

Introduced by Senator CalderonFebruary 21, 2013

An act to amend Sections 12013, 12240, and 12503 of, and to add Section 21606.3 to, the Business and Professions Code, relating to sealers.

LEGISLATIVE COUNSEL'S DIGEST

SB 485, as introduced, Calderon. Sealers: junk dealers and recyclers.

Existing law establishes the Division of Measurement Standards, administered by the State Sealer, within the Department of Food and Agriculture. Under existing law, the State Sealer, as well as county sealers, are authorized to enforce various provisions relating to weights and measures. Existing law authorizes a sealer, as a public officer, to arrest, without a warrant, a person whenever the officer has reasonable cause to believe that the person to be arrested has, in his or her presence, violated any of these provisions that are declared to be a public offense.

Upon written request of a resident of a county, existing law requires a sealer to test or cause to be tested, as soon as practicable, the weights, measures, or weighing or measuring instruments used for commercial purposes by the person designated in that request, provided that there appears reasonable grounds for testing.

Existing law requires a junk dealer or recycler to keep a written record of all sales and purchases made in the course of his or her business, as specified, and requires the junk dealer or recycler to report this information to the chief of police or to the sheriff, as specified. A violation of these provisions is a misdemeanor.

This bill would require a sealer who is responding to a request concerning the weights, measures, or weighing or measuring instruments of a junk dealer or recycler to also inspect the sales and purchase records

of the junk dealer or recycler to ensure compliance with the recordkeeping and reporting requirements described above. This bill would require a sealer to cite a junk dealer or recycler who is in violation of those recordkeeping or reporting requirements.

This bill would require a junk dealer or recycler to pay a supplemental fee to the Division of Measurement Standards in the amount that the division determines is necessary to cover its reasonable regulatory costs for enforcing these provisions and would authorize county boards of supervisors to charge junk dealers and recyclers an amount not to exceed the amount needed for county sealers to enforce these provisions.

By requiring county sealers to perform additional duties, 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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The recordkeeping and reporting requirements for
- 4 commercial scrap recycling transactions, as set forth generally in
- 5 Article 3 (commencing with Section 21600) of Chapter 9 of
- 6 Division 8 of the Business and Professions Code, are intended
- 7 primarily to discourage metal theft and to promote honest
- 8 competition within the scrap metal recycling industry.
- 9 (b) According to the Division of Measurement Standards, the
- 10 agency responsible for enforcement of weights and measures laws
- 11 and regulations, the primary functions carried out by the division
- 12 are to ensure fair and honest competition for industry and accurate
- 13 value comparison for consumers.
- 14 (c) Sealers of the division and county sealers are bona fide public
- 15 officers who have the authority to enforce certain criminal statutes
- 16 and to make arrests in order to ensure fair and honest competition
- 17 for industry and accurate value comparison for consumers.

1 (d) Because the division and county sealers are responsible for
2 periodically inspecting and regulating all weighing and measuring
3 devices utilized by all scrap recyclers doing business within the
4 state, they are perfectly suited to review and verify the
5 recordkeeping and reporting requirements for the scrap recycling
6 industry.

7 SEC. 2. Section 12013 of the Business and Professions Code
8 is amended to read:

9 12013. (a) Any sealer shall have the authority, as a public
10 officer, to arrest, without a warrant, any person whenever ~~such~~ *the*
11 officer has reasonable cause to believe that the person to be arrested
12 has, in his *or her* presence, violated any provision of this division,
13 the violation of which is declared to be a public ~~offense~~. *offense,*
14 *or any offense declared to be a misdemeanor in Section 21608.*

15 In any case in which an arrest is made pursuant to this authority
16 for an offense declared to be a misdemeanor or an infraction, the
17 arresting officer may, instead of taking the person arrested before
18 a magistrate, follow the procedure prescribed by Chapter 5C
19 (commencing with Section 853.5) of Title 3 of Part 2 of the Penal
20 Code, unless the arrested person demands to be taken before a
21 magistrate. The provisions of such chapter shall thereafter apply
22 with respect to any proceeding based upon the issuance of a citation
23 pursuant to this authority.

24 This subdivision shall not be interpreted to prevent further
25 restriction by the board of supervisors of a county of the authority
26 of a county sealer or his deputies to make arrests.

27 (b) There shall be no civil liability on the part of, and no cause
28 of action shall arise against, any person, acting pursuant to
29 subdivision (a) and within the scope of his authority, for false arrest
30 or false imprisonment arising out of any arrest which is lawful or
31 which the arresting officer, at the time of such arrest, had
32 reasonable cause to believe was lawful. No such officer shall be
33 deemed an aggressor or lose his right to self-defense by the use of
34 reasonable force to effect the arrest or to prevent escape or to
35 overcome resistance.

36 (c) Any sealer may serve all processes and notices throughout
37 the state; provided, that county sealers and their deputies are
38 authorized to serve processes and notices only within the
39 boundaries of the county which employs them.

