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AMENDED IN ASSEMBLY MAY 1, 2007
AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 844

Introduced by Assembly Members Berryhill and Maze
(Principal coauthors: Assembly Members Galgiani and Garrick)
(Principal coauthors: Senators Calderon, Cogdill, and Maldonado)
(Coauthors: Assembly Members Adams, Aghazarian, Anderson,
Arambula, Benoit, Blakeslee, Cook, DeVore, Emmerson, Fuller,
Gaines, Garcia, Horton, Houston, Huff, Jeffries, Keene, La Malfa,
Ma, Mullin, Nakanishi, Niello, Parra, Plescia, Sharon Runner,
Salas, Silva, Smyth, Spitzer, Strickland, Tran, Villines, and
Walters)
(Coauthors: Senators Cedillo, Denham, Florez, Margett, and Yee)

February 22, 2007

An act to amend Sections 21606, 21606.5, 21608, and 21609 of, and to add Sections 21608.3 and 21608.5 to, the Business and Professions Code, relating to junk dealers, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 844, as amended, Berryhill. Junk dealers and recyclers: nonferrous material.

Existing law requires junk dealers and recyclers, as defined, to keep written records of all sales and purchases made in the course of their business. Existing law requires these records to include, among other things, the place and date of each sale or purchase of junk, a description of the item of junk, and the personal and vehicle information of the person selling, purchasing, or transporting the junk. Existing law exempts certain purchases of scrap metals by a junk dealer or recycler from these provisions. A violation of the provisions regulating junk dealers and recyclers is a crime.

This bill would require a junk dealer or recycler to report the information included in those written records to the chief of police or sheriff, as specified, upon request and on a monthly basis. The bill would authorize the chief of police or sheriff to request weekly reports for no more than a 2-month period, except as specified, if there is an ongoing investigation of the junk dealer or recycler concerning possible criminal activity.

This bill would prohibit a junk dealer or recycler from providing payment for nonferrous material, as defined, unless the payment is made by cash or check, the check is mailed or the cash or check is provided no earlier than 3 days after the date of sale, and the dealer or recycler obtains a *photograph or video of the seller and certain other* identifying information, as specified, including the thumbprint of a seller, to be retained by the dealer or recycler for a certain period of time. The bill would specify an exception to the payment by cash or check requirement and provide that these requirements do not apply to the redemption of nonferrous materials of a certain value at a recycling center, as specified, or to coin dealers or automobile dismantlers. The bill would also prohibit a city, county, or city and county from adopting an ordinance related to junk dealer or recycler transactions involving nonferrous material, except under specified circumstances.

Under existing law, a knowing and willful violation of the recordkeeping requirements applicable to junk dealers and recyclers is punishable by specified fines, by imprisonment in the county jail for a specified period of time, or by both that fine and imprisonment. Existing law requires that, for a 3rd or subsequent violation, the court order the defendant to stop engaging in business as a junk dealer or recycler for a period of 30 days.

This bill would increase the minimum fines for those violations, as specified, and would also require the court, for a 3rd or subsequent violation, to order the defendant to stop engaging in business as a junk dealer or recycler for a period of not less than one year. The bill would further impose a specified civil fine for the unauthorized disclosure of a seller's personal identification information.

Under existing law, when a peace officer has probable cause to believe that property in the possession of a junk dealer or recycler is stolen, the peace officer may place a hold on that property. Existing law requires a court, upon conviction of a person for the theft of that property, to order the defendant to pay the reasonable costs for the storage of the property.

This bill would also require the court to order the defendant to pay the victim for the value of the property stolen and any reasonable collateral damage caused in the commission of the theft.

Because a violation of this bill's provisions would be a crime, 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.

This bill would declare that it is to take effect immediately as an urgency statute *and would provide that its provisions shall become operative on December 1, 2008.*

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. Section 21606 of the Business and Professions
- 2 Code is amended to read:

1 21606. (a) Every junk dealer and every recycler shall set out
2 in the written record required by this article all of the following:

3 (1) The place and date of each sale or purchase of junk made
4 in the conduct of his or her business as a junk dealer or recycler.

5 (2) The name, valid driver's license number and state of issue
6 or California-issued identification card number, and vehicle license
7 number including the state of issue of any motor vehicle used in
8 transporting the junk to the junk dealer's or recycler's place of
9 business.

