



- Board of Directors
Communications and Legislation Committee

4/10/2012 Board Meeting

8-6

Subject

Express support for SB 1387 (Emmerson, R-Riverside) - Metal Theft; and for AB 1508 (Carter, D-Rialto) - Junk Dealers and Recyclers: Nonferrous Materials

Description

As introduced February 24, 2012 (**Attachment 1**) by California Senator Bill Emmerson, Senate Bill 1387 is a measure designed to respond to the increased metal theft occurring throughout California. The bill would establish civil and criminal fines and penalties for unlawful possession of fire hydrants, including their connections, bronze or brass fittings, or parts, and manhole covers and backflow devices. It would also prohibit a junk dealer or recycler from possession of these items without written certification on the letterhead of the public agency or utility that owns or previously owned the items. A related bill, Assembly Bill 1508, as introduced January 12, 2012 (**Attachment 2**) by Assembly Member Wilmer Amina Carter, would eliminate certain exemptions in current law regarding payments for scrap metal and would increase recordkeeping duties of junk dealers and recyclers.

Background

Existing law regulates the business of buying, selling, and dealing in secondhand and used machinery and all ferrous and nonferrous scrap metal and alloys, also known as "junk." Under current law, junk dealers and recyclers must retain a written record of all sales and purchases made in the course of their business, including the names and addresses of persons to whom junk is sold or disposed of. The dealers and recyclers must retain the records for at least two years, and failure to do so is punishable as a misdemeanor. Additionally, junk dealers or recyclers in California require that payment for nonferrous metals be made by cash or check, and that, at the time of sale, the junk dealer or recycler obtains a photograph or video of the seller. Under existing law, a person (or the agent, employee, or representative) who deals in or collects junk, metals, or secondhand materials, who has not used due diligence to ascertain that the person selling or delivering the items has the legal right to do so, is guilty of a misdemeanor. This applies to the buying or receiving of any wire, cable, copper, lead, solder, mercury, iron, or brass that is typically used by or typically belongs to a railroad or other transportation, telephone, telegraph, gas, water, or electric light company, or county and/or city, or other political subdivision of the state that provides public utility service.

Under existing law, junk dealers or recyclers are prohibited from providing payment for nonferrous (copper, copper alloys, stainless steel, or aluminum) materials, unless the payment is made by cash or check. Current law requires recyclers and junk dealers to hold payment for three days. However, the existing law provides for certain exemptions from this payment by cash or check requirement, including, among others:

- Redemption of nonferrous materials of a certain value in connection with the redemption of beverage containers; and
- Sellers of junk or recycling materials who conduct five or more separate transactions per month with the junk dealer or recycler.

Legislative Analysis

SB 1387 would prohibit any junk dealer or recycler from possessing a public fire hydrant, fire department connection, its fittings or parts, a public manhole cover or lid, a public backflow device or its connections without written certification on the letterhead of the public agency or utility that previously owned it. The bill would further require that the individual possessing the certificate is clearly identified on the certificate and that the individual is authorized to negotiate the sale of the materials. The bill would require that junk dealers and recyclers perform higher levels of due diligence in regard to the seller's authorization to sell nonferrous metals. The bill would make junk dealers and recyclers civilly liable for these transactions. The failure of the dealer or recycler to perform the due diligence would give rise to the presumption that the property was stolen for the purposes of the provisions that prescribe stolen property. The bill proposes amendments to the Business and Professions Code, Civil Code, and Penal Code, relating to metal theft.

As described above, AB 1508 would eliminate certain cash or check exemptions to sellers of junk or recycling materials, including those where five or more separate transactions per month are conducted with the junk dealer or recycler. The bill also increases the recordkeeping responsibilities of junk dealers and recyclers, and expands the definition of a crime for failure to maintain such records. The bill would amend the Business and Professions Code relating to junk dealers and recyclers.