1 SEC. 3. Section 12240 of the Business and Professions Code
2 is amended to read:

3 12240. (a) Except as otherwise provided in this section, the
4 board of supervisors, by ordinance, may charge an annual
5 registration fee, not to exceed the county's total cost of actually
6 inspecting *records or devices* or testing the devices as required by
7 law, to recover the costs of inspecting or testing weighing and
8 measuring devices required of the county sealer pursuant to Section
9 12210, *to cover the cost of enforcing Section 12503*, and to recover
10 the cost of carrying out Section 12211.

11 (b) (1) *For a junk dealer or recycler regulated pursuant to*
12 *Article 3 (commencing with Section 21600) of Chapter 9 of*
13 *Division 8 that is subject to the registration fee in this section, this*
14 *registration fee shall include an additional amount not to exceed*
15 *the amount needed for the duties imposed by subdivision (b) and*
16 *(c) of Section 12503.*

17 ~~(b)~~

18 (2) Except as otherwise provided in this section, the annual
19 registration fee shall not exceed the amount set forth in subdivisions
20 (f) to (r), inclusive.

21 (c) The county may collect the fees biennially, in which case
22 they shall not exceed twice the amount of an annual registration
23 fee. The ordinance shall be adopted pursuant to Article 7
24 (commencing with Section 25120) of Chapter 1 of Part 2 of
25 Division 2 of Title 3 of the Government Code.

26 (d) Retail gasoline pump meters, for which the above fees are
27 assessed, shall be inspected as frequently as required by regulation,
28 but not less than once every two years.

29 (e) Livestock scales, animal scales, and scales used primarily
30 for weighing feed and seed, for which the above fees are assessed,
31 shall be inspected as frequently as required by regulation.

32 (f) For purposes of this section, the annual registration fee for
33 a business that uses a commercial weighing or measuring device
34 or devices shall consist of a business location fee, a Department
35 of Food and Agriculture administrative fee, as specified in Section
36 12241, and a device fee, as specified in subdivisions (g) to (r),
37 inclusive. The business location fee and device fee shall not exceed
38 one hundred dollars (\$100) per business location, plus 100 percent
39 of the maximum applicable device fee listed in subdivisions (g)
40 to (r), inclusive.

1 (g) (1) For marinas, mobilehome parks, recreational vehicle
2 parks, and apartment complexes, where the owner of the marina,
3 park, or complex owns and is responsible for the utility meters,
4 the device fee shall not exceed the following:

5 (A) For water submeters, two dollars (\$2) per device per space
6 or apartment.

7 (B) For electric submeters, three dollars (\$3) per device per
8 space or apartment.

9 (C) For vapor submeters, four dollars (\$4) per device per space
10 or apartment.

11 (2) Marinas, mobilehome parks, recreational vehicle parks, and
12 apartment complexes for which the above fees are assessed shall
13 be inspected and tested as frequently as required by regulation.

14 (h) For weighing devices, other than livestock, with capacities
15 of 10,000 pounds or greater, the device fee shall not exceed two
16 hundred fifty dollars (\$250) per device; for weighing devices, other
17 than livestock scales, with capacities of at least 2,000 pounds but
18 less than 10,000 pounds, the device fee shall not exceed one
19 hundred fifty dollars (\$150) per device.

20 (i) This section does not apply to farm milk tanks.

21 (j) A scale or device used in a certified farmers' market, as
22 defined by Section 113742 of the Health and Safety Code, is not
23 required to be registered in the county where the market is
24 conducted, if the scale or device has an unexpired seal for the
25 current year, issued by a licensed California county sealer.

26 (k) For livestock scales with capacities of 10,000 pounds or
27 greater, the device fee shall not exceed one hundred fifty dollars
28 (\$150) per device; for livestock scales with capacities of at least
29 2,000 pounds but less than 10,000 pounds, the device fee shall not
30 exceed one hundred dollars (\$100) per device.

31 (l) For liquefied petroleum gas (LPG) meters, truck mounted
32 or stationary, the device fee shall not exceed one hundred
33 eighty-five dollars (\$185) per device.

34 (m) For wholesale and vehicle meters, the device fee shall not
35 exceed seventy-five dollars (\$75) per device.

36 (n) For computing scales, the device fee shall not exceed twenty
37 dollars (\$20) per device. For purposes of this subdivision, a
38 computing scale shall be a weighing device with a capacity of less
39 than 100 pounds that indicates the money value of any commodity
40 weighed, at predetermined unit prices, throughout all or part of

1 the weighing range of the scale. For the purposes of this
2 subdivision, the portion of the annual registration fee consisting
3 of the business location fee and the device fees authorized by this
4 subdivision shall not exceed the sum of one thousand dollars
5 (\$1,000) for each business location.

6 (o) For jewelry and prescription scales, the device fee shall not
7 exceed eighty dollars (\$80) per device. For purposes of this
8 subdivision, a jewelry or prescription scale shall be a scale that
9 meets the specifications, tolerances, and sensitivity requirements
10 established or adopted by the secretary applicable to those devices
11 in accordance with Section 12107.