10 (3) The name and address of each person to whom junk is sold
11 or disposed of, and the license number of any motor vehicle used
12 in transporting the junk from the junk dealer's or recycler's place
13 of business.

14 (4) A description of the item or items of junk purchased or sold,
15 including the item type and quantity, and identification number,
16 if visible.

17 (5) A statement indicating either that the seller of the junk is
18 the owner of it, or the name of the person he or she obtained it
19 from, as shown on a signed transfer document.

20 (b) A person who makes, or causes to be made, a false or
21 fictitious statement regarding any information required by this
22 section is guilty of a misdemeanor.

23 (c) (1) Every junk dealer and every recycler shall report the
24 information required under subdivision (a) to the chief of police,
25 if the dealer's or recycler's business is located in a city, or to the
26 sheriff, if the dealer's or recycler's business is located in an
27 unincorporated part of a county, upon request of the chief of police
28 or sheriff and on a monthly basis, except as provided in paragraph
29 (2).

30 (2) The chief of police or sheriff may request the report
31 described in this section on a weekly basis if there is an ongoing
32 investigation of the junk dealer or recycler concerning possible
33 criminal activity. The chief of police or sheriff may request weekly
34 reports for no more than a two-month period unless the
35 investigation of the junk dealer or recycler continues and the chief
36 of police or sheriff makes a subsequent request for weekly reports
37 for an additional two-month period or part thereof.

38 (d) *The amendments to this section made by the act adding this*
39 *subdivision shall become operative on December 1, 2008.*

1 SEC. 2. Section 21606.5 of the Business and Professions Code
2 is amended to read:

3 21606.5. Every junk dealer or recycler shall, during normal
4 business hours, allow periodic inspection of any premises
5 maintained and any junk thereon for the purpose of determining
6 compliance with the recordkeeping requirements of this article,
7 and shall during those hours produce his or her records of sales
8 and purchases, except as provided in subparagraph (A) of paragraph
9 (3) of subdivision (a) of Section 21608.5, and all property
10 purchased incident to those transactions which is in the possession
11 of the junk dealer or recycler for inspection by any of the following
12 persons:

13 (a) An officer holding a warrant authorizing him or her to search
14 for personal property.

15 (b) A person appointed by the sheriff of a county or appointed
16 by the head of the police department of a city.

17 (c) An officer holding a court order directing him or her to
18 examine the records or property.

19 (d) *The amendments to this section made by the act adding this*
20 *subdivision shall become operative on December 1, 2008.*

21 SEC. 3. Section 21608 of the Business and Professions Code
22 is amended to read:

23 21608. (a) A junk dealer or recycler who fails in any respect
24 to keep the written record required by this article, or to set out in
25 that written record any matter required by this article to be set out
26 therein, is guilty of a misdemeanor.

27 Every junk dealer or recycler who refuses, upon demand pursuant
28 to Section 21606.5, to exhibit the written record required by this
29 article, or who destroys that record within two years after making
30 the final entry of a purchase or sale of junk therein, is guilty of a
31 misdemeanor.

32 (b) Any knowing and willful violation of subdivision (a) shall
33 be punishable as follows:

34 (1) For a first offense, by a fine of not less than one thousand
35 dollars (\$1,000), or by imprisonment in the county jail for not less
36 than 30 days, or by both that fine and imprisonment.

37 (2) For a second offense, by a fine of not less than two thousand
38 dollars (\$2,000), or by imprisonment in the county jail for not less
39 than 30 days, or by both that fine and imprisonment. In addition
40 to any other sentence imposed pursuant to this paragraph, the court

1 may order the defendant to stop engaging in business as a junk
2 dealer or recycler for a period not to exceed 30 days.

3 (3) For a third or any subsequent offense, by a fine of not less
4 than four thousand dollars (\$4,000), or by imprisonment in the
5 county jail for not less than six months, or by both that fine and
6 imprisonment. In addition to any other sentence imposed pursuant
7 to this paragraph, the court shall order the defendant to stop
8 engaging in business as a junk dealer or recycler for not less than
9 one year.

10 (c) *The amendments to this section made by the act adding this*
11 *subdivision shall become operative on December 1, 2008.*

12 SEC. 4. Section 21608.3 is added to the Business and
13 Professions Code, to read:

14 21608.3. (a) Any unauthorized disclosure of personal
15 identification information collected from a seller by a junk dealer
16 or recycler is prohibited, and any such disclosure shall render the
17 violator liable for a civil fine of up to five thousand dollars
18 (\$5,000).

