

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 485

**Introduced by Senator Calderon
(Coauthor: Senator Berryhill)**

February 21, 2013

An act to amend Sections ~~12013, 12240, and 12503~~ *12704 and 12709* of, and to add Section ~~21606.3~~ *12703.1* to, the Business and Professions Code, relating to ~~sealers~~: *weighmasters*.

LEGISLATIVE COUNSEL'S DIGEST

SB 485, as amended, Calderon. ~~Sealers: Weighmasters~~: junk dealers and recyclers.

Existing law vests the Department of Food and Agriculture with general supervision of weights and measures and weighing and measuring devices sold or used in the state, and authorizes the Secretary of Food and Agriculture to exercise any power conferred upon the department or upon the State Sealer, who is the chief of the division of the department charged with the enforcement of the provisions relating to weights and measures. Existing law defines a weighmaster as any person, who, for hire or otherwise, weighs, measures, or counts any commodity and issues a statement or memorandum of the weight, measure, or count which is used as the basis for either the purchase or sale of that commodity or charge for service. Existing law requires a weighmaster to obtain a license and to pay a license fee, as prescribed. Existing law authorizes the secretary to refuse to grant a license, to refuse to renew a license, or to revoke or suspend a license if, after a specified hearing, the secretary is satisfied that the applicant or licensee is not qualified to capably or reliably perform the duties of a

weighmaster or has been found guilty of a misdemeanor relating to the regulation of weighmasters.

This bill would require the department to require a recycler or junk dealer, as defined, who is an applicant for a new weighmaster license or a renewal of a weighmaster license to furnish specified additional information on the application. This bill would require the department to issue a license to a junk dealer or recycler upon receipt of an application for a new license or the renewal of a license that contains the appropriate information and fee. Upon issuance of a license to a junk dealer or recycler, this bill would require the department to make a thorough investigation of all of the information contained in the application within 90 days. If the department determines that information submitted in the application is materially inaccurate, this bill would require the department to revoke the license issued to the junk dealer or recycler unless the junk dealer or recycler complies with these information requirements within 14 days of notice, as specified. This bill would provide that a junk dealer or recycler whose license has been revoked is entitled to a hearing. This bill would require a junk dealer or recycler to pay an additional unspecified fee to the department for the administration and enforcement of these provisions.

~~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-no*.

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)~~

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

8 *SEC. 2. Section 12703.1 is added to the Business and*
9 *Professions Code, to read:*

10 12703.1. (a) *In addition to any other requirements for issuance*
11 *of a license pursuant to this chapter, if the applicant is a recycler*
12 *or junk dealer as defined in Section 21601, the department shall*
13 *require the applicant to furnish all of the following information*
14 *accurately on any application for a new license or the renewal of*
15 *a license issued pursuant to this chapter:*

16 (1) *A copy of the applicant's current business license.*

17 (2) *A statement indicating that the applicant has either filed an*
18 *application for a stormwater permit or is not required to obtain*
19 *a stormwater permit.*

20 (3) *A statement indicating that the applicant has the equipment*
21 *necessary to comply with the photographic and thumbprinting*
22 *requirements for the purchase and sale of nonferrous materials*
23 *pursuant to Section 21608.5 or a statement indicating that the*
24 *applicant will not be purchasing or selling nonferrous materials*
25 *and is not required to comply with Section 21608.5.*

26 (4) *The name or names of any deputy weighmasters.*

27 (b) *The department shall issue a license to a junk dealer or*
28 *recycler upon receipt of an application for a new license or*
29 *renewal of a license that contains the information required by*
30 *subdivision (a) and that is accompanied by the appropriate fee.*

31 (c) *Upon issuance of a license to a junk dealer or recycler, the*
32 *department shall make a thorough investigation of all of the*
33 *information contained in the application within 90 days.*
34 *Notwithstanding Section 12708, if the department determines that*
35 *the information submitted pursuant to subdivision (a) is materially*
36 *inaccurate, the department shall revoke the license issued to a*
37 *junk dealer or recycler unless the junk dealer or recycler complies*
38 *with the requirements of subdivision (a) within 14 days of notice*
39 *from the department of a proposed revocation pursuant to this*
40 *subdivision. A junk dealer or recycler whose license has been*

