will be requesting assistance from the Second-hand Dealer and Pawnbroker Unit in disseminating this

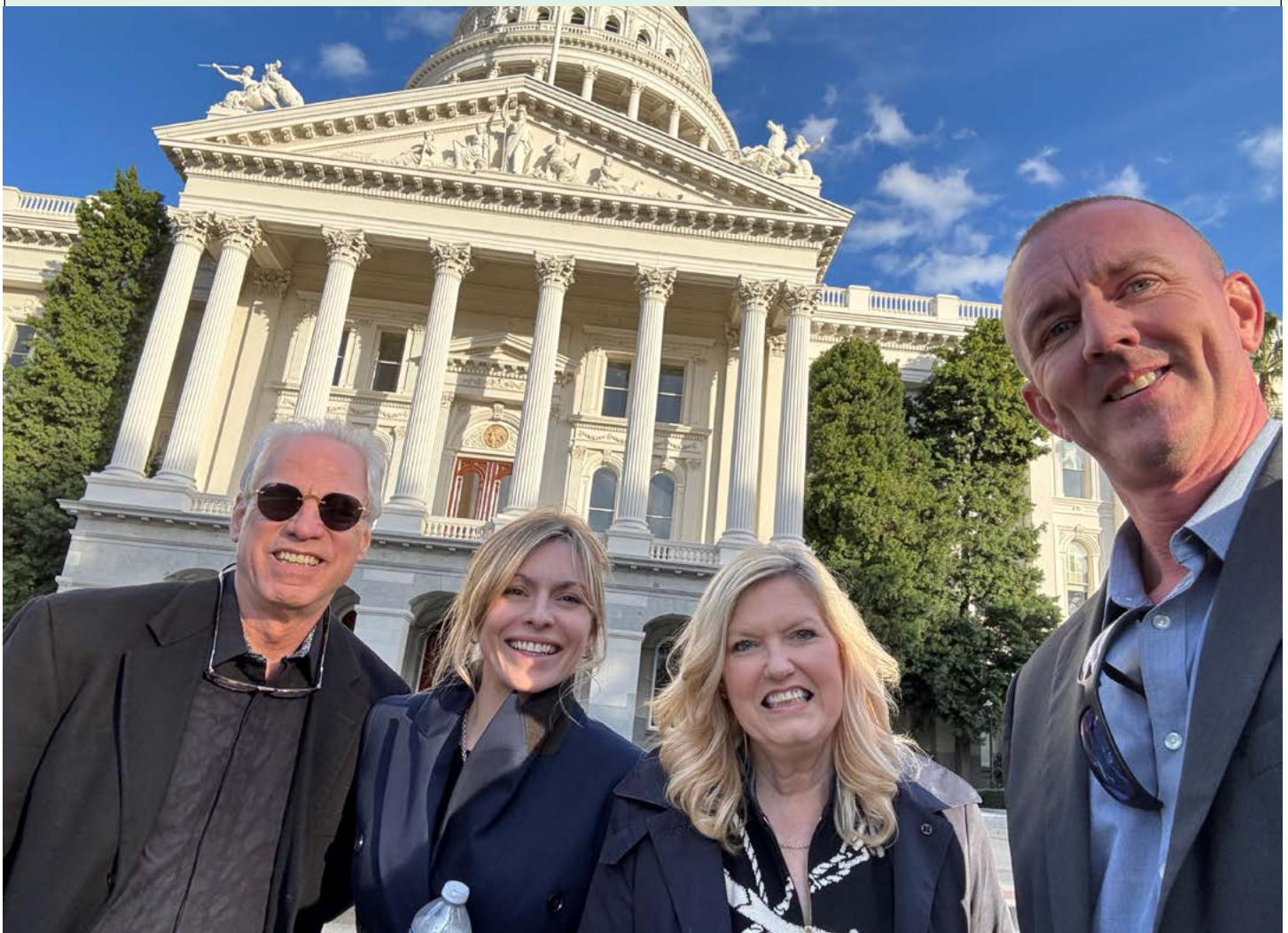
information to current pawnbroker licensees as well as local licensing agencies (chiefs of police and sheriffs).

## Special Elections 2025

Following the elections of Assemblymember Vince Fong to Congress, and Senator Janet Nguyen to the Orange County Board of Supervisors, Governor Newsom called a special primary election for Feb. 25, and a general election for April 29<sup>th</sup>, 2025. However, with one candidate for each seat winning by a "50%-plus-one vote" threshold, the winners were declared and the general elections were called off.

