

BILL NUMBER: AB 844 AMENDED
BILL TEXT

AMENDED IN SENATE APRIL 30, 2008
AMENDED IN SENATE JUNE 26, 2007
AMENDED IN SENATE JUNE 19, 2007
AMENDED IN ASSEMBLY JUNE 1, 2007
AMENDED IN ASSEMBLY MAY 1, 2007
AMENDED IN ASSEMBLY APRIL 9, 2007

INTRODUCED BY Assembly Members Berryhill and Maze
(Principal coauthor: Assembly Member Galgiani)
(Principal coauthors: Senators Cogdill and Maldonado)
(Coauthors: Assembly Members Emmerson, Garcia, Ma, and Parra)
(Coauthor: Senator Denham)

FEBRUARY 22, 2007

An act to amend Section 21609 of, and to add Sections 21608.5 and 21610 to , the Business and Professions Code, relating to junk dealers.

LEGISLATIVE COUNSEL'S DIGEST

AB 844, as amended, Berryhill. Junk dealers and recyclers: nonferrous material.

Existing law requires junk dealers and recyclers, as defined, to keep written records of all sales and purchases made in the course of their business. Existing law requires these records to include specified information, including, among other things, the place and date of each sale or purchase of junk, a description of the item of junk, and the personal and vehicle information of the person purchasing or transporting the junk. Existing law exempts certain purchases of scrap metals by a junk dealer or recycler from these provisions. A violation of these provisions regulating junk dealers and recyclers is a crime.

This bill would prohibit a junk dealer or recycler from providing payment for nonferrous material, as defined, unless ~~except as specified,~~ the payment is made by check, the check is mailed to the seller or is provided no earlier than 3 days after the date of sale, and the dealer or recycler obtains certain identifying information, as specified, and a photograph of the nonferrous material to be retained by the dealer or recycler for a certain period of time. The bill would specify that this provision does not apply if the junk dealer or recycler has on file or receives certain information from the seller and does not apply to the redemption of nonferrous materials of a certain value at a recycling center, as specified, or to coin dealers or automobile ~~recyclers~~ dismantlers .

~~The bill would also prohibit a city, county, city and county, or a state agency from adopting reporting, identification, or payment requirements for transactions by junk dealers or recyclers involving nonferrous material, except as specified.~~

The bill would require a court to order a person or a junk dealer or

recycler to pay specified damages if the person is convicted of the theft of, or the junk dealer or recycler is convicted of the sale of, property that has been placed on hold by a peace officer. The bill would also authorize a local governing body to adopt and enforce laws that provide consumer protections greater than those in state law regulating junk dealers and recyclers.

Because a violation of the bill's provisions would be a crime, this 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:

SECTION 1. Section 21608.5 is added to the Business and Professions Code, 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 check. *The check may be mailed to the seller at the address provided pursuant to paragraph (2) or may be collected by the seller from the junk dealer or recycler on the third business day after the date of sale.*

~~(2) The junk dealer or recycler provides the check no earlier than three business days after the date of sale. The check may be mailed to the seller or may be collected by the seller from the junk dealer or recycler.~~

~~(3) The junk dealer or recycler obtains a photograph and an address of the seller, or 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. The junk dealer or recycler shall preserve the photograph and the address or the copies obtained pursuant to this paragraph for a period of two years after the date of sale.~~

~~(b) The requirements of paragraphs (1) and (2) 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 with the seller, and in order for the requirements of paragraphs (1) and (2) 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) The requirement of paragraph (2) of subdivision (a) shall not apply if, in addition to obtaining the identifying information required in paragraph (3) of subdivision (a), the junk dealer or recycler obtains a photograph of the nonferrous material being purchased. This photograph shall be preserved for a period of two years after the date of sale.~~

(2) The junk dealer or recycler does one of the following and preserves the items for a period of two years after the date of sale:

(A) Obtains a photograph or video of the seller, a copy of a valid driver's license or a copy of a state or federal government-issued identification card, and a gas or electric utility bill addressed to the seller at an address other than a post office box with a payment date no more than two months prior to the date of the sale.

