

Assembly Bill No. 1583

CHAPTER 300

An act to amend Sections 21606, 21608.5, 22750, 22753, and 22755 of, and to add Section 21609.7 to, the Business and Professions Code, relating to bulk merchandise pallets.

[Approved by Governor September 13, 2012. Filed with
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LEGISLATIVE COUNSEL'S DIGEST

AB 1583, Roger Hernández. Bulk merchandise pallets.

(1) Existing law authorizes junk dealers and recyclers, as defined, to sell and purchase junk, which includes secondhand and used furniture, pallets, or other personal property, as specified. Existing law requires junk dealers and recyclers to obtain valid identification, as specified, from a seller before providing payment. Existing law requires junk dealers and recyclers to maintain written records of specified information, and makes a violation of the recordkeeping requirements a misdemeanor.

This bill would permit a seller to use a passport from any country or a Matricula Consular issued by Mexico, along with another form or identification bearing an address, or an identification card issued by the United States, as identification for purposes of these provisions.

This bill would prohibit junk dealers and recyclers from purchasing or receiving bulk merchandise pallets, as defined, marked with an indicia of ownership, as defined, from anyone except the indicated owner, unless specified information is provided to the junk dealer or recycler, and would require the junk dealer or recycler to maintain a written record of that information. The bill would also require that payment by the junk dealer for 5 or more bulk merchandise pallets to a person other than the indicated owner be made by check mailed to the address of the seller, as specified, or by check or by cash on or after the 3rd business day following the transaction.

(2) Existing law defines a merchandise pallet as a wooden or plastic carrier or container of specified size, used by a manufacturer or distributor to transport merchandise to retail outlets, which has a notice permanently affixed to it identifying the owner of the pallet and providing other specified information. Existing law prohibits and makes it a crime for an unauthorized person, as defined, to possess a merchandise pallet or for a person other than its owner to obliterate the identification notice on a pallet.

This bill would expand these provisions to cover merchandise pallets marked with indicia of ownership, as defined. The bill would also prohibit and make it a crime for a person other than the owner of the pallet to obliterate the indicia of ownership from a merchandise pallet.

(3) Existing law requires any person or entity purchasing plastic bulk merchandise containers who is in the business of recycling, shredding, or destruction of plastic bulk merchandise containers, as defined, to obtain a proof of ownership record and other identifying information from a person selling 5 or more containers, and to retain the required record for a specified time. A violation of these provisions is a misdemeanor.

This bill would instead require a person or entity purchasing or transporting plastic bulk merchandise containers who is in the business of recycling, shredding, or destruction of plastic bulk merchandise containers, or is in the business of transporting plastic bulk merchandise containers for those purposes, to obtain a proof of ownership record or bill of lading and other identifying information from the person selling or delivering 5 or more containers, and to retain the required record for a specified time.

Because this bill would expand the scope of a crime, the bill would impose a state-mandated local program.

(4) This bill would incorporate additional changes to Section 21608.5 of the Business and Professions Code proposed by AB 1508 that would become operative only if this bill and AB 1508 are both chaptered, and this bill is chaptered last.

(5) 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.

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

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

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

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

(2) One of the following methods of identification:

(A) The name, valid driver's license number and state of issue or California- or United States-issued identification card number.

(B) The name, identification number, and country of issue from a passport used for identification and the address from an additional item of identification that also bears the seller's name.

(C) The name and identification number from a Matricula Consular used for identification and the address from an additional item of identification that also bears the seller's name.

(3) The vehicle license number, including the state of issue, of any motor vehicle used in transporting the junk to the junk dealer's or recycler's place of business.

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

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

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

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

(c) Every junk dealer and every recycler shall report the information required in subdivision (a) to the chief of police or to the sheriff in the same manner as described in Section 21628.

SEC. 2. Section 21608.5 of the Business and Professions Code is amended to read:

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

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

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

(3) (A) Except as provided in subparagraph (B), the junk dealer or recycler obtains a copy of the valid driver's license of the seller containing a photograph and an address of the seller, a copy of a state or federal government-issued identification card containing a photograph and an address of the seller, a passport from any other country in addition to another item of identification bearing an address of the seller, or a Matricula Consular in addition to another item of identification bearing an address of the seller.

(B) If the seller prefers to have the check for the material mailed to an alternative address, other than a post office box, the junk dealer or recycler shall obtain a copy of a driver's license or identification card described in subparagraph (A), and a gas or electric utility bill addressed to the seller at that alternative address with a payment due date no more than two months prior to the date of sale. For purposes of this paragraph, "alternative address" means an address that is different from the address appearing on the seller's driver's license or identification card.

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

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

(6) (A) The junk dealer or recycler obtains a thumbprint of the seller, as prescribed by the Department of Justice. The junk dealer or recycler shall

keep this thumbprint with the information obtained under this subdivision and shall preserve the thumbprint in either hardcopy or electronic format for a period of two years after the date of sale.

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

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

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

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

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

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

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

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

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

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

SEC. 2.5. Section 21608.5 of the Business and Professions Code is amended to read:

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

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

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

(3) (A) Except as provided in subparagraph (B), the junk dealer or recycler obtains a copy of the valid driver's license of the seller containing a photograph and an address of the seller, a copy of a state or federal government-issued identification card containing a photograph and an address of the seller, a passport from any other country in addition to another item of identification bearing an address of the seller, or a Matricula Consular in addition to another item of identification bearing an address of the seller.