Huntington Beach City Councilmember Tony Strickland won a four-way race for the 36<sup>th</sup> Senate District in the primary election with 51 percent of the vote. Senator Strickland previously served in both the State Assembly and Senate with both of CAPA's lobbyists. Therefore CAPA can look forward to having another friend in the Legislature.

Stan Ellis, a Republican businessman, won a four-way race with 63% of the vote in a special primary election for the 32<sup>nd</sup> Assembly District seat vacated by Vince Fong who was elected to fill the seat previously held by Republican Congressman Kevin McCarthy. McCarthy also served as the 55<sup>th</sup> Speaker of the U.S. House of Rep-





representatives in 2023. Assemblymember Ellis has a distinct background that sets him apart from his colleagues. He founded Qubitekk, a quantum physics lab that is working with the Department of Energy and the Department of Defense to advance cybersecurity and protect critical infrastructure from the dangers of hacking threats, both foreign and domestic.

Assemblymember Bill Essayli, R-Corona, is the most recent member of the Legislature to resign after President Donald Trump appointed him to the U.S. Department of Justice's lead prosecutor position overseeing the Central District of California. Governor Newsom has now called for a special election on August 26 to fill the 63<sup>rd</sup> Assembly District seat.

Lake Elsinore City Councilwoman and former Mayor of Lake Elsinore Natasha Johnson is the first to have entered the race and has now been endorsed by U.S. Attorney Essayli. The former Democratic nominee during the November 2024 election, public school teacher and local teacher union leader Chris Shoults, has also announced his candidacy.

### **Legislation of Concern to Pawnbrokers – AB 1331**

In addition to lobbying for CAPA sponsored legislation, our lobbyists also work to address concerns with newly introduced legislation that could potentially hurt our members – whether directly or indirectly. One such bill is Assembly Bill (AB) 1331 by newly elected Assemblymember Sade Elhawary regarding workplace surveillance tools and the monitoring of workers.

CAPA has voiced concerns that AB 1331's provisions which require employers to disable workplace surveillance tools during off-duty hours, including rest and break periods, will have a detrimental effect on workplace safety. As we have witnessed, pawnbrokers have been victimized by retail theft at an alarming rate over the last several years and our members have experienced an increasing number of robberies in which their employees have been assaulted and/or held at gunpoint.

Our lobbyists have conveyed to the author the fact that our shops are an attractive target for thieves looking to steal items such as electronics, jewelry and gold because these items are easy to transport, sell for relatively high amounts, and can quickly be converted into cash. The use of video and audio surveillance equipment is important not only to aid in the recovery of stolen items, but to protect our employees in these dangerous situations.



Our reading of AB 1331 is that employers would be prohibited from utilizing this equipment to monitor breakrooms, employee lounges, and cafeterias – areas where surveillance is also used to ensure the safety of our employees in the event of a robbery. When thieves are intent on stealing valuable property from our shops, they do not discriminate between public areas and areas where “employees have a reasonable expectation of privacy.” In these instances, our employees expect that we, as their employers, will utilize equipment and take steps to ensure their safety under these circumstances.

Furthermore, AB 1331 does not take into account the continuous need for pawnbrokers to utilize “cybersecurity technology” in order to protect the personal identifiable information of our customers. As we know, because our pawn customers have limited financial resources, they are often left with little or no recourse in the event their personal or financial information is compromised, and fraudulent credit charges are made under their names.

CAPA’s lobbyists have provided the author with information about legislation passed by 3 other states which have employee surveillance laws that mandate transparency and disclosure, as opposed to prohibiting surveillance in specific areas. They will continue to monitor this legislation to ensure that amendments are taken to alleviate the problems this bill presents for us. ■

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— Jan Schneider, CAPA President

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# ENFORCEMENT OF ARBITRATION AGREEMENTS

Since the Industrial Revolution, arbitration has become an increasingly favored means of resolving commercial disputes. In the past few decades, this popularity has extended to disputes between employers and employees. Arbitration is now widely seen as a faster and cheaper means of resolution than judicial intervention. This is reflected in the passage of laws, such as the United States Arbitration Act of 1925 (“Federal Arbitration Act”), which have conferred validity and enforceability on contractual arbitration agreements. Ultimately, Congress and the courts have both demonstrated a preference for arbitration over

litigation. This preference has trickled down to states. In California, the arbitration clause has been normalized via statute as an accepted, commonplace feature of commercial and employment contracts. California Arbitration Act (Cal. Code Civ. Proc. §§ 1280 to 1294.4).

