

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2313

**Introduced by Assembly Members Nestande and Olsen
(Coauthor: Assembly Member Gray)**

February 21, 2014

An act to amend Section 17500 of the Business and Professions Code, relating to business; add Title 11.8 (commencing with Section 14190.15) to Part 4 of the Penal Code, relating to metal theft, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2313, as amended, Nestande. ~~False advertising.~~ *Metal theft and related recycling crimes.*

Existing law provides that any person who feloniously steals, takes, or carries away the personal property of another, or who fraudulently appropriates property that has been entrusted to him or her, is guilty of theft. Existing law also provides that a person who, being a dealer in or collector of junk, metals, or secondhand materials, 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, or city and county without using due diligence to ascertain that the person selling or delivering the same has a legal right to do so, is guilty of criminally receiving that property.

Existing law establishes the Department of Justice, which is headed by the Attorney General and tasked with, among other things, representing California in criminal cases.

This bill would require the Department of Justice to establish a Metal Theft Task Force Program to provide grants to applicant agencies for the purpose of providing local law enforcement and district attorneys with the tools necessary to successfully interdict the commission of metal theft and related metal recycling crimes. The bill would establish the Metal Theft Task Force Fund, to be administered by the department, and would continuously appropriate all moneys in that fund to the department for the purposes of the program. The bill would impose a fee, to be deposited into the fund, of up to 1% of the purchase price for each junk sale on the seller of junk for the purpose of regulating that seller, thereby making an appropriation.

The bill would require agencies receiving funding from the program to submit an annual report, as specified, and would require the department to use the information in those reports to review the program and report to the Governor and the Legislature. The bill would specify that the program would not be implemented until the Department of Finance determines that sufficient moneys have been deposited in the fund to implement the program.

This bill would also state findings and declarations of the Legislature relative to metal theft and the intent of the Legislature to provide local law enforcement with the tools to interdict metal theft and related metal recycling crimes.

~~Existing law makes it a crime for a person, corporation or association, or any employee of a corporation or association, to engage in advertising practices conducted by specified means of dissemination or publication, where a statement is made or disseminated that is untrue or misleading, and which by the exercise of reasonable care should be known to be untrue or misleading.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

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

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

- 1 SECTION 1. (a) *The Legislature finds and declares both of*
- 2 *the following:*
- 3 (1) *The theft of metal is a serious problem in California. Losses*
- 4 *due to metal theft are not limited to the value of the metal taken,*
- 5 *but frequently include the cost of repairing or replacing the*

1 *infrastructure, component, or item from which the metal was*
2 *removed, which greatly exceeds the value of the metal itself.*

3 (2) *The United States Department of Energy estimates that metal*
4 *theft costs United States businesses approximately one billion*
5 *dollars (\$1,000,000,000) annually.*

6 (b) *It is the intent of the Legislature in enacting this act to*
7 *provide local law enforcement and district attorneys with the tools*
8 *necessary to successfully interdict the commission of metal theft*
9 *and related metal recycling crimes.*

10 SEC. 2. *Title 11.8 (commencing with Section 14190.15) is*
11 *added to Part 4 of the Penal Code, to read:*

12

13 **TITLE 11.8. THEFT AND RECYCLING OF METALS**

14

15 14190.15. *For the purposes of this title, the following terms*
16 *have the following meanings:*

17 (a) *“Agency” means a regional task force, a local law*
18 *enforcement agency, or a district attorney.*

19 (b) *“Department” means the Department of Justice.*

20 (c) *“Fund” means the Metal Theft Task Force Fund.*

21 (d) *“Program” means the Metal Theft Task Force Program.*

22 14190.20. (a) *The Metal Theft Task Force Fund is hereby*
23 *established within the State Treasury. Notwithstanding Section*
24 *13340 of the Government Code, the fund is hereby continuously*
25 *appropriated to the department for the purposes set forth in this*
26 *title. Transfers to the Metal Theft Task Force Fund shall be*
27 *deposited in the State Treasury, or in a state depository bank*
28 *approved by the Treasurer.*

29 (b) *The fund shall consist of moneys deposited into it from the*
30 *federal government, industry, and private sources, and from fees*
31 *collected pursuant to Section 14190.45. General Fund moneys*
32 *shall not be deposited into the fund nor used to start up, implement,*
33 *or support the continuing administration of the provisions of this*
34 *title.*

