



R-20

Date: September 16, 2008
To: Honorable Mayor and City Council
From: Councilmember Patrick O'Donnell, Chair, State Legislation Committee
Subject: **SUPPORT FOR SENATE BILL SB 691 (CALDERON)**

The State Legislation Committee, at its meeting held August 19, 2008, considered communications relative to the above subject.

It is the recommendation of the State Legislation Committee to the City Council that they support Senate Bill SB 691 (CALDERON) as amended by Senator Calderon.

Respectfully submitted,

STATE LEGISLATION COMMITTEE

A handwritten signature in black ink, appearing to read "Patrick O'Donnell", written over a horizontal line.

Councilmember Patrick O'Donnell, Chair

Prepared by:
Dina Lopez

AMENDED IN ASSEMBLY JULY 14, 2008
AMENDED IN ASSEMBLY JULY 1, 2008
AMENDED IN ASSEMBLY JUNE 19, 2008
AMENDED IN ASSEMBLY APRIL 24, 2008
AMENDED IN ASSEMBLY AUGUST 31, 2007
AMENDED IN SENATE APRIL 16, 2007

SENATE BILL

No. 691

Introduced by Senator Calderon
(Principal coauthors: Assembly Members Anderson and Berryhill)
(Coauthor: Senator Yee)
(Coauthor: Assembly Member Adams)

February 23, 2007

An act to amend Sections 21606, 21606.5, 21608, and 21609 of, and to add Section 21608.5 to, the Business and Professions Code, relating to junk dealers.

LEGISLATIVE COUNSEL'S DIGEST

SB 691, as amended, Calderon. 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, 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 the provisions regulating junk dealers and recyclers is a crime.

This bill would require a junk dealer or recycler to report the information included in those written records to the chief of police or sheriff, as specified, upon request and on a monthly basis. The bill would authorize the chief of police or sheriff to request weekly reports for no more than a 2-month period, except as specified, if there is an ongoing investigation of the junk dealer or recycler concerning possible criminal activity.

The bill would prohibit 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, to be retained by the dealer or recycler for a certain period of time. The bill would specify an exception to the payment by cash or check requirement and provide that these requirements do not apply to the redemption of nonferrous materials of a certain value at a recycling center, as specified, or to coin dealers or automobile dismantlers. The bill would also prohibit a city, county, or city and county, from adopting an ordinance related to junk dealer or recycler transactions involving nonferrous material, except under specified circumstances.

Under existing law, a knowing and willful violation of the recordkeeping requirements applicable to junk dealers and recyclers is punishable by specified fines, by imprisonment in the county jail for a specified period of time, or by both that fine and imprisonment. Existing law requires that, for a 3rd or subsequent violation, the court order the defendant to stop engaging in business as a junk dealer or recycler for a period of 30 days.

This bill would increase the minimum fines for those violations, as specified, and would also require the court, for a 3rd or subsequent violation, to order the defendant to stop engaging in business as a junk dealer or recycler for a period not less than one year.

Under existing law, when a peace officer has probable cause to believe that property in the possession of a junk dealer or recycler is stolen, the peace officer may place a hold on that property. Existing law requires a court, upon conviction of a person for the theft of that property, to order the defendant to pay the reasonable costs for the storage of the property.

This bill would also require the court to order the defendant to pay the victim for the value of the property stolen and any reasonable collateral damage caused in the commission of the theft.

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:

1 SECTION 1. Section 21606 of the Business and Professions
2 Code is amended to read:

3 21606. (a) Every junk dealer and every recycler shall set out
4 in the written record required by this article all of the following:

5 (1) The place and date of each sale or purchase of junk made
6 in the conduct of his or her business as a junk dealer or recycler.

7 (2) The name, valid driver's license number and state of issue
8 or California-issued identification card number, and vehicle license
9 number including the state of issue of any motor vehicle used in
10 transporting the junk to the junk dealer's or recycler's place of
11 business.

12 (3) The name and address of each person to whom junk is sold
13 or disposed of, and the license number of any motor vehicle used
14 in transporting the junk from the junk dealer's or recycler's place
15 of business.

16 (4) A description of the item or items of junk purchased or sold,
17 including the item type and quantity, and identification number,
18 if visible.

19 (5) A statement indicating either that the seller of the junk is
20 the owner of it, or the name of the person he or she obtained it
21 from, as shown on a signed transfer document.

22 (b) A person who makes, or causes to be made, a false or
23 fictitious statement regarding any information required by this
24 section is guilty of a misdemeanor.

1 (c) (1) Every junk dealer and every recycler shall report the
2 information required under subdivision (a) to the chief of police,
3 if the dealer's or recycler's business is located in a city, or to the
4 sheriff, if the dealer's or recycler's business is located in an
5 unincorporated part of a county, upon request of the chief of police
6 or sheriff and on a monthly basis, except as provided in paragraph
7 (2).

8 (2) The chief of police or sheriff may request the report
9 described in this section on a weekly basis if there is an ongoing
10 investigation of the junk dealer or recycler concerning possible
11 criminal activity. The chief of police or sheriff may request weekly
12 reports for no more than a two-month period unless the
13 investigation of the junk dealer or recycler continues and the chief
14 of police or sheriff makes a subsequent request for weekly reports
15 for an additional two-month period or part thereof.

