

AMENDED IN SENATE APRIL 17, 2012

AMENDED IN SENATE MARCH 26, 2012

**SENATE BILL**

**No. 1045**

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**Introduced by Senator Emmerson**

February 6, 2012

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An act to add Section 3336.5 to the Civil Code, relating to metal theft.

LEGISLATIVE COUNSEL'S DIGEST

SB 1045, as amended, Emmerson. Metal theft: damages.

Existing law governs the business of buying, selling, and dealing in secondhand and used machinery and all ferrous and nonferrous scrap metals and alloys, also known as "junk." Existing law further requires junk dealers and recyclers to keep and maintain a written record of all sales and purchases made in the course of their business, including the name and address of each person to whom junk is sold or disposed of.

This bill would prohibit any junk dealer or recycler from possessing a ~~public~~ fire hydrant, fire department connection, ~~as defined, public~~ manhole cover or lid or any part of that cover or lid, or ~~public~~ backflow device or connection to that device without a written certification on the letterhead of the ~~public~~ agency or utility that owns or previously owned the material certifying that the entity has sold or is offering the material for sale and that the person possessing and identified in the certificate is authorized to negotiate the sale of the material. The bill would make junk dealers and recyclers civilly liable for *actual damages and also for exemplary* damages of 3 times the agency's or utility's actual damages, including the value of the material, repair and replacement costs, and labor costs. Under the bill, the agency or utility could also recover court costs and attorney's fees.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

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

1 SECTION 1. The Legislature hereby finds and declares all of  
2 the following:

3 (a) Theft of fire hydrants, manhole covers, and backflow devices  
4 has significantly increased in recent years and represents very  
5 substantial, and growing, health and safety issues.

6 (b) Local utilities, public agencies, and private entities have  
7 gone to great lengths to protect their customers, residents, and  
8 properties from the damage that can result from that theft.

9 (c) The Legislature believes that any junk dealer or recycler  
10 who is willing to obtain this material from a person who does not  
11 have a written certification letter should, in the event that this act  
12 is adopted, be liable to the owner of the material for three times  
13 the actual damages, including the cost of replacement, labor costs,  
14 and repair costs of any damage that occurs during the theft, plus  
15 court costs and reasonable attorney’s fees.

16 SEC. 2. Section 3336.5 is added to the Civil Code, to read:

17 3336.5. (a) (1) Any junk dealer or recycler who possesses a  
18 ~~public~~ fire hydrant, fire department connection, including, but not  
19 limited to, brass fittings and parts, ~~public~~ manhole cover or lid or  
20 part of that cover or lid, or ~~public~~ backflow device or connection  
21 to that device or part of that device without a written certification  
22 from the ~~public~~ agency or utility owning or previously owning the  
23 material shall be liable to the agency or utility for the wrongful  
24 possession of that material.

25 (2) A written certification under this subdivision shall be on the  
26 ~~agency~~ agency’s or utility’s letterhead and shall certify both that  
27 the agency or utility has sold the material described or is offering  
28 the material for sale, salvage, or recycling, and that the person  
29 possessing the certification or identified in the certification is  
30 authorized to negotiate the sale of that material.

31 ~~(b) The measure of damages for wrongful possession as~~  
32 ~~described in subdivision (a) shall be three times the agency’s or~~  
33 ~~utility’s actual damages, including the value of the material~~  
34 ~~wrongfully possessed, the cost of replacing the material, labor~~  
35 ~~costs, and the cost of repairing any damage caused by the removal~~

1 ~~of the material. The agency or utility shall also be entitled to~~  
2 ~~recover court costs and reasonable attorney's fees.~~

3 *(b) A junk dealer or recycler in violation of this section shall*  
4 *be liable to the agency or utility owning or previously owning the*  
5 *prohibited material as described in subdivision (a) for the actual*  
6 *damages incurred by the agency or utility, including the value of*  
7 *the material, the cost of replacing the material, labor costs, and*  
8 *the costs of repairing any damage caused by the removal of the*  
9 *material. The court shall also award exemplary damages of three*  
10 *times the actual damages incurred by the agency or utility. The*  
11 *agency or utility shall also be entitled to recover court costs and*  
12 *reasonable attorney's fees.*