12 (p) For weighing devices, other than computing, jewelry, and
13 prescription scales as defined in subdivisions (n) and (o), with
14 capacities of at least 100 pounds but less than 2,000 pounds, the
15 device fee shall not exceed fifty dollars (\$50) per device.

16 (q) For vehicle odometers utilized to charge mileage usage fees
17 in vehicle rental transactions or in computing other charges for
18 service, including, but not limited to, ambulance, towing, or
19 limousine services, the device fee shall not exceed sixty dollars
20 (\$60) per device.

21 (r) This section does not apply to odometers in rental passenger
22 vehicles, as defined in Section 465 of the Vehicle Code, that are
23 subject to Section 1936 of the Civil Code. If a person files a
24 complaint with the county sealer regarding the accuracy of a rental
25 passenger vehicle odometer, the county sealer may charge a fee
26 to the operator of the vehicle rental business sufficient to recover,
27 but not to exceed, the reasonable cost of testing the device in
28 investigation of the complaint.

29 (s) For vehicle odometers utilized to charge mileage usage fees
30 in vehicle rental transactions involving nonpassenger vehicles that
31 are not subject to Section 1936 of the Civil Code, the portion of
32 the annual registration fee consisting of the business location fee
33 and the device fee authorized pursuant to subdivision (q) shall not
34 exceed the sum of three hundred forty dollars (\$340) for each
35 business location.

36 (t) For all other commercial weighing or measuring devices not
37 listed in subdivisions (g) to (r), inclusive, the device fee shall not
38 exceed twenty dollars (\$20) per device. For the purposes of this
39 subdivision, the total portion of the annual registration fee
40 consisting of the business location fee and the device fees

1 authorized by this subdivision shall not exceed the sum of one
2 thousand dollars (\$1,000), for each business location.

3 (u) For the purposes of this section, a single business location
4 is defined as:

5 (1) Each business location that uses one or more categories or
6 types of commercial devices as set forth in subdivisions (g) to (p),
7 inclusive, and in subdivision (t), that require the use of specialized
8 testing equipment and that necessitates not more than one
9 inspection trip by a weights and measures official.

10 (2) Each vehicle, except for those vehicles that are employed
11 in vehicle rental transactions, in which one or more commercial
12 devices is installed and used.

13 (3) (A) For vehicles that are employed in vehicle rental
14 transactions and that are not subject to Section 1936 of the Civil
15 Code, each business location at which vehicles are stored or
16 maintained by a vehicle rental company for the purposes of renting
17 vehicles to customers.

18 (B) A facility that meets all of the following criteria shall not
19 be considered a business location for the purposes of this
20 paragraph:

21 (i) The facility is not wholly, or in any part, owned, leased, or
22 operated by the vehicle rental company.

23 (ii) The facility is not operated or staffed by an employee of the
24 vehicle rental company.

25 (iii) The facility stores or maintains, on a temporary basis,
26 vehicles at the location for customer convenience.

27 (C) If a person files a complaint with the county sealer regarding
28 the accuracy of an odometer in a vehicle found or located at a
29 facility described in subparagraph (B), the county sealer may
30 charge a fee to the operator of the vehicle rental company sufficient
31 to recover, but not to exceed, the reasonable cost of testing the
32 device in investigation of the complaint.

33 SEC. 4. Section 12503 of the Business and Professions Code
34 is amended to read:

35 12503. (a) Upon a written request of any resident of a county,
36 there appearing reasonable ground therefor, the sealer shall test or
37 cause to be tested, as soon thereafter as is practicable, the weights,
38 measures, or weighing or measuring instruments used for
39 commercial purposes by the person designated in that request.

1 (b) If the request set forth in subdivision (a) concerns the
2 weights, measures, or weighing or measuring instruments of a
3 junk dealer or recycler, the sealer shall inspect the record of sales
4 and purchases of the junk dealer or recycler to ensure compliance
5 with Sections 21605 and 21606.

6 (c) If the sealer determines that the junk dealer or recycler is
7 in violation of the recordkeeping or reporting requirements, the
8 sealer shall cite the junk dealer or recycler for a misdemeanor
9 violation as set forth in Section 21608.

10 (d) Costs of enforcing subdivisions (b) and (c) shall be paid
11 from the special account established in Section 21606.3.

12 SEC. 5. Section 21606.3 is added to the Business and
13 Professions Code, to read:

14 21606.3. (a) Every junk dealer and recycler shall pay a
15 supplemental fee to the Division of Measurement Standards that
16 the division determines is necessary to cover its reasonable
17 regulatory costs for enforcing subdivisions (b) and (c) of Section
18 12503.

19 (b) The fees shall be deposited into a special account within the
20 Department of Food and Agriculture Fund.

21 SEC. 6. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 a local agency or school district has the authority to levy service
24 charges, fees, or assessments sufficient to pay for the program or
25 level of service mandated by this act, within the meaning of Section
26 17556 of the Government Code.

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