Impacts to Metropolitan

SB 1387 focuses on three essential public safety items: fire hydrants, manhole covers, and backflow devices, which can present a risk to public health and safety when stolen. Individuals may be severely injured falling down manholes when covers are stolen, and cars and bicycles driving over open manholes can be damaged. Additionally, stolen backflow devices leave potable water sources susceptible to potential cross-contamination and stolen fire hydrants impair fire-fighting capabilities. Expanding the law to include these additional public safety items benefits Metropolitan and its member agencies, as well as multiple stakeholders throughout the state, by deterring metal thefts and preventing liabilities associated with such thefts.

Over the last five years, Metropolitan has experienced multiple metal theft incidents, involving manhole covers, aluminum fencing, posts and gates. Between 2006 and 2008, copper grounding cables were stolen from 500 of Metropolitan's electrical towers in the desert. SB 1387 and AB 1508 would provide Metropolitan, its member agencies and other public agencies in the state with an increased level of protection against metal theft by making it a criminal act to possess the specified items and by strengthening requirements in existing law. Additionally, both bills would provide additional tools to identify and prosecute metal thieves. SB 1387 also relieves junk dealers and recyclers from the responsibility of determining whether or not certain metal items in question are stolen, since the items will no longer be eligible for recycling without an appropriate certification. AB 1508 would provide for better records related to transactions between buyers and sellers of certain metal items, including the removal of certain exemptions in existing law regarding payments by cash or check.

Staff Recommendation

Metropolitan has experienced various instances of metal theft, and since both bills enhance the level of protection against metal theft and serve to deter thieves, staff recommends support for both SB 1387 and AB 1508.

Policy

Metropolitan Water District Administrative Code, Risk Management, Section 9100: Objectives, paragraph (b)... "[Metropolitan is expected to provide] The security [for] and [is responsible for the] preservation of District assets and service capabilities from loss, destruction, or depletion."

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may

have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and authorize the General Manager to express Metropolitan’s support for SB 1387 and AB 1508.

Fiscal Impact: No fiscal impact to Metropolitan

Business Analysis: Both bills are designed to serve as deterrents to metal theft and, in turn, reduce the risks and liabilities associated with metal thefts for Metropolitan, its member agencies and across the state.

Option #2

Take no position on SB 1387 and AB 1508.

Fiscal Impact: No fiscal impact to Metropolitan

Business Analysis: Without these bills, metal thefts would likely continue at the current rate, gaps in existing law would not be addressed and the associated risks/liabilities would not be reduced.

Staff Recommendation

Option #1


Linda Waade
Deputy General Manager, External Affairs

4/4/2012
Date


Jeffrey Kightlinger
General Manager

4/4/2012
Date

Attachment 1 – Senate Bill 1387 (as introduced February 24, 2012)

Attachment 2 – Assembly Bill 1508 (as introduced January 12, 2012)

SENATE BILL**No. 1387**

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

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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.

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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 ~~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.

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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

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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 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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AMENDED IN ASSEMBLY FEBRUARY 28, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1508

Introduced by Assembly Member Carter

January 12, 2012

An act to amend Section ~~2810~~ 21608.5 of the ~~Vehicle Business and Professions~~ Code, relating to ~~vehicles~~ junk dealers and recyclers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1508, as amended, Carter. ~~Vehicles: inspection of loads. Junk dealers and recyclers: nonferrous materials.~~

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, and makes a violation of the recordkeeping requirements a crime. Existing law prohibits a junk dealer or recycler from providing payment for nonferrous materials, 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 a specified period of time. Existing law exempts from the payment by cash or check requirement, among others, the redemption of nonferrous materials of a certain value in connection with the redemption of beverage containers, as specified. Existing law also exempts from the cash or check requirement those sellers of junk or recycling materials who conduct 5 or more separate transactions per month with the junk dealer or recycler, as specified.

This bill would eliminate these exemptions. Because the bill would expand the definition of a crime by increasing the recordkeeping duties

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of junk dealers and recyclers, 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.

