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AB-236 Weighmasters: exemptions: pawnbrokers and secondhand dealers. (2015-2016)

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Assembly Bill No. 236

CHAPTER 103

An act to amend Sections 12701 and 12703.1 of the Business and Professions Code, relating to weighmasters.

[Approved by Governor July 15, 2015. Filed with Secretary of State July 15, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 236, Lackey. Weighmasters: exemptions: pawnbrokers and secondhand dealers.

Existing law requires a person who weighs, measures, or counts a commodity and issues a statement or memorandum of the weight, measure, or count that is used as the basis for either the purchase or sale of that commodity or charge for service, to obtain a license as a weighmaster from the Department of Food and Agriculture, and imposes a license fee and various other requirements on weighmasters. Existing law exempts specified persons from those provisions by establishing a list of persons who are not weighmasters. Existing law, until January 1, 2019, requires the department to require a recycler or junk dealer 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 add licensed pawnbrokers and secondhand dealers to the list of persons who are not weighmasters and would specify that pawnbrokers and secondhand dealers are exempt from the above-described provision applicable to a junk dealer or recycler who is an applicant for a weighmaster license.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The intent of the Legislature in enacting this measure is to clarify that licensed pawnbrokers and secondhand dealers are not weighmasters.

(b) The Legislature finds and declares that this clarification is necessary following the enactment of Senate Bill 485 of the 2013–14 Regular Session of the Legislature, and the Department of Food and Agriculture's subsequent administrative interpretation that pawnbrokers and secondhand dealers are subject to the provisions regulating weighmasters.

SEC. 2. Section 12701 of the Business and Professions Code, as amended by Section 1 of Chapter 693 of the Statutes of 2012, is amended to read:

12701. The following persons are not weighmasters:

(a) Retailers weighing, measuring, or counting commodities for sale by them in retail stores in the presence of, and directly to, consumers.

(b) Except for persons subject to Section 12730, producers of agricultural commodities or livestock, who weigh commodities produced or purchased by them or by their producer neighbors, when no charge is made for the weighing, or when no signed or initialed statement or memorandum is issued of the weight upon which a purchase or sale of the commodity is based.

(c) Common carriers issuing bills of lading on which are recorded, for the purpose of computing transportation charges, the weights of commodities offered for transportation, including carriers of household goods when transporting shipments weighing less than 1,000 pounds.

(d) Milk samplers and weighers licensed pursuant to Article 8 (commencing with Section 35161) of Chapter 12 of Part 1 of Division 15 of the Food and Agricultural Code, when performing the duties for which they are licensed.

(e) Persons who measure the amount of oil, gas, or other fuels for purposes of royalty computation and payment, or other operations of fuel and oil companies and their retail outlets.

(f) Newspaper publishers weighing or counting newspapers for sale to dealers or distributors.

(g) Textile maintenance establishments weighing, counting, or measuring any articles in connection with the business of those establishments.

(h) County sanitation districts operating pursuant to Chapter 3 (commencing with Section 4700) of Part 3 of Division 5 of the Health and Safety Code, garbage and refuse disposal districts operating pursuant to Chapter 2 (commencing with Section 49100) of Part 8 of Division 30 of the Public Resources Code, and solid waste facilities, as defined in Section 40194 of the Public Resources Code.

(i) Facilities that handle medical waste and that report net weights, and not estimates, to the generator of the medical waste and the Department of Public Health in accordance with the provisions of the Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code).

(j) Persons who purchase scrap metal or salvage materials pursuant to a nonprofit recycling program, or recycling centers certified pursuant to Division 12.1 (commencing with Section 14500) of the Public Resources Code that purchase empty beverage containers from the public for recycling.

(k) Pest control operators licensed pursuant to Chapter 4 (commencing with Section 11701) of Division 6 of the Food and Agricultural Code.

(l) Retailers or recycling centers established solely for the redemption of empty beverage containers, as that phrase is defined in Section 14512 of the Public Resources Code, who are weighing, measuring, or counting salvage or returnable materials for purchase or redemption by them in retail stores, or, in the case of recycling centers, on the retail store premises or on a parking lot immediately adjacent to a retail store that is used for the purpose of parking by the store customers, directly from and in the presence of the seller. "Retailer" means an entity that derives 90 percent or more of its income from the sale of small quantities of food or nonfood items, or both, directly to consumers. "Salvage materials" means used paper products and used containers made of aluminum, tin, glass, or plastic.

(m) Any log scaler who performs log scaling functions, except weighing, as defined in the United States Forest Service Handbook, Supplement No. 4 of March 1987.

(n) Pawnbrokers licensed pursuant to Chapter 3 (commencing with Section 21300) of Division 8 of the Financial Code, and secondhand dealers licensed pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8, when the pawnbroker or secondhand dealer weighs property that it acquires and reports the acquisition of the property pursuant to Section 21208 of the Financial Code or Article 4 (commencing with Section 21625) of Chapter 9 of Division 8, respectively.

