

AMENDED IN ASSEMBLY JANUARY 4, 2012

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 704**

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**Introduced by Assembly Member Ma**

February 17, 2011

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An act to *amend Section 21646 of, and to add Section 21645.1 to, the Business and Professions Code, relating to secondhand goods.*

LEGISLATIVE COUNSEL'S DIGEST

AB 704, as amended, Ma. Secondhand goods.

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's license to any peace officer upon demand.~~

*This bill would require a person conducting business as a secondhand dealer to provide a valid secondhand dealer's license to any peace officer upon demand and would authorize a peace officer to impound all tangible personal property found in the possession or control of the person if a secondhand dealer's license is not provided to the peace*

*officer and the peace officer has probable cause to believe the property was acquired while the person was operating as a secondhand dealer without being licensed, except as specified. The bill would authorize the imposition of storage charges for personal property impounded pursuant to these provisions, would authorize the property to be stored up to 90 days, and would set forth requirements for the redemption, or the forfeiture and sale, of the impounded property. The bill would require an impounding agency to satisfy specified requirements regarding impounded property 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. The bill would establish a \$100 fee for asserting a claim to impounded property 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 equally between the district attorney or city attorney and the Trial Court Trust Fund.*

*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 attorneys' fees and costs of suit, as specified.*

Because a knowing violation of the bill's provisions by a person engaging in the business of a secondhand dealer 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.

Vote: majority. 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 21645.1 is added to the Business and~~
- 2     ~~Professions Code, to read:~~
- 3     ~~21645.1. A person conducting business as a secondhand dealer,~~
- 4     ~~as defined in Section 21626, shall provide a valid license issued~~
- 5     ~~under this article to any peace officer upon demand.~~

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, and  
6 to further effectuate the legislative intent of Section 21625, is  
7 through the forfeiture of property acquired and accumulated by a  
8 person who is required to be licensed pursuant to this article but  
9 is found to be in violation of Section 21640. The provisions of this  
10 section are intended to be in addition to the penalty provisions of  
11 Section 21645.

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

15 (c) (1) If a person conducting business as a secondhand dealer  
16 is unable to provide a valid secondhand dealer's license issued  
17 under this article on the demand of a peace officer as required by  
18 subdivision (b), the peace officer may impound all tangible  
19 personal property, as defined in Section 21627, found in the  
20 possession or under the control of the person if, upon examination,  
21 the peace officer has probable cause to believe the property was  
22 acquired while the person was operating as a secondhand dealer  
23 without being licensed, unless the peace officer is reasonably able,  
24 by other means, to verify that the person was properly licensed at  
25 the time the person acquired the property.

26 (2) A peace officer shall not impound tangible personal property  
27 pursuant to this subdivision if the person conducting business as  
28 a secondhand dealer provides documentation indicating that he  
29 or she held a valid secondhand dealers's license for that location  
30 at any time within the preceding 90 days, unless the license was  
31 terminated by the issuing agency and the person was provided  
32 notice thereof.

33 (3) A peace officer may exercise discretion with respect to  
34 impoundment under this subdivision if the person can establish  
35 that he or she is an employee of a person required to be licensed  
36 under this article, the employer is not present, and the person  
37 conducting business as a secondhand dealer does not have  
38 management or control of, or a financial interest in, the business  
39 for which a secondhand dealer license is required under this  
40 article.

1 (4) A peace officer shall serve the person from whom tangible  
2 personal property is taken pursuant to this subdivision with a  
3 notice specifying the requirements set forth in subdivision (d), the  
4 right of the impounding agency to sell the tangible personal  
5 property if the requirements of subdivision (d) are not met within  
6 the statutory time, and the right of the person from whom the  
7 tangible personal property is taken to challenge any sale following  
8 service of the notice of forfeiture required under subdivision (g).  
9 Within five days after the impoundment, the peace officer shall  
10 also serve on the person from whom the tangible personal property  
11 is taken, and any secured creditor, a notice advising those parties  
12 that they are entitled to a postimpoundment hearing before the  
13 impounding agency within 30 days after the service of the  
14 postimpoundment hearing notice. A person from whom tangible  
15 personal property is taken may challenge the results of the  
16 postimpoundment hearing in the appropriate court.

17 (d) Tangible personal property impounded pursuant to  
18 subdivision (c) shall be stored for a period not exceeding 90 days  
19 by the impounding officer, and shall be available to be redeemed  
20 when both of the following conditions have been satisfied:

21 (1) The person from whom the property was taken has obtained  
22 or otherwise produced a valid secondhand dealer license as  
23 required under this article.

24 (2) The reports of acquisition of tangible personal property as  
25 required by Section 21628 have been completed for all of the  
26 property that was impounded.

27 (e) Storage charges shall be imposed for the tangible personal  
28 property impounded under this section in accordance with the  
29 provisions of Section 21200.6 of the Financial Code.