~~(1) Existing law authorizes the Department of the California Highway Patrol to stop a vehicle transporting timber products, livestock, poultry, farm produce, crude oil, petroleum products, or inedible kitchen grease and inspect certain documents to determine whether the driver is in legal possession of the load, and, upon reasonable belief that the driver of the vehicle is not in legal possession, to take custody of the vehicle and load, as prescribed, and imposes duties on the sheriff with respect to the care and safekeeping of those products.~~

~~This bill would additionally authorize a member of a city police department or a member of a county sheriff's office, whose primary responsibility is to conduct theft investigations, to stop any vehicle, and would make those provisions applicable with regard to a vehicle that is transporting metal products or metal alloy products. By imposing additional duties on a sheriff regarding the care and safekeeping of metal products and metal alloy products, this bill would impose a state-mandated local program.~~

~~The bill additionally would authorize a member of a city police department and a member of the county sheriff's office, whose primary responsibility is to conduct theft investigations, to stop and inspect vehicles transporting any of those loads.~~

~~(2) 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

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.** *Section 21608.5 of the Business and Professions*
2 *Code is amended to read:*

3 21608.5. (a) A junk dealer or recycler in this state shall not
4 provide payment for nonferrous material unless, in addition to
5 meeting the written record requirements of Sections 21605 and
6 21606, all of the following requirements are met:

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

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

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

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

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

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

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

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

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

16 (e)

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

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

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

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

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

34 (e)

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

37 (f)

38 (d) For the purposes of this section, "nonferrous material" means
39 copper, copper alloys, stainless steel, or aluminum, but does not
40 include beverage containers, as defined in Section 14505 of the

1 Public Resources Code, that are subject to a redemption payment
2 pursuant to Section 14560 of the Public Resources Code.

3 ~~(g)~~

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

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

14 *SEC. 2. No reimbursement is required by this act pursuant to*
15 *Section 6 of Article XIII B of the California Constitution because*
16 *the only costs that may be incurred by a local agency or school*
17 *district will be incurred because this act creates a new crime or*
18 *infraction, eliminates a crime or infraction, or changes the penalty*
19 *for a crime or infraction, within the meaning of Section 17556 of*
20 *the Government Code, or changes the definition of a crime within*
21 *the meaning of Section 6 of Article XIII B of the California*
22 *Constitution.*

23 ~~SECTION 1. Section 2810 of the Vehicle Code is amended to~~
24 ~~read:~~

25 ~~2810. (a) A member of the Department of the California~~
26 ~~Highway Patrol, a member of a city police department whose~~
27 ~~primary responsibility is to conduct theft investigations, or a~~
28 ~~member of a county sheriff's office whose primary responsibility~~
29 ~~is to conduct theft investigations may stop any vehicle transporting~~
30 ~~any timber products, livestock, poultry, farm produce, crude oil,~~
31 ~~petroleum products, metal products, metal alloy products, or~~
32 ~~inedible kitchen grease, and inspect the bills of lading, shipping~~
33 ~~or delivery papers, or other evidence to determine whether the~~
34 ~~driver is in legal possession of the load, and, upon reasonable belief~~
35 ~~that the driver of the vehicle is not in legal possession, shall take~~
36 ~~custody of the vehicle and load and turn them over to the custody~~
37 ~~of the sheriff of the county in which the timber products, livestock,~~
38 ~~poultry, farm produce, crude oil, petroleum products, metal~~
39 ~~products, metal alloy products, or inedible kitchen grease, or any~~
40 ~~part of those loads, is apprehended.~~

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1 ~~(b) The sheriff shall receive and provide for the care and~~
2 ~~safekeeping of the apprehended timber products, livestock, poultry,~~
3 ~~farm produce, crude oil, petroleum products, metal products, metal~~
4 ~~alloy products, or inedible kitchen grease, or any part of those~~
5 ~~loads, and immediately, in cooperation with the department,~~
6 ~~proceed with an investigation and its legal disposition.~~

7 ~~(e) Any expense incurred by the sheriff in the performance of~~
8 ~~his or her duties under this section shall be a legal charge against~~
9 ~~the county.~~

10 ~~SEC. 2. If the Commission on State Mandates determines that~~
11 ~~this act contains costs mandated by the state, reimbursement to~~
12 ~~local agencies and school districts for those costs shall be made~~
13 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
14 ~~4 of Title 2 of the Government Code.~~

O