(B) If the seller prefers to have the check for the material mailed to an alternative address, other than a post office box, the junk dealer or recycler shall obtain a copy of a driver's license or identification card described in subparagraph (A), and a gas or electric utility bill addressed to the seller at that alternative address with a payment due date no more than two months prior to the date of sale. For purposes of this paragraph, "alternative address" means an address that is different from the address appearing on the seller's driver's license or identification card.

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

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

(6) (A) The junk dealer or recycler obtains a thumbprint of the seller, as prescribed by the Department of Justice. The junk dealer or recycler shall keep this thumbprint with the information obtained under this subdivision and shall preserve the thumbprint in either hardcopy or electronic format for a period of two years after the date of sale.

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

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

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

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

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

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

(d) (1) This section shall not apply to the purchase of nonferrous material having a value of not more than twenty dollars (\$20) in a single transaction, when the majority of the transaction is for the redemption of beverage containers under the California Beverage Container Recycling and Litter Reduction Act, as set forth in Division 12.1 (commencing with Section 14500) of the Public Resources Code.

(2) Materials made of copper or copper alloys shall not be purchased under this subdivision.

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

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

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

SEC. 3. Section 21609.7 is added to the Business and Professions Code, to read:

21609.7. (a) Except as provided in subdivision (b), no junk dealer or recycler may purchase or receive bulk merchandise pallets marked with an indicia of ownership from any person or entity other than the indicated owner. For purposes of this section, "indicia of ownership" means words, symbols, or registered trademarks printed, stamped, etched, attached, or otherwise displayed on the exterior surface of the merchandise pallet that reasonably identifies the owner.

(b) If the seller is not the indicated owner, a junk dealer or recycler may purchase or receive bulk merchandise pallets only if the seller or transferor provides a receipt from the indicated owner verifying the seller's current ownership or a document indicating that the seller or transferor is authorized by the indicated owner to sell or transfer the merchandise pallets. Copies of these documents shall be maintained by the junk dealer or recycler as part of the written record of the transaction.

(c) For a single transaction involving five or more bulk merchandise pallets marked with indicia of ownership where the seller is not the indicated owner, the junk dealer or recycler shall make payment only by a check mailed to the address shown on the driver's license or other government-issued photo identification provided by the seller or by cash or check collected by the seller on or after the third business day following the date of the transaction.

(d) For purposes of this section, "bulk merchandise pallets" means plastic or wood containers, carriers, or holders used by a manufacturer or distributor for bulk transport of merchandise to wholesale or retail outlets.

SEC. 4. Section 22750 of the Business and Professions Code is amended to read:

22750. For purposes of this chapter:

(a) "Bakery tray" or "bakery basket" is a plastic or metal container that holds bread or other baked goods and is used by a distributor, retailer, or an agent of the distributor or retailer as a means to transport, store, or carry those products, which has a notice permanently affixed to it that does all of the following: (1) identifies the company name of the owner of the item; (2) notifies the public that the unauthorized possession of the item is a violation of state law; and (3) lists an address or telephone number for returning the item to the owner.

(b) "Merchandise pallet" is a wooden or plastic carrier or container, used by a manufacturer or distributor for bulk transport of merchandise to wholesale or retail outlets marked with an indicia of ownership. For purposes of this chapter, "indicia of ownership" means words, symbols, or registered trademarks printed, stamped, etched, attached, or otherwise displayed on the exterior surface of the merchandise pallet that reasonably identify the owner.

SEC. 5. Section 22753 of the Business and Professions Code is amended to read:

22753. The following acts are punishable as provided in subdivision (b) of Section 489 or in Section 490 of the Penal Code as to any bakery tray, bakery basket, or merchandise pallet described in Section 22750:

(a) Possession of a bakery tray, bakery basket, or merchandise pallet by an unauthorized person.

(b) Obliteration of the company owner's name on the bakery tray or bakery basket, or obliteration of the indicia of ownership on a merchandise pallet, except by the owner.

SEC. 6. Section 22755 of the Business and Professions Code is amended to read:

22755. (a) For purposes of this section, "plastic bulk merchandise container" means a plastic crate or shell used by a product producer, distributor, or retailer, or an agent of the product producer, distributor, or retailer as a means for the bulk transportation, storage, or carrying of retail containers of milk, eggs, or bottled beverage products.

(b) Any person or entity purchasing or transporting plastic bulk merchandise containers, who is in the business of recycling, shredding, or

destruction of, or in the business of transporting for the purpose of recycling, shredding, or destruction of, plastic bulk merchandise containers, shall obtain a proof of ownership record or bill of lading from a person selling or delivering five or more plastic bulk merchandise containers that shows that the person selling or delivering the containers has lawful possession or ownership of the containers, and shall also verify the seller's identity by a driver's license or other government-issued photo identification. The proof of ownership record shall include all of the following information:

(1) The name, address, telephone number, and signature of the seller or the seller's authorized representative.

(2) The name and address of the buyer or consignee if not sold.

(3) A description of the product including number of units.

(4) The date of transaction.

(c) The information required to be collected by this section shall be kept for one year from the date of purchase or delivery, whichever is later.

(d) Any person who violates the provisions of this section is guilty of a misdemeanor.

SEC. 7. Section 2.5 of this bill incorporates amendments to Section 21608.5 of the Business and Professions Code proposed by both this bill and Assembly Bill 1508. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 21608.5 of the Business and Professions Code, and (3) this bill is enacted after Assembly Bill 1508, in which case Section 2 of this bill shall not become operative.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.