

Assembly Bill No. 85

Passed the Assembly July 13, 2009

Chief Clerk of the Assembly

Passed the Senate July 9, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 21606.5 of, to repeal Section 21608.3 of, and to repeal and amend Section 21608.5 of, the Business and Professions Code, relating to junk dealers and recyclers.

LEGISLATIVE COUNSEL'S DIGEST

AB 85, Tom Berryhill. Junk dealers and recyclers.

Existing law prohibits a junk dealer or recycler from providing payment for nonferrous material, as defined, unless the payment is made by cash or check, the check is mailed or the cash or check is provided no earlier than 3 days after the date of sale, and the dealer or recycler obtains a photograph or video of the seller and certain other identifying information, as specified, which information is to be retained by the dealer or recycler for 2 years. Existing law requires a junk dealer or recycler to allow for periodic inspection of any premises maintained for purposes of determining compliance with the recordkeeping requirements, and, upon inspection, to produce his or her sales and purchase records.

This bill would correct erroneous cross-references in the record production provisions and in other related provisions, and would delete duplicate provisions.

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

SECTION 1. Section 21606.5 of the Business and Professions Code is amended to read:

21606.5. Every junk dealer or recycler shall, during normal business hours, allow periodic inspection of any premises maintained and any junk thereon for the purpose of determining compliance with the recordkeeping requirements of this article, and shall during those hours produce his or her records of sales and purchases, except as provided in subparagraph (B) of paragraph (6) of subdivision (a) of Section 21608.5, and all property purchased incident to those transactions which is in the possession of the junk dealer or recycler for inspection by any of the following persons:

(a) An officer holding a warrant authorizing him or her to search for personal property.

(b) A person appointed by the sheriff of a county or appointed by the head of the police department of a city.

(c) An officer holding a court order directing him or her to examine the records or property.

(d) The amendments to this section made by the act adding this subdivision shall become operative on December 1, 2008.

SEC. 2. Section 21608.3 of the Business and Professions Code, as added by Section 4 of Chapter 731 of the Statutes of 2008, is repealed.

SEC. 3. Section 21608.5 of the Business and Professions Code, as added by Section 5 of Chapter 730 of the Statutes of 2008, is repealed.

SEC. 4. Section 21608.5 of the Business and Professions Code, as added by Section 5 of Chapter 731 of the Statutes of 2008, is amended to read:

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

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

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

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

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

means an address that is different from the address appearing on the seller's driver's license or identification card.

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

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

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

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

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

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

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

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

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

(d) This section shall not apply to the redemption of nonferrous material having a value of not more than twenty dollars (\$20) in

a single transaction, when the primary purpose of the transaction is the redemption of beverage containers under the California Beverage Container Recycling and Litter Reduction Act, as set forth in Division 12.1 (commencing with Section 14500) of the Public Resources Code.

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

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

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

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

Approved _____, 2009

Governor