

AMENDED IN ASSEMBLY MARCH 14, 2013

CALIFORNIA LEGISLATURE—2013—14 REGULAR SESSION

ASSEMBLY BILL

No. 1095

Introduced by Assembly Member Nestande

February 22, 2013

~~An act to amend Section 3294 of the Civil Code, relating to civil actions.~~ *An act to amend Section 21608.5 of the Business and Professions Code, relating to business.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1095, as amended, Nestande. ~~Civil actions: damages.~~ *Junk dealers and recyclers: nonferrous materials.*

Existing law requires junk dealers and recyclers, as defined, to maintain written records of all sales and purchases made in the course of their business, and makes a violation of the recordkeeping requirements a misdemeanor. Existing law prohibits a junk dealer or recycler from providing payment for nonferrous material, as defined, unless the payment is made by cash or check, the check is mailed or the cash or check is provided no earlier than 3 days after the date of sale, and the dealer or recycler obtains a photograph or video of the seller and certain other identifying information, as specified, which information is to be retained by the dealer or recycler, as part of the written record of purchases, for a specified period of time. Existing law exempts from the payment by 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 require a junk dealer or recycler to provide payment by check only, mailed or provided to the seller of the materials no earlier than 30 days after the date of sale, and would prohibit the junk dealer

or recycler from recycling, selling, or disposing of the materials during that time period. The bill would delete the exemption from the check-only payment requirement of those sellers of junk or recycling materials who conduct 5 or more separate transactions per month with the junk dealer or recycler. The bill would exempt from the check-only payment requirement, and permit payment by check or cash on or after the 3rd business day from the date of sale, the sale of nonferrous materials under specified circumstances, including if the nonferrous materials were marked with an indicia of ownership, as defined. Under these circumstances, the bill would require the junk dealer or recycler to obtain specified documentation from the seller.

The bill would also exempt from the check-only payment requirement, and permit payment by check or cash on or after the 3rd business day from the date of sale, the sale of nonferrous materials that were removed from the home of the seller during construction, if the junk dealer or recycler obtained specified documentation from the seller, including a letter from a licensed contractor stating that the materials were removed from the home of the seller during construction. The bill would provide that a licensed contractor who willfully or knowingly makes a false or fictitious statement in that letter is guilty of a crime. The bill would also require the junk dealer or regular to retain the documentation obtained pursuant to these provisions as part of the written record of purchases.

Because a violation of the recordkeeping requirement would be a crime and because this bill creates a new 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.

~~Existing law authorizes the plaintiff, in an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, to recover damages for the sake of example and by way of punishing the defendant in addition to the actual damages.~~

~~This bill would make technical, nonsubstantive changes to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-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, *which* may be mailed to the seller at the address provided
9 pursuant to paragraph (3) or ~~the cash or check may be collected~~
10 by the seller from the junk dealer or recycler on or after the ~~third~~
11 ~~business 30th~~ day after the date of sale, *during which period the*
12 *junk dealer or recycler may not discard, disassemble, recycle, sell,*
13 *dispose of, or otherwise remove the items purchased from the junk*
14 *dealer's or recycler's property.*

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

17 (3) (A) Except as provided in subparagraph (B), the junk dealer
18 or recycler obtains a copy of the valid driver's license of the seller
19 containing a photograph and an address of the seller, a copy of a
20 state or federal government-issued identification card containing
21 a photograph and an address of the seller, a passport from any
22 other country in addition to another item of identification bearing
23 an address of the seller, or a Matricula Consular in addition to
24 another item of identification bearing an address of the seller.

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

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

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

1 (6) (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 this subdivision and shall preserve the thumbprint in either
5 hardcopy or electronic format for a period of two years after the
6 date of sale.

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

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

22 (e)

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

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

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

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

33 ~~(d)~~

34 (c) (1) This section shall not apply to the purchase of nonferrous
35 material having a value of not more than twenty dollars (\$20) in
36 a single transaction, when the majority of the transaction is for the
37 redemption of beverage containers under the California Beverage
38 Container Recycling and Litter Reduction Act, as set forth in
39 Division 12.1 (commencing with Section 14500) of the Public
40 Resources Code.

1 (2) Materials made of copper or copper alloys shall not be
2 purchased under this subdivision.

3 (e)

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

6 (e) Paragraph (1) of subdivision (a) shall not apply, and
7 payment for the nonferrous materials may be made by cash, or
8 check mailed to the seller at the address provided pursuant to
9 paragraph (3) of subdivision (a), or by cash or check collected by
10 the seller from the junk dealer or recycler on or after the third
11 business day after the date of sale, if one of the following conditions
12 are met:

13 (1) If the materials are marked with an indicia of ownership,
14 the junk dealer or recycler obtains a proof of ownership record,
15 including, but not limited to, a receipt from the indicated owner,
16 or a bill of lading, from the person selling or delivering the
17 materials that shows that person has lawful possession or
18 ownership of the materials. Copies of these documents shall be
19 maintained by the junk dealer or recycler as part of the written
20 record of the transaction.