19 (b) *This section shall become operative on December 1, 2008.*

20 SEC. 5. Section 21608.5 is added to the Business and
21 Professions Code, to read:

22 21608.5. (a) A junk dealer or recycler in this state shall not
23 provide payment for nonferrous material unless, in addition to
24 meeting the written record requirements of Sections 21605 and
25 21606, all of the following requirements are met:

26 (1) The payment for the material is made by cash or check. The
27 check may be mailed to the seller at the address provided pursuant
28 to paragraph ~~(2)~~ (3) or the cash or check may be collected by the
29 seller from the junk dealer or recycler on the third business day
30 after the date of sale.

31 (2) *At the time of sale, the junk dealer or recycler obtains a*
32 *clear photograph or video of the seller.*

33 ~~(2)~~

34 (3) (A) Except as provided in subparagraph (B), the junk dealer
35 or recycler obtains a copy of the valid driver’s license of the seller
36 containing a photograph and an address of the seller or a copy of
37 a state or federal government-issued identification card containing
38 a photograph and an address of the seller.

39 (B) If the seller prefers to have the check for the material mailed
40 to an alternative address, other than a post office box, the junk

1 dealer or recycler shall obtain a photograph or video of the seller,
2 or a copy of a driver's license or identification card described in
3 subparagraph (A), and a gas or electric utility bill addressed to the
4 seller at that alternative address with a payment due date no more
5 than two months prior to the date of sale. For purposes of this
6 paragraph, "alternative address" means an address that is different
7 from the address appearing on the seller's driver's license or
8 identification card.

9 (C)

10 (4) The junk dealer or recycler obtains a *clear* photograph or
11 video of the nonferrous material being purchased.

12 (D)

13 (5) The junk dealer or recycler shall preserve the information
14 obtained pursuant to this paragraph for a period of two years after
15 the date of sale.

16 (3)

17 (6) (A) The junk dealer or recycler obtains a thumbprint of the
18 seller, as prescribed by the Department of Justice. The junk dealer
19 or recycler shall keep this thumbprint with the information obtained
20 under ~~paragraph (2) this subdivision~~ and shall preserve the
21 thumbprint in either hard copy or electronic format for a period of
22 two years after the date of sale. ~~The junk dealer or recycler shall~~
23 ~~make the thumbprint available to a person listed in Section 21606.5~~
24 ~~only if that person has probable cause to believe that property in~~
25 ~~the possession of the junk dealer or recycler has been stolen. The~~
26 ~~seller shall acknowledge this disclosure requirement in writing.~~

27 (B) Inspection or seizure of the thumbprint shall only be
28 performed by a peace officer acting within the scope of his or her
29 authority in response to a criminal search warrant signed by a
30 magistrate and served on the junk dealer or recycler by the peace
31 officer. Probable cause for the issuance of that warrant must be
32 based upon a theft specifically involving the transaction for which
33 the thumbprint was given.

34 (b) Paragraph (1) of subdivision (a) shall not apply if, during
35 any three-month period commencing on or after the effective date
36 of this section, the junk dealer or recycler completes five or more
37 separate transactions per month, on five or more separate days per
38 month, with the seller and, in order for paragraph (1) of subdivision
39 (a) to continue to be inapplicable, the seller must continue to

1 complete five or more separate transactions per month with the
2 junk dealer or recycler.

3 (c) This section shall not apply if, on the date of sale, the junk
4 dealer or recycler has on file or receives all of the following
5 information:

6 (1) The name, physical business address, and business telephone
7 number of the seller's business.

8 (2) The business license number or tax identification number
9 of the seller's business.

10 (3) A copy of the valid driver's license of the person delivering
11 the nonferrous material on behalf of the seller to the junk dealer
12 or the recycler.

13 (d) This section shall not apply to the redemption of nonferrous
14 material having a value of not more than twenty dollars (\$20) in
15 a single transaction, when the primary purpose of the transaction
16 is the redemption of beverage containers under the California
17 Beverage Container Recycling and Litter Reduction Act, as set
18 forth in Division 12.1 (commencing with Section 14500) of the
19 Public Resources Code.

20 (e) This section shall not apply to coin dealers or to automobile
21 dismantlers, as defined in Section 220 of the Vehicle Code.

