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CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 844**

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**Introduced by Assembly Members Berryhill and Maze**

**(Principal coauthors: Assembly Members Galgiani and Garrick)**

(Principal coauthors: Senators Calderon, Cogdill, and Maldonado)

**(Coauthors: Assembly Members Adams, Aghazarian, Anderson, Arambula, Benoit, Blakeslee, Cook, DeVore, Emmerson, Fuller, Gaines, Garcia, Horton, Houston, Huff, Jeffries, Keene, La Malfa, Ma, Mullin, Nakanishi, Niello, Parra, Plescia, Sharon Runner, Salas, Silva, Smyth, Spitzer, Strickland, Tran, Villines, and Walters)**

(Coauthors: Senators *Cedillo*, Denham, Florez, *Margett*, and Yee)

February 22, 2007

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An act to amend Sections 21606, 21606.5, 21608, and 21609 of, and to add ~~Section~~ *Sections 21608.3 and 21608.5* to, the Business and Professions Code, relating to junk dealers, and declaring the urgency thereof, to take effect immediately.

## 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, 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 selling, 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.

This 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 certain identifying information, as specified, *including the thumbprint of a seller*, 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 of not less than one year. *The bill would further impose a specified civil fine for the unauthorized disclosure of a seller's personal identification information.*

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 this bill's provisions would be a crime, 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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . 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:

- 1 (1) The place and date of each sale or purchase of junk made  
2 in the conduct of his or her business as a junk dealer or recycler.
- 3 (2) The name, valid driver's license number and state of issue  
4 or California-issued identification card number, and vehicle license  
5 number including the state of issue of any motor vehicle used in  
6 transporting the junk to the junk dealer's or recycler's place of  
7 business.
- 8 (3) The name and address of each person to whom junk is sold  
9 or disposed of, and the license number of any motor vehicle used  
10 in transporting the junk from the junk dealer's or recycler's place  
11 of business.
- 12 (4) A description of the item or items of junk purchased or sold,  
13 including the item type and quantity, and identification number,  
14 if visible.
- 15 (5) A statement indicating either that the seller of the junk is  
16 the owner of it, or the name of the person he or she obtained it  
17 from, as shown on a signed transfer document.
- 18 (b) A person who makes, or causes to be made, a false or  
19 fictitious statement regarding any information required by this  
20 section is guilty of a misdemeanor.
- 21 (c) (1) Every junk dealer and every recycler shall report the  
22 information required under subdivision (a) to the chief of police,  
23 if the dealer's or recycler's business is located in a city, or to the  
24 sheriff, if the dealer's or recycler's business is located in an  
25 unincorporated part of a county, upon request of the chief of police  
26 or sheriff and on a monthly basis, except as provided in paragraph  
27 (2).
- 28 (2) The chief of police or sheriff may request the report  
29 described in this section on a weekly basis if there is an ongoing  
30 investigation of the junk dealer or recycler concerning possible  
31 criminal activity. The chief of police or sheriff may request weekly  
32 reports for no more than a two-month period unless the  
33 investigation of the junk dealer or recycler continues and the chief  
34 of police or sheriff makes a subsequent request for weekly reports  
35 for an additional two-month period or part thereof.
- 36 SEC. 2. Section 21606.5 of the Business and Professions Code  
37 is amended to read:
- 38 21606.5. Every junk dealer or recycler shall, during normal  
39 business hours, allow periodic inspection of any premises  
40 maintained and any junk thereon for the purpose of determining

1 compliance with the recordkeeping requirements of this article,  
2 and shall during those hours produce his or her records of sales  
3 and purchases, except as provided in *subparagraph (A) of*  
4 paragraph (3) of subdivision (a) of Section 21608.5, and all  
5 property purchased incident to those transactions which is in the  
6 possession of the junk dealer or recycler for inspection by any of  
7 the following persons:

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

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

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

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

16 21608. (a) A junk dealer or recycler who fails in any respect  
17 to keep the written record required by this article, or to set out in  
18 that written record any matter required by this article to be set out  
19 therein, is guilty of a misdemeanor.

20 Every junk dealer or recycler who refuses, upon demand pursuant  
21 to Section 21606.5, to exhibit the written record required by this  
22 article, or who destroys that record within two years after making  
23 the final entry of a purchase or sale of junk therein, is guilty of a  
24 misdemeanor.

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

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

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

36 (3) For a third or any subsequent offense, by a fine of not less  
37 than four thousand dollars (\$4,000), or by imprisonment in the  
38 county jail for not less than six months, or by both that fine and  
39 imprisonment. In addition to any other sentence imposed pursuant  
40 to this paragraph, the court shall order the defendant to stop

1 engaging in business as a junk dealer or recycler for not less than  
2 one year.