21 (2) If the materials are not marked with an indicia of ownership,
22 the junk dealer or recycler obtains a proof of purchase record
23 identifying the materials brought in for sale or recycling, including,
24 but not limited to, a retail store receipt identifying the materials
25 by part number if that part number is indicated on the materials.
26 Copies of these documents shall be maintained by the junk dealer
27 or recycler as part of the written record of the transaction.

28 (3) If the materials are recycled after being removed from the
29 home of the seller, the junk dealer or recycler obtains the following
30 documentation, and maintains that documentation as part of the
31 written record of the transaction:

32 (A) A letter from a licensed contractor indicating the address
33 of the seller and stating that the materials were removed from the
34 home of the seller during the course of construction. A licensed
35 contractor who willfully or knowingly makes a false or fictitious
36 statement under this subparagraph is guilty of a misdemeanor
37 punishable pursuant to subdivision (b) of Section 21608.

38 (B) A copy of the contractor's license.

39 (C) A utility bill addressed to the seller with a payment due date
40 no more than two months prior to the date of sale, indicating the

1 seller’s name and address as it appears on the letter pursuant to
2 subparagraph (A) and the seller’s name as it appears on the
3 identification documentation provided pursuant to paragraph (3)
4 of subdivision (a).

5 (f) For the purposes of this section, the following terms have
6 the following meanings:

7 (1) “Indicia of ownership” means words, symbols, or registered
8 trademarks printed, stamped, etched, attached, or otherwise
9 displayed on the exterior surface of the materials that reasonably
10 identify the owner.

11 ~~(f) For the purposes of this section, “nonferrous~~

12 (2) “Nonferrous material” means copper, copper alloys,
13 stainless steel, or aluminum, but does not include beverage
14 containers, as defined in Section 14505 of the Public Resources
15 Code, that are subject to a redemption payment pursuant to Section
16 14560 of the Public Resources Code.

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

26 *SEC. 2. No reimbursement is required by this act pursuant to*
27 *Section 6 of Article XIII B of the California Constitution because*
28 *the only costs that may be incurred by a local agency or school*
29 *district will be incurred because this act creates a new crime or*
30 *infraction, eliminates a crime or infraction, or changes the penalty*
31 *for a crime or infraction, within the meaning of Section 17556 of*
32 *the Government Code, or changes the definition of a crime within*
33 *the meaning of Section 6 of Article XIII B of the California*
34 *Constitution.*

35 ~~SECTION 1. Section 3294 of the Civil Code is amended to~~
36 ~~read:~~

37 ~~3294. (a) In an action for the breach of an obligation not arising~~
38 ~~from contract, where it is proven by clear and convincing evidence~~
39 ~~that the defendant has been guilty of oppression, fraud, or malice,~~
40 ~~the plaintiff, in addition to the actual damages, may recover~~

1 damages for the sake of example and by way of punishing the
2 defendant.

3 (b) ~~An employer shall not be liable for damages pursuant to
4 subdivision (a), based upon acts of an employee of the employer,
5 unless the employer had advance knowledge of the unfitness of
6 the employee and employed him or her with a conscious disregard
7 of the rights or safety of others or authorized or ratified the
8 wrongful conduct for which the damages are awarded or was
9 personally guilty of oppression, fraud, or malice. With respect to
10 a corporate employer, the advance knowledge and conscious
11 disregard, authorization, ratification or act of oppression, fraud,
12 or malice must be on the part of an officer, director, or managing
13 agent of the corporation.~~

14 (c) ~~As used in this section, the following definitions shall apply:~~

15 (1) ~~“Malice” means conduct which is intended by the defendant
16 to cause injury to the plaintiff or despicable conduct which is
17 carried on by the defendant with a willful and conscious disregard
18 of the safety or rights of others.~~

19 (2) ~~“Oppression” means despicable conduct that subjects a
20 person to cruel and unjust hardship in conscious disregard of that
21 person’s rights.~~

22 (3) ~~“Fraud” means an intentional misrepresentation, deceit, or
23 concealment of a material fact known to the defendant with the
24 intention on the part of the defendant of thereby depriving a person
25 of property or a legal right or otherwise causing injury.~~

26 (d) ~~Damages may be recovered pursuant to this section in an
27 action pursuant to Chapter 4 (commencing with Section 377.10)
28 of Title 3 of Part 2 of the Code of Civil Procedure based upon a
29 death which resulted from a homicide for which the defendant has
30 been convicted of a felony, whether or not the decedent died
31 instantly or survived the fatal injury for some period of time. The
32 procedures for joinder and consolidation contained in Section
33 377.62 of the Code of Civil Procedure shall apply to prevent
34 multiple recoveries of punitive or exemplary damages based upon
35 the same wrongful act.~~

36 (e) ~~The amendments to this section made by Chapter 1498 of
37 the Statutes of 1987 apply to all actions in which the initial trial
38 has not commenced prior to January 1, 1988.~~

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