

Introduced by Senator EmmersonFebruary 24, 2012

An act to amend Sections 21604 and 21608.5 of, and to add Section 21609.1 to, the Business and Professions Code, to add Section 3336.1 to the Civil Code, and to amend Sections 496a and 496e of the Penal Code, relating to metal theft.

LEGISLATIVE COUNSEL'S DIGEST

SB 1387, as introduced, Emmerson. Metal theft.

(1) 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 requires junk dealers and recyclers to keep 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, and to preserve the written record for at least 2 years after making the final entry of any purchase or sale of junk. Existing law provides that the failure to keep a written record as required is punishable as a misdemeanor.

Existing law prohibits a junk dealer or recycler in this state from providing payment for nonferrous metals unless, in addition to the requirement to create and maintain a written record, specified requirements are met, including that the payment for the material be made by cash or check and that, at the time of sale, the junk dealer or recycler obtains a clear photograph or video of the seller. Existing law requires the junk dealer or recycler to preserve this information for 2 years after the date of sale.

This bill would prohibit any junk dealer or recycler from possessing a public fire hydrant, fire department connection, including, but not limited to, bronze or brass fittings or parts, a public manhole cover or

lid, or any part of that cover or lid, or a public backflow device and connections to that device without a written certification on the letterhead of the public agency or utility that owns or previously owned the material and that the entity has sold or is offering the material for sale, and that the person possessing the certificate and identified in the certificate is authorized to negotiate the sale of the material. The bill would make junk dealers and recyclers civilly liable and would also provide that if a junk dealer or recycler lacks the certification described above, the lack of that certification would give rise to the presumption that the property was stolen for purposes of the provisions proscribing receiving stolen property.

(2) Existing law makes it a crime to receive stolen property. Existing law specifically provides that a person who is a dealer in or collector of junk, metals or secondhand materials, or the agent, employee, or representative of the dealer or collector, and who buys or receives any wire, cable, copper, lead, solder, mercury, iron or brass that he or she knows or reasonably should know is ordinarily used by or ordinarily belongs to a railroad or other transportation, telephone, telegraph, gas, water, or electric light company, or county, city, city and county, or other political subdivision of the state engaged in furnishing public utility service, without using due diligence to ascertain that the person selling or delivering the items has the legal right to do so, is guilty of criminally receiving that property. Existing law provides that this crime is a misdemeanor. Existing law also provides that any person who buys or receives, for purposes of salvage, any part of a fire hydrant or fire department connection, as specified, is subject to a criminal fine of not more than \$3,000.

This bill would also prohibit any person, including a junk dealer or recycler, engaged in the salvage, recycling, or purchase or sale of scrap metal from possessing those items. The bill would expand the prohibition described above proscribing the purchase or receipt of items that a dealer or collector knows or reasonably should know is ordinarily used by or ordinarily belongs to a transportation or utility company, or a political subdivision of the state engaged in furnishing public utility service, to also apply to recyclers, and to apply to the fire hydrants and other items described above. The bill would also expand the provision providing that any person who buys or receives, for purposes of salvage, any part of a fire hydrant or fire department connection is subject to a criminal fine of not more than \$3,000 by making that fine applicable to any person who is engaged in the salvage, recycling, purchase, or

sale of scrap metal and who, knowing that the item has been stolen or obtained in any manner constituting theft or extortion, possesses a fire hydrant, or any part thereof, a fire department connection, including brass fittings and parts, a manhole cover or lid, or any part of that cover or lid, or a backflow device and connections to that device, or any part of that device.

By creating new crimes, 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. 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 a
5 significant health and safety issue.

6 (b) Local jurisdictions and public agencies have gone to great
7 lengths to preserve and protect residents and their property from
8 the damages that can result from such theft.

9 (c) Additional laws and regulations need to be enacted that
10 would provide local governments with the tools to further protect
11 both local government property and the health and safety of the
12 residents they serve.

13 (d) Therefore, it is the intent of the Legislature to strictly prohibit
14 fire hydrants, manhole covers, and backflow devices from being
15 accepted, in whole or in part, by a recycler or junk dealer for the
16 purpose of salvage, unless presented with written certification by
17 a representative of a public agency.

18 (e) By strictly prohibiting these items from being recycled, the
19 burden is taken off of the recyclers as they will no longer be
20 saddled with the responsibility of having to decipher if the items
21 were stolen or obtained illegally.

1 (f) Furthermore, the Legislature thinks it is important to enable
2 a public agency to recoup, repair, and replace costs, attorney's
3 fees, and lawsuit costs and will establish penalties for theft of such
4 items.

5 SEC. 2. Section 21604 of the Business and Professions Code
6 is amended to read:

7 21604. Except as otherwise provided in this article, this article
8 does not apply to:

9 (a) Any person who buys or sells junk acquired in the conduct
10 of any business other than that of a junk dealer *or recycler*.

11 (b) ~~Those~~ *Except as provided in Section 21609.1, those*
12 purchases of scrap metal by a junk dealer *or recycler* when the
13 payment for the scrap metal is by check issued to the company
14 represented as being the owner of the scrap.

15 (c) Scrap metal purchased or received from another junk dealer
16 or recycler who has recorded, reported, and held the material as
17 required. The purchase or receipt shall also be exempt from further
18 holding or reporting provided that the selling party gives the buyer
19 written assurance of this fact. The seller shall be held responsible
20 for any failure to report or hold.