(B) Obtains a copy of the valid driver's license of the seller containing a photograph and an address of the seller.

(C) Obtains a copy of a state or federal government-issued identification card containing a photograph and an address of the seller.

(3) The junk dealer or recycler obtains a photograph of the nonferrous material being purchased and preserves the photograph for a period of two years after the date of sale.

~~(d)~~

(b) 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.

~~(e)~~

(c) This section shall not apply to the redemption of nonferrous material having a value of not more than ~~twenty~~ ~~dollars (\$20)~~ ten dollars (\$10) 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. ~~For purposes of this subdivision, "primary purpose" means the value of the beverage containers being redeemed is greater than the value of the nonferrous material being sold.~~

~~(f)~~

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

~~(g)~~

(e) 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

~~SEC. 2. Section 21610 is added to the Business and Professions Code, to read:~~

~~21610. This article shall not prohibit the enactment, amendment, or enforcement of an ordinance or resolution by a city, county, or city and county relating to junk dealers or recyclers that is consistent with this article, except that no city, county, city and~~

~~county, or state agency shall adopt reporting, identification, or payment requirements for transactions by junk dealers or recyclers involving nonferrous material as defined in Section 21600.5.~~

SEC. 2. Section 21609 of the Business and Professions Code is amended to read:

21609. (a) Whenever any peace officer has probable cause to believe that property in the possession of a junk dealer or recycler is stolen, in lieu of seizing the property, the peace officer as defined in subdivision (b) of Section 21606. 5, at his or her option, may place a hold on the property for a period not to exceed 90 days. When a peace officer places a hold on the property, the peace officer shall give the junk dealer or recycler a written notice at the time the hold is placed, describing the item or items to be held plus the case number. During that period the junk dealer or recycler shall not release or dispose of the property, except pursuant to a court order or upon receipt of a written authorization signed by any peace officer who is a member of the law enforcement agency of which the peace officer placing the hold on the property is a member. Except as specifically set forth in this section, a junk dealer or recycler shall not be subject to civil liability for compliance with this section.

(b) Whenever property that is in the possession of a junk dealer or recycler is subject to a hold and the property is required by a peace officer in a criminal investigation, the junk dealer or recycler, upon reasonable notice, shall produce the property at reasonable times and places or may deliver the property to any peace officer upon the request of any peace officer who is a member of the law enforcement agency of which the peace officer placing the hold on the property is a member.

(c) Whenever property that is in the possession of a junk dealer or recycler is subject to a hold and the property is no longer required for the purpose of criminal investigation, the law enforcement agency that placed the hold on the property shall undertake the following:

(1) With respect to the property being held, if the law enforcement agency has no knowledge of the property on hold being reported as stolen, the property shall be released upon written notice to the ~~scrap metal~~ junk dealer or recycler. The notice shall be provided in a timely fashion.

(2) If the law enforcement agency has knowledge that the property has been reported stolen, the law enforcement agency shall notify the person who reported the stolen property of the name and address of the junk dealer or recycler holding the property and authorize the release of the property to that person.

The law enforcement agency that placed the property on hold shall release the hold after 60 days has elapsed following the delivery of the notice to the person who reported the property stolen.

(3) If a victim seeks to recover property that is subject to a hold, the junk dealer or recycler shall advise the victim of the name and badge number of the peace officer who placed the hold on the property and the name of the law enforcement agency of which the officer is a member. If the property is not required to be held pursuant to a criminal prosecution the hold shall be released.

(d) Upon conviction of any person for the theft of property placed on hold pursuant to this section, the court shall order the defendant to pay the junk dealer or recycler reasonable costs for

storage of the property.

(e) Upon conviction of any person for the theft of, or of any junk dealer or recycler for the sale of, property placed on hold pursuant to this section, the court shall order the defendant to pay the victim for both the value of the material stolen and the reasonable collateral damage caused in the commission of the theft.

SEC. 3. Section 21610 is added to the Business and Professions Code , to read:

21610. Nothing in this chapter shall prevent a local governing body from adopting and enforcing laws that provide consumer protections greater than those set forth in this chapter.

~~SEC. 3.~~ SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