1 *revoked pursuant to this subdivision is entitled to a hearing*
2 *conducted pursuant to Chapter 5 (commencing with Section 11500)*
3 *of Part 1 of Division 3 of Title 2 of the Government Code.*

4 *SEC. 3. Section 12704 of the Business and Professions Code*
5 *is amended to read:*

6 12704. (a) A weighmaster shall pay to the department the
7 following license fee for each license year as applicable to the
8 operation:

9 (1) Seventy-five dollars (\$75) if the weighmaster is operating
10 at a fixed location.

11 (2) Thirty dollars (\$30) for each additional fixed location the
12 weighmaster is operating at.

13 (3) Two hundred dollars (\$200) if the weighmaster is operating
14 at other than a fixed location.

15 (4) Twenty dollars (\$20) for each deputy weighmaster.

16 (5) _____ dollars (\$_____) *if the weighmaster is a recycler or*
17 *junk dealer as defined in Section 21601 or is performing services*
18 *on behalf of a recycler or junk dealer.*

19 (b) "License year" means the period of time beginning with the
20 first day of the month the weighmaster is required to be licensed
21 in this state, and ending on the date designated by the director for
22 expiration of the license, or yearly intervals after the first renewal.

23 (c) "Location" means a premise on which weighing, measuring,
24 or counting devices are used.

25 *SEC. 4. Section 12709 of the Business and Professions Code*
26 *is amended to read:*

27 12709. (a) All license fees collected ~~pursuant~~ *pursuant* to this
28 chapter shall be deposited in the Department of Food and
29 Agriculture Fund to be expended by the department for the
30 administration and enforcement of this chapter, *except as provided*
31 *in subdivision (b).*

32 (b) *License fees collected pursuant to paragraph (5) of*
33 *subdivision (a) of Section 12704 shall be deposited in a special*
34 *account in the Department of Food and Agriculture Fund to be*
35 *expended by the department for the administration and enforcement*
36 *of Section 12703.1.*

37 ~~SEC. 2. Section 12013 of the Business and Professions Code~~
38 ~~is amended to read:~~

39 ~~12013. (a) Any scaler shall have the authority, as a public~~
40 ~~officer, to arrest, without a warrant, any person whenever the~~

1 officer has reasonable cause to believe that the person to be arrested
2 has, in his or her presence, violated any provision of this division,
3 the violation of which is declared to be a public offense, or any
4 offense declared to be a misdemeanor in Section 21608.

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

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

17 (b) There shall be no civil liability on the part of, and no cause
18 of action shall arise against, any person, acting pursuant to
19 subdivision (a) and within the scope of his authority, for false arrest
20 or false imprisonment arising out of any arrest which is lawful or
21 which the arresting officer, at the time of such arrest, had
22 reasonable cause to believe was lawful. No such officer shall be
23 deemed an aggressor or lose his right to self-defense by the use of
24 reasonable force to effect the arrest or to prevent escape or to
25 overcome resistance.

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

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

32 12240. (a) Except as otherwise provided in this section, the
33 board of supervisors, by ordinance, may charge an annual
34 registration fee, not to exceed the county's total cost of actually
35 inspecting records or devices or testing the devices as required by
36 law, to recover the costs of inspecting or testing weighing and
37 measuring devices required of the county sealer pursuant to Section
38 12210, to cover the cost of enforcing Section 12503, and to recover
39 the cost of carrying out Section 12211.