21 SEC. 3. Section 21608.5 of the Business and Professions Code
22 is amended to read:

23 21608.5. (a) A junk dealer or recycler in this state shall not
24 provide payment for nonferrous material unless, in addition to
25 meeting the written record requirements of Sections 21605 and
26 21606, all of the following requirements are met:

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

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

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

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

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

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

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

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

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

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

39 (2) The business license number or tax identification number
40 of the seller’s business.

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

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

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

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

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

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

29 SEC. 4. Section 21609.1 is added to the Business and
30 Professions Code, to read:

31 21609.1. No junk dealer or recycler shall possess any public
32 fire hydrant, or fire department connection, including, but not
33 limited to, brass fittings and parts, or public manhole cover or lid
34 or part of that cover or lid, or public backflow device or connection
35 to that device or part of that device in the absence of a written
36 certification on the letterhead of the public agency or utility owning
37 or previously owning the material described in the certification
38 that the agency has either sold the material described or is offering
39 the material for sale, salvage or recycling, and that the person
40 possessing the certification and identified in the certification is

1 authorized to negotiate the sale of that material. The lack of a
2 certification shall give rise to a presumption, in the case of property
3 that was stolen, that the junk dealer or recycler knew or should
4 have known that the property was stolen for purposes of
5 prosecution pursuant to Sections 496, 496a, and 496e of the Penal
6 Code. A junk dealer or recycler violating this section shall also be
7 liable to the owner of the prohibited material for the value of the
8 material and for damages pursuant to Section 3336.1 of the Civil
9 Code, including the cost of replacement and repair of damage
10 incurred by the public agency when the materials were removed,
11 court costs, and reasonable attorney's fees in a civil suit by the
12 owner.

13 SEC. 5. Section 3336.1 is added to the Civil Code, to read:

14 3336.1. For wrongful possession of a public fire hydrant or
15 fire department connection, including, but not limited to, bronze
16 or brass fittings and parts, a public manhole cover or lid, or any
17 part of that cover or lid, or a public backflow device and any
18 connection to that device, or any part of that device, the measure
19 of damages is three times the amount that would compensate the
20 owner for the owner's actual damages, including the value of the
21 material wrongfully possessed, the cost of replacing the material,
22 the cost of repairs of damage incurred by the public agency when
23 the materials were removed, court costs, and reasonable attorney's
24 fees.

25 SEC. 6. Section 496a of the Penal Code is amended to read:

26 496a. (a) Every person who, being a dealer in or collector *or*
27 *recycler* of junk, metals or secondhand materials, or the agent,
28 employee, or representative of ~~such~~ *that* dealer or collector *or*
29 *recycler*, buys or receives any wire, cable, copper, lead, solder,
30 mercury, iron or brass, *fire hydrants and connections to those*
31 *hydrants, including, but not limited to, bronze or brass fittings and*
32 *parts, or manhole covers or lids, or backflow devices and*
33 *connections to that device*, which he or she knows or reasonably
34 should know is ordinarily used by or ordinarily belongs to a
35 railroad or other transportation, telephone, telegraph, gas, water,
36 or electric light company *or fire department*, or county, city, city
37 and county, or other political subdivision of this state engaged in
38 furnishing public utility service, *including water and sanitation*
39 *services, or fire protection* without using due diligence to ascertain
40 that the person selling or delivering the same has a legal right to

1 do so, is guilty of criminally receiving that property, and is
 2 punishable, by imprisonment in a county jail for not more than
 3 one year, or by imprisonment pursuant to subdivision (h) of Section
 4 1170, or by a fine of not more than two hundred fifty dollars
 5 (\$250), or by both that fine and imprisonment.

6 (b) (1) Any person buying or receiving material pursuant to
 7 subdivision (a) shall, *in addition to complying with the*
 8 *requirements of Sections 21607 and 21608.5 of the Business and*
 9 *Professions Code*, obtain evidence of ~~his or her identity from the~~
 10 ~~seller~~ *the seller's identity*, including, but not limited to, that
 11 person's full name, signature, address, driver's license number,
 12 vehicle license number, and the license number of the vehicle
 13 delivering the material.

14 ~~The~~

15 (2) ~~The~~ record of the transaction shall include an appropriate
 16 description of the material purchased and such record shall be
 17 maintained pursuant to Section 21607 of the Business and
 18 Professions Code.

19 SEC. 7. Section 496e of the Penal Code is amended to read:

20 496e. (a) Any person who ~~buys or receives, for purposes of~~
 21 ~~salvage, any part of a~~ *is engaged in the salvage, recycling,*
 22 *purchase, or sale of scrap metal and who possesses any of the*
 23 *following items that have been stolen or obtained in any manner*
 24 *constituting theft or extortion, knowing the property to be so stolen*
 25 *or obtained is guilty of a crime:*

26 (1) ~~A fire hydrant or any part of that hydrant.~~

27 (2) Any fire department connection, including, but not limited
 28 to, bronze or brass fittings and parts, ~~that has been stolen or~~
 29 ~~obtained in any manner constituting theft or extortion, knowing~~
 30 ~~the property to be so stolen or obtained,.~~

31 (3) *Manhole covers or lids, or any part of those covers and lids.*

32 (4) *Backflow devices and connections of that device, or any part*
 33 *of that device.*

34 (b) *A person who violates subdivision (a)* shall, in addition to
 35 any other penalty provided by law, be subject to a criminal fine of
 36 not more than three thousand dollars (\$3,000).

37 SEC. 8. No reimbursement is required by this act pursuant to
 38 Section 6 of Article XIII B of the California Constitution because
 39 the only costs that may be incurred by a local agency or school
 40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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