However, this deference does not mean that any arbitration clause contained in any contract is valid and enforceable. Although there is a strong judicial presumption in favor of the validity and enforceability of arbitration clauses, there are also a number of circumstances under which they will not be enforced. As a result, arbitration clauses may be

attacked on a number of grounds.

**Statutory issues:** Be aware of statutes that may be grounds for attacking the enforceability of an arbitration agreement. For example, for agreements that fall under the California Arbitration Act, acceding to an arbitration clause may not be a precondition to employment. Cal. Labor Code § 432.6. This is inclusive of conditioning continued employment or the receipt of employment benefits on employees agreeing to arbitration clauses. Notably, this statute is only applicable to contracts entered into, modified, or extended on or after January 1, 2020. Further, contracts falling under the Federal Arbitration Act are preempted and not subject to this provision<sup>1</sup>. See *Chamber of Com. of the United States of Am. v. Bonta*, 62 F.4<sup>th</sup> 473, 486 (9<sup>th</sup> Cir. 2023) (“[T]he FAA preempts a state rule that discriminates against arbitration by discouraging or prohibiting the formation of an arbitration agreement.”). Additionally, the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (“EFAA”) served to amend the Federal Arbitration Act. Under its terms, for any dispute occurring after March 3, 2022, arbitration agreements related to sexual assault or sexual harassment are unenforceable. California courts have weighed in that, if even one of the claims at issue is related to sexual assault or sexual harassment, the entire dispute is not subject to compelled arbitration. See *Doe v. Second St. Corp.*, 105 Cal. App. 5<sup>th</sup> 552 (2024); *Liu v. Miniso Depot CA, Inc.*, 105 Cal. App. 5<sup>th</sup> 791 (2024).

**Contractual formation issues:** Since arbitration clauses fall within the realm of contract law, they can be attacked on a number of bases related to the valid formation of a binding contract. For example, whether an individual provided assented to the arbitration clause. This raises particularly interesting issues, given the burden on the party demanding arbitration to prove the validity of any arbitration agreement, when it comes to e-signatures. See, e.g., *Garcia v. Stoneledge Furniture LLC*, 102 Cal. App. 5<sup>th</sup> 41, 53 (2024) (holding that the employer failed to demonstrate how the unique user ID and password used to electronically sign an arbitration agreement could be exclusively tied to the employee in question). As a result, the technical aspects of contracts that are sent, reviewed, and signed electronically are vital to evaluating contract formation defenses.

**Contract enforcement issues:** Further, any of the grounds that exist for revocation of a contract are valid grounds for arguing that an arbitration clause is unenforceable (e.g., fraud, duress, or unconscionability). Cal. Code Civ. Proc. § 1281. Unconscionability, which can be asserted on procedural or substantive grounds, is the most ready basis for asserting that an arbitration agreement is unenforceable. Both forms of unconscionability must be present for a contract to be unenforceable. *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal.4<sup>th</sup> 83, 144 (2000). However, courts examine them on a sliding scale: the more harsh or unreasonable the substantive terms of the arbitration agreement, the more irrelevant it is whether the procedural terms comported with regular contract practices. *Id.*

**Procedural Unconscionability:** For procedural unconscionability, the focus is “oppression” or “surprise” due to the unequal bargaining powers of the employer versus the employee. *Id.* Look for anything indicative of a contract of adhesion or other form of unfairness to the employee, to include:

- A lack of meaningful opportunity for the employee to negotiate or modify terms. See *Sanchez v. Valencia Holding Co., LLC*, 61 Cal.4<sup>th</sup> 899, 910 (2015).
- An arbitration clause that is hidden (e.g., large blocks of text with no subheadings, inclusion of the clause under a seemingly irrelevant heading, etc.) or obscured by fine print. See *Bruni v. Didion*, 160 Cal.App.4<sup>th</sup> 1272, 1290 (2008).
- Language that is legally dense and confusing or contains contradictory terms, so as to prevent the employee from reasonably understanding the clause to which they are agreeing. *OTO, L.L.C. v. Kho*, 8 Cal.5<sup>th</sup> 111, 127 (2019).
- A setting where an employee was rushed, told that signing the arbitration clause was mandatory, or was otherwise unreasonably pressured to sign the agreement. See *Martinez v. Master Protection Corp.*, 118 Cal.App.4<sup>th</sup> 107, 114 (2004).
- The employee was denied access to the arbitration rules or related documents prior to signing. *Trivedi v. Curexo Tech. Corp.*, 189 Cal.App.4<sup>th</sup> 387, 393–94 (2010).
- There is a distinct mismatch in the bargaining power or degree of sophistication of the parties. See *Pokorny v. Quixtar, Inc.*, 601 F.3d 987, 996 (9<sup>th</sup> Cir. 2010).
- The employee is not presented a copy of the contract in their own language even though their English language skills are very limited. *Cisneros Alvarez v. Altamed Health Servs. Corp.*, 60 Cal. App. 5<sup>th</sup> 572, 589 (2021).