1 ~~(b) (1) For a junk dealer or recycler regulated pursuant to Article~~
2 ~~3 (commencing with Section 21600) of Chapter 9 of Division 8~~
3 ~~that is subject to the registration fee in this section, this registration~~
4 ~~fee shall include an additional amount not to exceed the amount~~
5 ~~needed for the duties imposed by subdivision (b) and (c) of Section~~
6 ~~12503.~~

7 ~~(2) Except as otherwise provided in this section, the annual~~
8 ~~registration fee shall not exceed the amount set forth in subdivisions~~
9 ~~(f) to (r), inclusive.~~

10 ~~(e) The county may collect the fees biennially, in which case~~
11 ~~they shall not exceed twice the amount of an annual registration~~
12 ~~fee. The ordinance shall be adopted pursuant to Article 7~~
13 ~~(commencing with Section 25120) of Chapter 1 of Part 2 of~~
14 ~~Division 2 of Title 3 of the Government Code.~~

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

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

21 ~~(f) For purposes of this section, the annual registration fee for~~
22 ~~a business that uses a commercial weighing or measuring device~~
23 ~~or devices shall consist of a business location fee, a Department~~
24 ~~of Food and Agriculture administrative fee, as specified in Section~~
25 ~~12241, and a device fee, as specified in subdivisions (g) to (r),~~
26 ~~inclusive. The business location fee and device fee shall not exceed~~
27 ~~one hundred dollars (\$100) per business location, plus 100 percent~~
28 ~~of the maximum applicable device fee listed in subdivisions (g)~~
29 ~~to (r), inclusive.~~

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

34 ~~(A) For water submeters, two dollars (\$2) per device per space~~
35 ~~or apartment.~~

36 ~~(B) For electric submeters, three dollars (\$3) per device per~~
37 ~~space or apartment.~~

38 ~~(C) For vapor submeters, four dollars (\$4) per device per space~~
39 ~~or apartment.~~

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

4 ~~(h) For weighing devices, other than livestock, with capacities~~
5 ~~of 10,000 pounds or greater, the device fee shall not exceed two~~
6 ~~hundred fifty dollars (\$250) per device; for weighing devices, other~~
7 ~~than livestock scales, with capacities of at least 2,000 pounds but~~
8 ~~less than 10,000 pounds, the device fee shall not exceed one~~
9 ~~hundred fifty dollars (\$150) per device.~~

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

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

16 ~~(k) For livestock scales with capacities of 10,000 pounds or~~
17 ~~greater, the device fee shall not exceed one hundred fifty dollars~~
18 ~~(\$150) per device; for livestock scales with capacities of at least~~
19 ~~2,000 pounds but less than 10,000 pounds, the device fee shall not~~
20 ~~exceed one hundred dollars (\$100) per device.~~

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

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

26 ~~(n) For computing scales, the device fee shall not exceed twenty~~
27 ~~dollars (\$20) per device. For purposes of this subdivision, a~~
28 ~~computing scale shall be a weighing device with a capacity of less~~
29 ~~than 100 pounds that indicates the money value of any commodity~~
30 ~~weighed, at predetermined unit prices, throughout all or part of~~
31 ~~the weighing range of the scale. For the purposes of this~~
32 ~~subdivision, the portion of the annual registration fee consisting~~
33 ~~of the business location fee and the device fees authorized by this~~
34 ~~subdivision shall not exceed the sum of one thousand dollars~~
35 ~~(\$1,000) for each business location.~~

36 ~~(o) For jewelry and prescription scales, the device fee shall not~~
37 ~~exceed eighty dollars (\$80) per device. For purposes of this~~
38 ~~subdivision, a jewelry or prescription scale shall be a scale that~~
39 ~~meets the specifications, tolerances, and sensitivity requirements~~

1 established or adopted by the secretary applicable to those devices
2 in accordance with Section 12107.