16 SEC. 2. Section 21606.5 of the Business and Professions Code
17 is amended to read:

18 21606.5. Every junk dealer or recycler shall, during normal
19 business hours, allow periodic inspection of any premises
20 maintained and any junk thereon for the purpose of determining
21 compliance with the recordkeeping requirements of this article,
22 and shall during those hours produce his or her records of sales
23 and purchases, except as provided in paragraph—(3) (4) of
24 subdivision (a) of Section 21608.5, and all property purchased
25 incident to those transactions which is in the possession of the junk
26 dealer or recycler for inspection by any of the following persons:

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

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

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

33 SEC. 3. Section 21608 of the Business and Professions Code
34 is amended to read:

35 21608. (a) A junk dealer or recycler who fails in any respect
36 to keep the written record required by this article, or to set out in
37 that written record any matter required by this article to be set out
38 therein, is guilty of a misdemeanor.

39 Every junk dealer or recycler who refuses, upon demand pursuant
40 to Section 21606.5, to exhibit the written record required by this

1 article, or who destroys that record within two years after making
2 the final entry of a purchase or sale of junk therein, is guilty of a
3 misdemeanor.

4 (b) Any knowing and willful violation of subdivision (a) shall
5 be punishable as follows:

6 (1) For a first offense, by a fine of not less than one thousand
7 dollars (\$1,000), or by imprisonment in the county jail for not less
8 than 30 days, or by both that fine and imprisonment.

9 (2) For a second offense, by a fine of not less than two thousand
10 dollars (\$2,000), or by imprisonment in the county jail for not less
11 than 30 days, or by both that fine and imprisonment. In addition
12 to any other sentence imposed pursuant to this paragraph, the court
13 may order the defendant to stop engaging in business as a junk
14 dealer or recycler for a period not to exceed 30 days.

15 (3) For a third or any subsequent offense, by a fine of not less
16 than four thousand dollars (\$4,000), or by imprisonment in the
17 county jail for not less than six months, or by both that fine and
18 imprisonment. In addition to any other sentence imposed pursuant
19 to this paragraph, the court shall order the defendant to stop
20 engaging in business as a junk dealer or recycler for not less than
21 one year.

22 SEC. 4. Section 21608.5 is added to the Business and
23 Professions Code, to read:

24 21608.5. (a) A junk dealer or recycler in this state shall not
25 provide payment for nonferrous material unless, in addition to
26 meeting the written record requirements of Sections 21605 and
27 21606, all of the following requirements are met:

28 (1) The payment for the material is made by cash or check. The
29 check may be mailed to the seller at the address provided pursuant
30 to paragraph ~~(2)~~ (3) or the check or cash may be collected by the
31 seller from the junk dealer or recycler on the third business day
32 after the date of sale.

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

35 ~~(2)~~

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

1 (B) If the seller prefers to have the check for the material mailed
2 to an alternative address, other than a post office box, the junk
3 dealer or recycler shall obtain ~~a~~, *in addition to the clear* photograph
4 or video of the seller, ~~or required pursuant to paragraph (2)~~, a
5 copy of a driver's license or identification card described in
6 subparagraph (A); and a gas or electric utility bill addressed to the
7 seller at that alternative address with a payment due date no more
8 than two months prior to the date of sale. For purposes of this
9 paragraph, "alternative address" means an address that is different
10 from the address appearing on the seller's driver's license or
11 identification card.

12 (C) The junk dealer or recycler obtains a *clear* photograph or
13 video of the nonferrous material being purchased.

14 (D) The junk dealer or recycler shall preserve the information
15 obtained pursuant to this paragraph for a period of two years after
16 the date of sale.

17 ~~(3)~~

18 (4) The junk dealer or recycler obtains a thumbprint of the seller,
19 as prescribed by the Department of Justice. The junk dealer or
20 recycler shall keep this thumbprint with the information obtained
21 under paragraph ~~(2)~~ (3) and shall preserve the thumbprint in either
22 hard copy or electronic format for a period of two years after the
23 date of sale. The junk dealer or recycler shall make the thumbprint
24 available to a person listed in Section 21606.5 only if that person
25 has probable cause to believe that property in the possession of
26 the junk dealer or recycler has been stolen. The seller shall
27 acknowledge this disclosure requirement in writing.

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

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

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

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

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

6 (d) This section shall not apply to the redemption of nonferrous
7 material having a value of not more than twenty dollars (\$20) in
8 a single transaction when the primary purpose of the transaction
9 is the redemption of beverage containers under the California
10 Beverage Container Recycling and Litter Reduction Act, as set
11 forth in Division 12.1 (commencing with Section 14500) of the
12 Public Resources Code.

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

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

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

29 SEC. 5. Section 21609 of the Business and Professions Code
30 is amended to read:

31 21609. (a) Whenever a peace officer has probable cause to
32 believe that property in the possession of a junk dealer or recycler
33 is stolen, in lieu of seizing the property, the peace officer as defined
34 in subdivision (b) of Section 21606.5, at his or her option, may
35 place a hold on the property for a period not to exceed 90 days.
36 When a peace officer places a hold on the property, the peace
37 officer shall give the junk dealer or recycler a written notice at the
38 time the hold is placed, describing the item or items to be held plus
39 the case number. During that period the junk dealer or recycler
40 shall not release or dispose of the property, except pursuant to a

1 court order or upon receipt of a written authorization signed by a
2 peace officer who is a member of the law enforcement agency of
3 which the peace officer placing the hold on the property is a
4 member. Except as specifically set forth in this section, a junk
5 dealer or recycler shall not be subject to civil liability for
6 compliance with this section.

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

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

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

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

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

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

1 (d) Upon conviction of a person for the theft of property placed
2 on hold pursuant to this section, the court shall order the defendant
3 to do both of the following:

4 (1) Pay the junk dealer or recycler reasonable costs for storage
5 of the property.

6 (2) Pay the victim for both the value of the property stolen and
7 any reasonable collateral damage caused in the commission of the
8 theft.

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

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