This is by no means a comprehensive list. This is especially true given that employment agreements are increasingly reviewed and signed electronically, creating new dynamics in how these agreements are structured and presented.

**Substantive Unconscionability:** For substantive unconscionability, the focus is on “overly harsh” or “one-sided” arbitration processes. *Armendariz*, 24 Cal.4<sup>th</sup> at 114. Look for anything indicative of the arbitration clause being a subterfuge to ensure a favorable result for the employer in any dispute, to include:

- Not requiring neutral arbitrators. *Id.*
- A lack of mutuality, such as requiring one contracting party but not the other to submit to arbitration or only requiring arbitration for the types of claims more likely to be brought by an employee than an employer. *Id.*; *Ramirez v. Charter Commc'ns, Inc.*, 16 Cal.5<sup>th</sup> 478 (2024).
- A scope or duration that is too broad, such as requiring an employee to arbitrate all claims against the employer, even after the employment relationship has ended. *Cook v. Univ. of S. California*, 102 Cal.App.5<sup>th</sup> 312 (2024).

- Provisions that do not allow for more than minimal discovery. *See, e.g., Nunez v. Cycad Mgmt. LLC*, 77 Cal. App.5th 276, 285 (2022) (arbitration agreement limited discovery to three depositions and an aggregate of thirty discovery requests of any kind, including sub-parts.).
- Requiring the employee to pay unreasonable attorneys' fees or requiring them to pay the costs of arbitration. *Wherry v. Award, Inc.*, 192 Cal. App.4th 1242 (2d. Dist. 2011); *Cole v. Burns Int'l Sec. Servs.*, 105 F.3d 1465 (D.C. Cir. 1997).
- Confidentiality clauses, particularly where they serve to limit the employees' right to discovery or are only applicable to the types of claims brought by employees. *See, e.g., Ramos v. Superior Ct.*, 28 Cal.App.5th 1042 (2018).
- Forcing an employee to waive administrative rights or remedies otherwise available to them. *See, e.g., Hasty v. Am. Auto. Assn. etc.*, 98 Cal.App.5th 1041 (2023) (cannot waive an employee's right to remedy or relief from filing charges or complaints with a government agency)
- Serves to shorten the statute of limitations for bringing a claim. *Martinez v. Master Prot. Corp.*, 118 Cal.App.4th 107 (2004).

It is important to note that, even where a specific provision of an arbitration agreement is unconscionable, the employer may argue that it should simply be severed from

the rest of the agreement. However, where an agreement is "permeated with unconscionability"—such that a court would effectively be required to rewrite the agreement—this remedy is not available to employers. *Ramirez v. Charter Commc'ns, Inc.*, 16 Cal. 5th 478, 517 (2024).

In sum, arbitration clauses are subject to numerous attacks regarding enforceability. Valid arbitration agreements require understanding possible statutory bars to enforceability, probing the means by which the employee was presented the agreement and asked to sign it (inclusive of reviewing the exact method of electronic signature and other documents that accompanied the arbitration agreement), and understanding the exact terms of any arbitration that may result from the agreement.

*This Mastagni Holstedt, A.P.C. publication is intended for informational purposes only and should not be relied upon in reaching a conclusion in a particular area of law. Applicability of the legal principles and laws discussed may differ substantially, in individual situations. Receipt of this or any other Mastagni Holstedt, A.P.C. publication, notice, email, and/or communication does not create an attorney-client relationship. Mastagni Holstedt, A.P.C. is not responsible for inadvertent errors that may occur in the publishing process.* ■

1. However, the Federal Arbitration Act does not apply to transportation workers engaged in interstate commerce, allowing their arbitration clauses to fall under the scope of the California Arbitration Act.



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