

AMENDED IN SENATE APRIL 19, 2012

AMENDED IN SENATE APRIL 16, 2012

AMENDED IN SENATE APRIL 11, 2012

AMENDED IN SENATE MARCH 27, 2012

SENATE BILL

No. 1387

**Introduced by Senator Emmerson
(Coauthor: Senator Berryhill)**

February 24, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1387, as amended, 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.

Existing law provides that any person who violates specified provisions of existing law relating to secondhand goods is guilty of a misdemeanor.

This bill would prohibit any junk dealer or recycler from possessing a fire hydrant, fire department connection, including, but not limited to, bronze or brass fittings or parts, a manhole cover or lid, or any part of that cover or lid, or a backflow device and connections to that device without a written certification on the letterhead of the 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 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. By imposing this prohibition, the violation of which would be a misdemeanor pursuant to other provisions of existing law, this bill would impose a state-mandated local program.~~

(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 property 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, *that has been stolen or obtained in any manner constituting theft or extortion, knowing the property to be stolen or so obtained*, 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 *this* 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.~~

The bill also would state legislative findings and declarations regarding the necessity for its provisions.

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.

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

4 (c) Additional laws and regulations need to be enacted that
 5 would provide local governments with the tools to further protect
 6 both local government property and the health and safety of the
 7 residents they serve.

8 (d) Therefore, it is the intent of the Legislature to strictly prohibit
 9 fire hydrants, manhole covers, and backflow devices from being
 10 accepted, in whole or in part, by a recycler or junk dealer for the
 11 purpose of salvage, unless presented with written certification by
 12 a representative of the agency or utility owning or previously
 13 owning the material.

14 (e) By strictly prohibiting these items from being recycled, the
 15 burden is taken off of the recyclers as they will no longer be
 16 saddled with the responsibility of having to decipher whether the
 17 items were stolen or obtained illegally.

18 ~~(f) Furthermore, the Legislature thinks it is important to enable
 19 an agency to recoup, repair, and replace costs, attorney's fees, and
 20 lawsuit costs and will establish penalties for theft of such items.~~

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

23 21604. Except as otherwise provided in this article, this article
 24 does not apply to:

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

27 (b) Except as provided in Section 21609.1, those purchases of
 28 scrap metal by a junk dealer or recycler when the payment for the
 29 scrap metal is by check issued to the company represented as being
 30 the owner of the scrap.

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

37 ~~SEC. 3. Section 21608.5 of the Business and Professions Code
 38 is amended to read:~~

39 ~~21608.5. (a) A junk dealer or recycler in this state shall not
 40 provide payment for nonferrous material unless, in addition to~~

1 meeting the written record requirements of Sections 21605 and
2 21606, all of the following requirements are met:

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

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

10 (3) (A) Except as provided in subparagraph (B), the junk dealer
11 or recycler obtains a copy of the valid driver's license of the seller
12 containing a photograph and an address of the seller or a copy of
13 a state or federal government-issued identification card containing
14 a photograph and an address of the seller.

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

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

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

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

35 (B) Inspection or seizure of the thumbprint shall only be
36 performed by a peace officer acting within the scope of his or her
37 authority in response to a criminal search warrant signed by a
38 magistrate and served on the junk dealer or recycler by the peace
39 officer. Probable cause for the issuance of that warrant must be

1 based upon a theft specifically involving the transaction for which
2 the thumbprint was given.

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

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

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

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

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

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

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

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

35 ~~(g) This section is intended to occupy the entire field of law~~
36 ~~related to junk dealer or recycler transactions involving nonferrous~~
37 ~~material. However, a city or county ordinance, or a city and county~~
38 ~~ordinance, relating to the subject matter of this section is not in~~
39 ~~conflict with this section if the ordinance is passed by a two-thirds~~
40 ~~vote and it can be demonstrated by clear and convincing evidence~~

1 that the ordinance is both necessary and addresses a unique problem
2 within and specific to the jurisdiction of the ordinance that cannot
3 effectively be addressed under this section.

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

5 ~~SEC. 4.~~

6 *SEC. 3.* Section 21609.1 is added to the Business and
7 Professions Code, to read:

8 21609.1. No junk dealer or recycler shall possess any fire
9 hydrant, or fire department connection, including, but not limited
10 to, brass fittings and parts, or manhole cover or lid or part of that
11 cover or lid, or backflow device or connection to that device or
12 part of that device in the absence of a written certification on the
13 letterhead of the agency or utility owning or previously owning
14 the material described in the certification that the agency has either
15 sold the material described or is offering the material for sale,
16 salvage, or recycling, and that the person possessing the
17 certification and identified in the certification is authorized to
18 negotiate the sale of that material. ~~The lack of a certification shall~~
19 ~~give rise to a presumption, in the case of property that was stolen,~~
20 ~~that the junk dealer or recycler knew or should have known that~~
21 ~~the property was stolen for purposes of prosecution pursuant to~~
22 ~~Sections 496, 496a, and 496e of the Penal Code.~~

23 ~~SEC. 5.~~ Section 496a of the Penal Code is amended to read:

24 ~~496a. (a) Every person who, being a dealer in or collector or~~
25 ~~recycler of junk, metals, or secondhand materials, or the agent,~~
26 ~~employee, or representative of that dealer or collector or recycler,~~
27 ~~buys or receives any wire, cable, copper, lead, solder, mercury,~~
28 ~~iron or brass, fire hydrants and connections to those hydrants,~~
29 ~~including, but not limited to, bronze or brass fittings and parts, or~~
30 ~~manhole covers or lids, or backflow devices and connections to~~
31 ~~that device, which he or she knows or reasonably should know is~~
32 ~~ordinarily used by or ordinarily belongs to a railroad or other~~
33 ~~transportation, telephone, telegraph, gas, water, or electric light~~
34 ~~company or fire department, or county, city, city and county, or~~
35 ~~other political subdivision of this state engaged in furnishing public~~
36 ~~utility service, including water and sanitation services, or fire~~
37 ~~protection without using due diligence to ascertain that the person~~
38 ~~selling or delivering the same has a legal right to do so, is guilty~~
39 ~~of criminally receiving that property, and is punishable, by~~
40 ~~imprisonment in a county jail for not more than one year, or by~~

1 imprisonment pursuant to subdivision (h) of Section 1170, or by
2 a fine of not more than two hundred fifty dollars (\$250), or by both
3 that fine and imprisonment.

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

11 (2) The record of the transaction shall include an appropriate
12 description of the material purchased and such record shall be
13 maintained pursuant to Section 21607 of the Business and
14 Professions Code.

15 ~~SEC. 6.~~

16 *SEC. 4.* Section 496e of the Penal Code is amended to read:

17 496e. (a) Any person who is engaged in the salvage, recycling,
18 purchase, or sale of scrap metal and who possesses any of the
19 following items that have been stolen or obtained in any manner
20 constituting theft or extortion, knowing the property to be so stolen
21 or obtained, is guilty of a crime:

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

23 (2) Any fire department connection, including, but not limited
24 to, bronze or brass fittings and parts.

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

26 (4) Backflow devices and connections to that device, or any
27 part of that device.

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

31 ~~SEC. 7.~~

32 *SEC. 5.* No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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