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

7 ~~(q) For vehicle odometers utilized to charge mileage usage fees
8 in vehicle rental transactions or in computing other charges for
9 service, including, but not limited to, ambulance, towing, or
10 limousine services, the device fee shall not exceed sixty dollars
11 (\$60) per device.~~

12 ~~(r) This section does not apply to odometers in rental passenger
13 vehicles, as defined in Section 465 of the Vehicle Code, that are
14 subject to Section 1936 of the Civil Code. If a person files a
15 complaint with the county sealer regarding the accuracy of a rental
16 passenger vehicle odometer, the county sealer may charge a fee
17 to the operator of the vehicle rental business sufficient to recover,
18 but not to exceed, the reasonable cost of testing the device in
19 investigation of the complaint.~~

20 ~~(s) For vehicle odometers utilized to charge mileage usage fees
21 in vehicle rental transactions involving nonpassenger vehicles that
22 are not subject to Section 1936 of the Civil Code, the portion of
23 the annual registration fee consisting of the business location fee
24 and the device fee authorized pursuant to subdivision (q) shall not
25 exceed the sum of three hundred forty dollars (\$340) for each
26 business location.~~

27 ~~(t) For all other commercial weighing or measuring devices not
28 listed in subdivisions (g) to (r), inclusive, the device fee shall not
29 exceed twenty dollars (\$20) per device. For the purposes of this
30 subdivision, the total portion of the annual registration fee
31 consisting of the business location fee and the device fees
32 authorized by this subdivision shall not exceed the sum of one
33 thousand dollars (\$1,000), for each business location.~~

34 ~~(u) For the purposes of this section, a single business location
35 is defined as:~~

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

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

4 ~~(3) (A) For vehicles that are employed in vehicle rental~~
5 ~~transactions and that are not subject to Section 1936 of the Civil~~
6 ~~Code, each business location at which vehicles are stored or~~
7 ~~maintained by a vehicle rental company for the purposes of renting~~
8 ~~vehicles to customers.~~

9 ~~(B) A facility that meets all of the following criteria shall not~~
10 ~~be considered a business location for the purposes of this~~
11 ~~paragraph:~~

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

14 ~~(ii) The facility is not operated or staffed by an employee of the~~
15 ~~vehicle rental company.~~

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

18 ~~(C) If a person files a complaint with the county sealer regarding~~
19 ~~the accuracy of an odometer in a vehicle found or located at a~~
20 ~~facility described in subparagraph (B), the county sealer may~~
21 ~~charge a fee to the operator of the vehicle rental company sufficient~~
22 ~~to recover, but not to exceed, the reasonable cost of testing the~~
23 ~~device in investigation of the complaint.~~

24 ~~SEC. 4. Section 12503 of the Business and Professions Code~~
25 ~~is amended to read:~~

26 ~~12503. (a) Upon a written request of any resident of a county,~~
27 ~~there appearing reasonable ground therefor, the sealer shall test or~~
28 ~~cause to be tested, as soon thereafter as is practicable, the weights,~~
29 ~~measures, or weighing or measuring instruments used for~~
30 ~~commercial purposes by the person designated in that request.~~

31 ~~(b) If the request set forth in subdivision (a) concerns the~~
32 ~~weights, measures, or weighing or measuring instruments of a junk~~
33 ~~dealer or recycler, the sealer shall inspect the record of sales and~~
34 ~~purchases of the junk dealer or recycler to ensure compliance with~~
35 ~~Sections 21605 and 21606.~~

36 ~~(c) If the sealer determines that the junk dealer or recycler is in~~
37 ~~violation of the recordkeeping or reporting requirements, the sealer~~
38 ~~shall cite the junk dealer or recycler for a misdemeanor violation~~
39 ~~as set forth in Section 21608.~~

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

3 ~~SEC. 5. Section 21606.3 is added to the Business and~~
4 ~~Professions Code, to read:~~

5 ~~21606.3. (a) Every junk dealer and recycler shall pay a~~
6 ~~supplemental fee to the Division of Measurement Standards that~~
7 ~~the division determines is necessary to cover its reasonable~~
8 ~~regulatory costs for enforcing subdivisions (b) and (c) of Section~~
9 ~~12503.~~

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

12 ~~SEC. 6. No reimbursement is required by this act pursuant to~~
13 ~~Section 6 of Article XIII B of the California Constitution because~~
14 ~~a local agency or school district has the authority to levy service~~
15 ~~charges, fees, or assessments sufficient to pay for the program or~~
16 ~~level of service mandated by this act, within the meaning of Section~~
17 ~~17556 of the Government Code.~~