30 (f) If after 60 days from the date of the impoundment the person  
31 from whom the tangible personal property was taken has failed  
32 to satisfy the requirements of subdivision (d), the impounding  
33 agency shall do all of the following:

34 (1) Prepare the report of acquisition of tangible personal  
35 property for all impounded property as required by Section 21628  
36 or verify that the report was duly transmitted to the Department  
37 of Justice.

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

1 (g) *The district attorney or city attorney shall serve on the*  
2 *person from whom the tangible personal property was taken and*  
3 *on any secured creditor a notice of forfeiture for all or part of the*  
4 *tangible personal property. The notice shall be issued by registered*  
5 *mail on or after the 65th day following the impoundment. The*  
6 *notice shall state that the person served with the notice of forfeiture*  
7 *has 15 calendar days from the date of the mailing of the notice to*  
8 *file a claim. A secured creditor located outside the State of*  
9 *California shall be allowed an additional five days to file a claim.*  
10 *The notice shall identify the name and address of the district*  
11 *attorney or city attorney who is authorized to prosecute the*  
12 *forfeiture action and to receive objections. If no claim has been*  
13 *received after service of the notice of forfeiture, the impounding*  
14 *agency may sell the tangible personal property to the highest*  
15 *bidder at a noticed, public sale.*

16 (h) *If the district attorney or city attorney issuing the notice of*  
17 *forfeiture does not receive a claim within the time provided in*  
18 *subdivision (g), the district attorney or city attorney shall sign and*  
19 *record with the county recorder a notice of forfeiture. A written*  
20 *declaration of forfeiture by the district attorney or city attorney*  
21 *shall be deemed to provide good and sufficient title to the forfeited*  
22 *property. Any property impounded but not forfeited shall be*  
23 *returned to the person from whom it was taken within 90 days of*  
24 *the impoundment.*

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

1 (2) *The fee shall be distributed equally between the district*  
 2 *attorney or city attorney filing the action and the Trial Court Trust*  
 3 *Fund.*

4 (3) *The burden of proof in the civil case shall be on the person*  
 5 *from whom the tangible personal property was taken to prove by*  
 6 *a preponderance of the evidence that the tangible personal*  
 7 *property is not stolen property acquired as a result of the operation*  
 8 *of a secondhand business that was required to be licensed pursuant*  
 9 *to this article. All questions that may arise shall be decided and*  
 10 *all other proceedings shall be conducted as in an ordinary civil*  
 11 *action.*

12 (4) *A judgment of forfeiture does not require as a condition*  
 13 *precedent the conviction of a defendant of an offense under this*  
 14 *article.*

15 (5) *The filing of a claim within the time limit specified in*  
 16 *subdivision (g) is a jurisdictional prerequisite for the availing of*  
 17 *the action authorized by that subdivision.*

18 (j) *All right, title, and interest in the tangible personal property*  
 19 *shall vest in the impounding agency upon commission of the act*  
 20 *giving rise to the forfeiture. However, the tangible personal*  
 21 *property shall not be subject to forfeiture and sale until all court*  
 22 *challenges are resolved.*

23 (k) *Any tangible personal property that is not redeemed pursuant*  
 24 *to subdivision (d) and is subsequently forfeited pursuant to a notice*  
 25 *of forfeiture or a judgment of forfeiture shall be sold to the highest*  
 26 *bidder at a noticed, public sale. The notice shall be published in*  
 27 *a local paper of general jurisdiction nearest the impounding*  
 28 *agency within 10 days after that agency receives the notice or*  
 29 *judgment of forfeiture.*

30 (l) *The proceeds of any sale provided for pursuant to subdivision*  
 31 *(k) shall be distributed in the following order:*

32 (1) *First to the impounding agency to satisfy the storage charge*  
 33 *provided in subdivision (e).*

34 (2) *Second, to any secured creditor to satisfy the indebtedness*  
 35 *of the person from whom the tangible personal property was taken.*

36 (3) *Of the remaining proceeds, funds shall be made available*  
 37 *to pay any local agency and court costs that are reasonably related*  
 38 *to the implementation of this section and that remain unsatisfied.*

39 (4) *Of the remaining proceeds, half shall be delivered to the*  
 40 *impounding agency, one-quarter to the district attorney or city*

1 attorney prosecuting the forfeiture action, and one-quarter to the  
2 Department of Justice and reserved for the costs incurred in  
3 electronically reporting the acquisition of tangible personal  
4 property as set forth in Section 21628.

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

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

22 ~~SEC. 2.~~

23 SEC. 3. No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution because  
25 the only costs that may be incurred by a local agency or school  
26 district will be incurred because this act creates a new crime or  
27 infraction, eliminates a crime or infraction, or changes the penalty  
28 for a crime or infraction, within the meaning of Section 17556 of  
29 the Government Code, or changes the definition of a crime within  
30 the meaning of Section 6 of Article XIII B of the California  
31 Constitution.