35 (c) *The fund shall be administered by the department.*

36 (d) *Moneys distributed from the fund pursuant to the program*
37 *established pursuant to Section 14190.25 are intended to ensure*
38 *that local law enforcement and district attorneys are equipped*
39 *with the necessary personnel and tools to successfully combat*

1 *metal theft and related recycling crimes, which include, but are*
2 *not limited to, all of the following offenses:*

3 *(1) The theft of metals, including, but not limited to, nonferrous*
4 *metals.*

5 *(2) The purchase and recycling of stolen metals, including, but*
6 *not limited to, recycled metal beverage containers, by recyclers.*

7 *(3) The transportation of stolen metals from this state to another*
8 *state.*

9 *(4) The transportation of stolen metals from another state to*
10 *this state.*

11 *14190.25. (a) The department shall establish the Metal Theft*
12 *Task Force Program. Administration of the overall program and*
13 *the evaluation and monitoring of all grants made pursuant to this*
14 *title shall be performed by the department.*

15 *(b) Moneys appropriated to the department for the program*
16 *shall be expended for programs that enhance the capacity of local*
17 *law enforcement and prosecutors to deter, investigate, and*
18 *prosecute metal theft and related recycling crimes.*

19 *(c) After deduction of the department's actual and necessary*
20 *administrative costs, the moneys in the fund shall be expended for*
21 *programs to enhance the capacity of local law enforcement and*
22 *prosecutors to deter, investigate, and prosecute metal theft and*
23 *related recycling crimes.*

24 *(d) Moneys distributed under this program shall be expended*
25 *for the exclusive purpose of deterring, investigating, and*
26 *prosecuting metal theft and related recycling crimes. Agencies*
27 *that receive moneys pursuant to the program may consult with*
28 *experts from the United States military, the California Military*
29 *Department, law enforcement entities, and various other state and*
30 *private organizations, including pertinent trade associations, as*
31 *necessary to maximize the effectiveness of this program.*

32 *14190.30. (a) The department shall develop administrative*
33 *procedures for the selection of agencies to receive a grant under*
34 *this program, which shall include, at a minimum, the following*
35 *requirements:*

36 *(1) That each agency seeking a grant submit a written*
37 *application to the department setting forth in detail the proposed*
38 *use of the grant funds.*

39 *(2) That, if an applicant agency is a regional task force, the task*
40 *force shall be identified by a name that is appropriate to the area*

1 *that it serves and, in order to qualify for a grant, shall be*
2 *comprised of local law enforcement and prosecutors from at least*
3 *two counties.*

4 *(3) That priority be given to agencies that are regional task*
5 *forces outside of the 13 counties funded under the rural crime*
6 *prevention programs authorized pursuant to Sections 14170 and*
7 *14180.*

8 *(b) The department shall develop specific guidelines for the*
9 *selection of agencies to receive a grant under this program. The*
10 *guidelines shall include, at a minimum, all of the following*
11 *selection criteria, which shall be considered by the department in*
12 *awarding grants:*

13 *(1) The number of metal theft or related recycling crime cases*
14 *filed in the immediately preceding year.*

15 *(2) The number of metal theft or related recycling crime cases*
16 *investigated in the immediately preceding year.*

17 *(3) The number of victims involved in the cases filed.*

18 *(4) The total aggregate monetary loss suffered by the victims,*
19 *including damage caused by the theft.*

20 *(5) Local moneys available to assist the agencies.*

21 *(6) The number of licensed recycling facilities in the area.*

22 *14190.35. (a) Each agency that has been awarded a grant*
23 *under the program during the previous funding cycle shall, upon*
24 *reapplication for funds to the department in each successive year*
25 *and in addition to any other information required by this title,*
26 *submit a detailed accounting of moneys received and expended in*
27 *the immediately preceding year.*

28 *(b) The accounting shall include all of the following information:*

29 *(1) The amount of moneys received and expended.*

30 *(2) The use to which those moneys were put, including payment*
31 *of salaries and expenses, purchase of equipment and supplies, and*
32 *other expenditures by type.*

33 *(3) The number of filed complaints, investigations, arrests, and*
34 *convictions for metal theft and related recycling crimes that*
35 *resulted from expenditure of the funds.*

36 *14190.40. (a) The department shall regularly review the*
37 *effectiveness of the program in deterring, investigating, and*
38 *prosecuting metal theft and related recycling crimes and shall,*
39 *notwithstanding Section 10231.5 of the Government Code, submit*

1 a report to the Legislature and Governor that is based on reports
 2 submitted to the department pursuant to subdivision (b).