22 (f) For the purposes of this section, "nonferrous material" means
23 copper, copper alloys, stainless steel, or aluminum, but does not
24 include beverage containers, as defined in Section 14505 of the
25 Public Resources Code, that are subject to a redemption payment
26 pursuant to Section 14560 of the Public Resources Code.

27 (g) This section is intended to occupy the entire field of law
28 related to junk dealer or recycler transactions involving nonferrous
29 material. However, a city or county ordinance, or a city and county
30 ordinance, relating to the subject matter of this section is not in
31 conflict with this section if the ordinance is passed by a two-thirds
32 vote and it can be demonstrated by clear and convincing evidence
33 that the ordinance is both necessary and addresses a unique problem
34 within and specific to the jurisdiction of the ordinance that cannot
35 effectively be addressed under this section.

36 (h) *This section shall become operative on December 1, 2008.*

37 SEC. 6. Section 21609 of the Business and Professions Code
38 is amended to read:

39 21609. (a) Whenever a peace officer has probable cause to
40 believe that property in the possession of a junk dealer or recycler

1 is stolen, in lieu of seizing the property, the peace officer as defined
2 in subdivision (b) of Section 21606.5, at his or her option, may
3 place a hold on the property for a period not to exceed 90 days.
4 When a peace officer places a hold on the property, the peace
5 officer shall give the junk dealer or recycler a written notice at the
6 time the hold is placed, describing the item or items to be held plus
7 the case number. During that period the junk dealer or recycler
8 shall not release or dispose of the property, except pursuant to a
9 court order or upon receipt of a written authorization signed by a
10 peace officer who is a member of the law enforcement agency of
11 which the peace officer placing the hold on the property is a
12 member. Except as specifically set forth in this section, a junk
13 dealer or recycler shall not be subject to civil liability for
14 compliance with this section.

15 (b) Whenever property that is in the possession of a junk dealer
16 or recycler is subject to a hold and the property is required by a
17 peace officer in a criminal investigation, the junk dealer or recycler,
18 upon reasonable notice, shall produce the property at reasonable
19 times and places or may deliver the property to any peace officer
20 upon the request of any peace officer who is a member of the law
21 enforcement agency of which the peace officer placing the hold
22 on the property is a member.

23 (c) Whenever property that is in the possession of a junk dealer
24 or recycler is subject to a hold and the property is no longer
25 required for the purpose of criminal investigation, the law
26 enforcement agency that placed the hold on the property shall
27 undertake the following:

28 (1) With respect to the property being held, if the law
29 enforcement agency has no knowledge of the property on hold
30 being reported as stolen, the property shall be released upon written
31 notice to the junk dealer or recycler. The notice shall be provided
32 in a timely fashion.

33 (2) If the law enforcement agency has knowledge that the
34 property has been reported stolen, the law enforcement agency
35 shall notify the person who reported the stolen property of the
36 name and address of the junk dealer or recycler holding the
37 property and authorize the release of the property to that person.

38 The law enforcement agency that placed the property on hold
39 shall release the hold after 60 days has elapsed following the

1 delivery of the notice to the person who reported the property
2 stolen.

3 (3) If a victim seeks to recover property that is subject to a hold,
4 the junk dealer or recycler shall advise the victim of the name and
5 badge number of the peace officer who placed the hold on the
6 property and the name of the law enforcement agency of which
7 the officer is a member. If the property is not required to be held
8 pursuant to a criminal prosecution the hold shall be released.

9 (d) Upon conviction of a person for the theft of property placed
10 on hold pursuant to this section, the court shall order the defendant
11 to do both of the following:

12 (1) Pay the junk dealer or recycler reasonable costs for the
13 storage of the property.

14 (2) Pay the victim for both the value of the property stolen and
15 any reasonable collateral damage caused in the commission of the
16 theft.

17 (e) *The amendments to this section made by the act adding this*
18 *subdivision shall become operative on December 1, 2008.*

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

28 SEC. 8. This act is an urgency statute necessary for the
29 immediate preservation of the public peace, health, or safety within
30 the meaning of Article IV of the Constitution and shall go into
31 immediate effect. The facts constituting the necessity are:

32 In order to address statewide concerns related to public safety,
33 and to decrease the rising theft of nonferrous materials, it is
34 necessary that this act take effect immediately.