3 *SEC. 4. Section 21608.3 is added to the Business and*  
4 *Professions Code, to read:*

5 *21608.3. Any unauthorized disclosure of personal identification*  
6 *information collected from a seller by a junk dealer or recycler is*  
7 *prohibited, and any such disclosure shall render the violator liable*  
8 *for a civil fine of up to five thousand dollars (\$5,000).*

9 ~~SEC. 4.~~

10 *SEC. 5. Section 21608.5 is added to the Business and*  
11 *Professions Code, to read:*

12 21608.5. (a) A junk dealer or recycler in this state shall not  
13 provide payment for nonferrous material unless, in addition to  
14 meeting the written record requirements of Sections 21605 and  
15 21606, all of the following requirements are met:

16 (1) The payment for the material is made by cash or check. The  
17 check may be mailed to the seller at the address provided pursuant  
18 to paragraph (2) or the cash or check may be collected by the seller  
19 from the junk dealer or recycler on the third business day after the  
20 date of sale.

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

26 (B) If the seller prefers to have the check for the material mailed  
27 to an alternative address, other than a post office box, the junk  
28 dealer or recycler shall obtain a photograph or video of the seller,  
29 or a copy of a driver's license or identification card described in  
30 subparagraph (A), and a gas or electric utility bill addressed to the  
31 seller at that alternative address with a payment due date no more  
32 than two months prior to the date of sale. For purposes of this  
33 paragraph, "alternative address" means an address that is different  
34 from the address appearing on the seller's driver's license or  
35 identification card.

36 (C) The junk dealer or recycler obtains a photograph or video  
37 of the nonferrous material being purchased.

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

1 (3) (A) The junk dealer or recycler obtains a thumbprint of the  
2 seller, as prescribed by the Department of Justice. The junk dealer  
3 or recycler shall keep this thumbprint with the information obtained  
4 under paragraph (2) and shall preserve the thumbprint in either  
5 hard copy or electronic format for a period of two years after the  
6 date of sale. The junk dealer or recycler shall make the thumbprint  
7 available to a person listed in Section 21606.5 only if that person  
8 has probable cause to believe that property in the possession of  
9 the junk dealer or recycler has been stolen. The seller shall  
10 acknowledge this disclosure requirement in writing.

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

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

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

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

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

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

36 (d) This section shall not apply to the redemption of nonferrous  
37 material having a value of not more than twenty dollars (\$20) in  
38 a single transaction, when the primary purpose of the transaction  
39 is the redemption of beverage containers under the California  
40 Beverage Container Recycling and Litter Reduction Act, as set

1 forth in Division 12.1 (commencing with Section 14500) of the  
2 Public Resources Code.

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

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

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

19 ~~SEC. 5.~~

20 *SEC. 6.* Section 21609 of the Business and Professions Code  
21 is amended to read:

22 21609. (a) Whenever a peace officer has probable cause to  
23 believe that property in the possession of a junk dealer or recycler  
24 is stolen, in lieu of seizing the property, the peace officer as defined  
25 in subdivision (b) of Section 21606.5, at his or her option, may  
26 place a hold on the property for a period not to exceed 90 days.  
27 When a peace officer places a hold on the property, the peace  
28 officer shall give the junk dealer or recycler a written notice at the  
29 time the hold is placed, describing the item or items to be held plus  
30 the case number. During that period the junk dealer or recycler  
31 shall not release or dispose of the property, except pursuant to a  
32 court order or upon receipt of a written authorization signed by a  
33 peace officer who is a member of the law enforcement agency of  
34 which the peace officer placing the hold on the property is a  
35 member. Except as specifically set forth in this section, a junk  
36 dealer or recycler shall not be subject to civil liability for  
37 compliance with this section.

38 (b) Whenever property that is in the possession of a junk dealer  
39 or recycler is subject to a hold and the property is required by a  
40 peace officer in a criminal investigation, the junk dealer or recycler,



1 upon reasonable notice, shall produce the property at reasonable  
2 times and places or may deliver the property to any peace officer  
3 upon the request of any peace officer who is a member of the law  
4 enforcement agency of which the peace officer placing the hold  
5 on the property is a member.

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

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

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

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

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

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

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

36 (2) Pay the victim for both the value of the property stolen and  
37 any reasonable collateral damage caused in the commission of the  
38 theft.

1     ~~SEC. 6.~~

2     ~~SEC. 7.~~ No reimbursement is required by this act pursuant to  
3 Section 6 of Article XIII B of the California Constitution because  
4 the only costs that may be incurred by a local agency or school  
5 district will be incurred because this act creates a new crime or  
6 infraction, eliminates a crime or infraction, or changes the penalty  
7 for a crime or infraction, within the meaning of Section 17556 of  
8 the Government Code, or changes the definition of a crime within  
9 the meaning of Section 6 of Article XIII B of the California  
10 Constitution.

11    ~~SEC. 7.~~

12    ~~SEC. 8.~~ This act is an urgency statute necessary for the  
13 immediate preservation of the public peace, health, or safety within  
14 the meaning of Article IV of the Constitution and shall go into  
15 immediate effect. The facts constituting the necessity are:

16    In order to address statewide concerns related to public safety,  
17 and to decrease the rising theft of nonferrous materials, it is  
18 necessary that this act take effect immediately.