(o) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 3. Section 12701 of the Business and Professions Code, as added by Section 2 of Chapter 693 of the Statutes of 2012, is amended to read:

12701. The following persons are not weighmasters:

(a) Retailers weighing, measuring, or counting commodities for sale by them in retail stores in the presence of, and directly to, consumers.

(b) Except for persons subject to Section 12730, producers of agricultural commodities or livestock, who weigh commodities produced or purchased by them or by their producer neighbors, when no charge is made for the weighing, or when no signed or initialed statement or memorandum is issued of the weight upon which a purchase or sale of the commodity is based.

(c) Common carriers issuing bills of lading on which are recorded, for the purpose of computing transportation charges, the weights of commodities offered for transportation, including carriers of household goods when transporting shipments weighing less than 1,000 pounds.

(d) Milk samplers and weighers licensed pursuant to Article 8 (commencing with Section 35161) of Chapter 12 of Part 1 of Division 15 of the Food and Agricultural Code, when performing the duties for which they are licensed.

(e) Persons who measure the amount of oil, gas, or other fuels for purposes of royalty computation and payment, or other operations of fuel and oil companies and their retail outlets.

(f) Newspaper publishers weighing or counting newspapers for sale to dealers or distributors.

(g) Textile maintenance establishments weighing, counting, or measuring any articles in connection with the business of those establishments.

(h) County sanitation districts operating pursuant to Chapter 3 (commencing with Section 4700) of Part 3 of Division 5 of the Health and Safety Code, garbage and refuse disposal districts operating pursuant to Chapter 2 (commencing with Section 49100) of Part 8 of Division 30 of the Public Resources Code, and solid waste facilities, as defined in Section 40194 of the Public Resources Code.

(i) Persons who purchase scrap metal or salvage materials pursuant to a nonprofit recycling program, or recycling centers certified pursuant to Division 12.1 (commencing with Section 14500) of the Public Resources Code that purchase empty beverage containers from the public for recycling.

(j) Pest control operators licensed pursuant to Chapter 4 (commencing with Section 11701) of Division 6 of the Food and Agricultural Code.

(k) Retailers, or recycling centers established solely for the redemption of empty beverage containers, as that phrase is defined in Section 14512 of the Public Resources Code, who are weighing, measuring, or counting salvage or returnable materials for purchase or redemption by them in retail stores, or, in the case of recycling centers, on the retail store premises or on a parking lot immediately adjacent to a retail store that is used for the purpose of parking by the store customers, directly from and in the presence of the seller. "Retailer" means an entity that derives 90 percent or more of its income from the sale of small quantities of food or nonfood items, or both, directly to consumers. "Salvage materials" means used paper products and used containers made of aluminum, tin, glass, or plastic.

(l) Any log scaler who performs log scaling functions, except weighing, as defined in the United States Forest Service Handbook, Supplement No. 4 of March 1987.

(m) Pawnbrokers licensed pursuant to Chapter 3 (commencing with Section 21300) of Division 8 of the Financial Code, and secondhand dealers licensed pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8, when the pawnbroker or secondhand dealer weighs property that it acquires and reports the acquisition of the property pursuant to Section 21208 of the Financial Code or Article 4 (commencing with Section 21625) of Chapter 9 of Division 8, respectively.

(n) This section shall become operative on January 1, 2017.

SEC. 4. Section 12703.1 of the Business and Professions Code is amended to read:

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

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

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

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

(4) A statement indicating that the applicant has requested to receive theft alert notifications pursuant to subdivision (a) of Section 21608.7, unless that requirement does not apply pursuant to subdivision (b) of that section.

(5) The name or names of any deputy weighmasters.

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

(c) (1) On or before December 31, 2014, upon issuance of a license to a junk dealer or recycler, or renewal of such a license, the department shall make a thorough investigation of all of the information contained in the application within 90 days. If the license is issued or renewed on or after January 1, 2015, the department shall make a thorough investigation of all the information contained in the application within 90 days for a new license, and within one calendar year for a renewal of a license.

(2) Notwithstanding Section 12708, if the department determines that the information submitted pursuant to subdivision (a) is materially inaccurate, the department shall revoke the license issued to a junk dealer or recycler unless the junk dealer or recycler complies with the requirements of subdivision (a) within 14 days of notice from the department of a proposed revocation pursuant to this subdivision.

(3) A junk dealer or recycler whose license has been revoked pursuant to this subdivision is entitled to a hearing conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) The secretary may enter into a cooperative agreement with any county sealer to carry out the provisions of this section.

(e) This section shall not apply to a pawnbroker licensed pursuant to Chapter 3 (commencing with Section 21300) of Division 8 of the Financial Code and a secondhand dealer licensed pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8.

(f) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.