3 (b) Agencies receiving funding from the program shall submit
 4 an annual report to the department that details all of the following:

5 (1) The number of metal theft and recycling crime cases filed
 6 in the immediately preceding year.

7 (2) The number of metal theft and recycling crime cases
 8 investigated in the immediately preceding year.

9 (3) The number of victims involved in the cases filed.

10 (4) The number of convictions obtained in the immediately
 11 preceding year.

12 (5) The total aggregate monetary loss suffered by the victims,
 13 including damage caused by the theft.

14 (6) An accounting of moneys received and expended in the
 15 immediately preceding year, which shall include all of the
 16 following:

17 (A) The amount of moneys received and expended.

18 (B) The uses to which those moneys were put, including payment
 19 of salaries and expenses, purchase of supplies, and other
 20 expenditures.

21 (C) Any other relevant information requested.

22 14190.45. A fee of up to 1 percent of purchase price for each
 23 junk sale, as defined in Section 21600 of the Business and
 24 Professions Code, shall be assessed on the seller of junk for the
 25 purpose of regulating that seller. The fee assessed pursuant to this
 26 section shall be collected by junk dealers, as defined in Section
 27 21601 of the Business and Professions Code, and recyclers, as
 28 defined in Section 21605 of the Business and Professions Code,
 29 at the time each sale is conducted, and shall be submitted to the
 30 Controller for deposit into the fund.

31 14190.50. (a) The program established pursuant to this title
 32 shall not be implemented until the Department of Finance
 33 determines that sufficient moneys have been deposited in the Metal
 34 Theft Task Force Fund to implement the provisions of this title.

35 (b) The department shall only be required to implement the
 36 provisions of this title upon the availability of moneys in the fund
 37 in an amount sufficient to cover all costs relating to the startup,
 38 implementation, and continuing administration of the provisions
 39 of this title.

1 14190.55. *The department may adopt regulations as needed*
2 *to administer this title.*

3 ~~SECTION 1. Section 17500 of the Business and Professions~~
4 ~~Code is amended to read:~~

5 ~~17500. It is unlawful for a person, firm, corporation or~~
6 ~~association, or an employee thereof with intent directly or indirectly~~
7 ~~to dispose of real or personal property or to perform services,~~
8 ~~professional or otherwise, or anything of any nature whatsoever~~
9 ~~or to induce the public to enter into an obligation relating thereto,~~
10 ~~to make or disseminate or cause to be made or disseminated before~~
11 ~~the public in this state, or to make or disseminate or cause to be~~
12 ~~made or disseminated from this state before the public in any state,~~
13 ~~in a newspaper or other publication, or an advertising device, or~~
14 ~~by public outcry or proclamation, or in any other manner or means,~~
15 ~~including over the Internet, a statement, concerning that real or~~
16 ~~personal property or those services, professional or otherwise, or~~
17 ~~concerning any circumstance or matter of fact connected with the~~
18 ~~proposed performance or disposition thereof, that is untrue or~~
19 ~~misleading, and that is known, or should be known, by the exercise~~
20 ~~of reasonable care, to be untrue or misleading, or for any person,~~
21 ~~firm, or corporation to so make or disseminate or cause to be so~~
22 ~~made or disseminated any such statement as part of a plan or~~
23 ~~scheme with the intent not to sell that personal property or those~~
24 ~~services, professional or otherwise, so advertised at the price stated~~
25 ~~therein, or as so advertised. Any violation of the provisions of this~~
26 ~~section is a misdemeanor punishable by imprisonment in the county~~
27 ~~jail not exceeding six months, or by a fine not exceeding two~~
28 ~~thousand five hundred dollars (\$2,500), or by both that~~
29 ~~imprisonment and fine.~~