

Senate Bill No. 1045

Passed the Senate August 22, 2012

Secretary of the Senate

Passed the Assembly August 20, 2012

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1045, 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 fire hydrant, fire department connection, manhole cover or lid or any part of that cover or lid, or backflow device or connection to that device without a written certification on the letterhead of the 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, unless the court determines that extenuating circumstances do not justify awarding exemplary damages. This bill would require a junk dealer or recycler who unknowingly takes possession of one or more of these prohibited materials as part of a load of otherwise nonprohibited materials without the above-described written certification to notify the appropriate law enforcement agency, as defined, by the next business day upon discovery of the prohibited materials. Under the bill, written confirmation of the notice from the law enforcement agency would relieve the junk dealer or recycler of liability to the public agency. The bill would further state the Legislature’s intent not to create liability on the part of

junk dealers or recyclers to 3rd parties injured or damaged by the theft of the prohibited materials.

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

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

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

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

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

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

3336.5. (a) (1) Any junk dealer or recycler who possesses a fire hydrant, fire department connection, including, but not limited to, brass fittings and parts, manhole cover or lid or part of that cover or lid, or backflow device or connection to that device or part of that device without a written certification from the agency or utility owning or previously owning the material shall be liable to the agency or utility for the wrongful possession of that material as provided in subdivision (b).

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

(b) Except as provided in subdivision (c), a junk dealer or recycler in violation of this section shall be liable to the agency or utility owning or previously owning the prohibited material as described in subdivision (a) for the actual damages incurred by the agency or utility, including the value of the material, the cost of replacing the material, labor costs, and the costs of repairing

any damage caused by the removal of the material. The court shall also award exemplary damages of three times the actual damages incurred by the agency or utility, unless the court decides that extenuating circumstances do not justify awarding these exemplary damages.

(c) (1) A junk dealer or recycler who unknowingly takes possession of one or more of the materials described in subdivision (a) as part of a load of otherwise nonprohibited materials without the written certification described in subdivision (a) shall notify the appropriate law enforcement agency by the end of the next business day upon discovery of the prohibited materials. Written confirmation of that notice shall relieve the junk dealer or recycler of liability to the agency or utility for the possession of those materials.

(2) The following definitions shall apply for purposes of this subdivision:

(A) “Appropriate law enforcement agency” means, in the case of any material described in subdivision (a) that is located within the territorial limits of an incorporated city, the police chief of the city or his or her designee, or, in the case of any material described in subdivision (a) that is located outside the territorial limits of an incorporated city, the sheriff of the county or his or her designee.

(B) “Written confirmation” means any confirmation received from the law enforcement agency as electronic mail, facsimile, or other written correspondence, including, but not limited to, a letter delivered in person or by certified mail.

(d) Nothing in this section is intended to create a basis for liability on the part of the junk dealers and recyclers to third parties for damages or injuries related to or arising from the theft of the materials described in this section.

Approved _____, 2012

Governor