

Date of Hearing: May 3, 2022

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

AB 1760 (Rodriguez) – As Amended April 6, 2022

**SUBJECT:** Bulk merchandise pallets

**SUMMARY:** This bill would authorize a junk dealer or recycler to purchase bulk merchandise pallets from a seller, as provided, and would permit a junk dealer or recycler to acquire bulk merchandise pallets from sellers who cannot locate the pallet owner, as specified. Specifically, **this bill would:**

- 1) Clarify a junk dealer or recycler's ability to *purchase* bulk merchandise pallets marked with an indicia of ownership from a seller if the seller provides one of the following:
  - A receipt from the indicated owner verifying the seller's current ownership.
  - A document indicating that the seller is authorized by the indicated owner to sell the merchandise pallets.
- 2) Provide that the authorization in 1), above, does not prohibit a junk dealer or recycler from acquiring good faith possession of merchandise pallets based on the representations of the seller that the indicated owner cannot be located or has failed to retrieve the merchandise pallets on a timely basis.
- 3) Provides that a junk dealer or recycler who acquires good faith possession may require payment of reasonable storage fees for the merchandise pallets if the indicated owner demands a return within 35 calendar days after the junk dealer or recycler notifies the indicated owner of having acquired good faith possession.
- 4) Provides, after 35 calendar days, that the owner shall be deemed to have relinquished possession of the merchandise pallets, at which time the junk dealer or recycler may either sell the pallets or charge reasonable storage fees if the indicated owner demands a return and the pallets are still in the possession of the junk dealer or recycler.
- 5) Makes technical, clarifying, or otherwise nonsubstantive statutory changes.

**EXISTING LAW:**

- 1) Regulates junk dealers and recyclers and defines "junk" as secondhand and used machinery and all ferrous (containing iron) and nonferrous (excludes iron) scrap metals (as defined) and alloys, including any and all secondhand and used furniture, pallets, or other personal property, excluding livestock. (Bus.& Prof. Code Sec. 21600.)
- 2) Requires junk dealers and recyclers to keep a written record of all junk sales and purchases for at least two years and requires the written information to be reported to the chief of police or sheriff, as specified, and makes it a misdemeanor to make a false or fictitious statement in the written record. The written record must include:

- The place and date of the transaction.
  - The name, driver's license number and state of issue, and the license plate number and state of issue of any vehicle used in transporting the junk.
  - The name and address of each person to whom the junk is sold and that person's vehicle license number.
  - A description of the junk purchased or sold.
  - A signed statement indicating that the seller owns or is authorized to sell the junk. (Bus.& Prof. Code Sec. 21606.)
- 3) Makes it a crime for an unauthorized person, as defined, to possess a merchandise pallet or for a person other than its owner to obliterate the identification notice on a merchandise pallet. (Bus.& Prof. Code Sec. 22753.)
  - 4) Requires any person or entity purchasing plastic bulk merchandise containers who is in the business of recycling, shredding, or destruction of plastic bulk merchandise containers, as defined, to obtain a proof of ownership record and other identifying information from a person selling five or more containers, and to retain the required record for one year from the date of purchase or delivery, as specified. Makes a violation of these provisions a misdemeanor. (Bus.& Prof. Code Sec. 22755.)
  - 5) Prohibits a junk dealer or recycler from purchasing or receiving bulk merchandise pallets marked with an indicia of ownership from any person or entity other than the indicated owner. (Bus.& Prof. Code Sec. 21609.7.)
  - 6) Permits a junk dealer or recycler to purchase pallets from a seller that is not the indicated owner only if the seller or transferor provides a receipt from the indicated owner verifying the seller's current ownership or a document indicating that the seller or transferor is authorized by the indicated owner to sell or transfer the merchandise pallets. Copies of these documents shall be maintained by the junk dealer or recycler as part of the written record of the transaction. (Bus.& Prof. Code Sec. 21609.7.)
  - 7) For the purposes of the two provisions above, defines "indicia of ownership" to mean "words, symbols, or registered trademarks printed, stamped, etched, attached, or otherwise displayed on the exterior surface of the merchandise pallet that reasonably identifies the owner." (Bus.& Prof. Code Sec. 21609.7.)
  - 8) Defines "merchandise pallet" as a wooden or plastic carrier or container of specified size, used by a manufacturer or distributor to transport merchandise to retail outlets, which has a notice permanently affixed to it identifying the owner of the pallet and providing other specified information. (Bus.& Prof. Code Sec. 22750.)

**FISCAL EFFECT:** None. This bill has been keyed nonfiscal by the Legislative Counsel.

**COMMENTS:**

1) **Purpose of this bill:** This bill seeks to permit junk dealers and recyclers to acquire pallets with an indicia of ownership from a seller who is not the indicated owner, as specified. This bill is sponsored by the North American Pallet Association (NAPA).

2) **Author's statement:** According to the Author:

AB 1760 would alleviate the need for pallet transferors to obtain ownership of pallets in order to move and store them on behalf of businesses. Specifically, this bill would revise provisions of law that prohibit junk dealers and recyclers from purchasing *or* receiving bulk merchandise pallets marked with an indicia of ownership from anyone except the owner to allow only to purchased pallets. This will allow pallets received in good faith, not those paid for, to be marked with an indicia of ownership.

Additionally, this bill would provide a time limit for when pallets may be claimed as owned by the manufacturer. After 35 days, junk dealers or recyclers may sell or charge reasonable storage fees, should the indicated owner demand return of the abandoned pallets.

3) **Background:** Approximately one decade ago, this Legislature passed AB 1583 (Hernández, Ch. 300, Stats. 2012) which prohibits junk dealers and recyclers from purchasing or receiving bulk merchandise pallets marked with indicia of ownership from anyone except the indicated owner, unless the seller provides proof of ownership, such as a receipt from the indicated owner. MillerCoors, the sponsor of that bill, argued that the bill was needed to address a serious problem with the theft of plastic. MillerCoors wrote:

In December of 2011, the L.A. County Sheriff investigators recovered \$1.3 million in stolen plastic containers, boxes, and crates. According to lead detective Shelley Jones from the Sheriff's Industry Substation, stolen plastic pallets cost businesses in the San Gabriel Valley alone nearly \$10 million annually. Sheriff's officials said the recovered property was part of a complex web of organized crime operating nationally and internationally that deals in stealing, recycling, and reselling trademarked plastic containers.

AB 1583 tightens and clarifies existing laws relative to purchase of merchandise pallets, adding a prohibition on purchasing or receiving pallets marked with indicia of ownership unless the seller can prove lawful ownership or possession. When the seller is not the indicated owner, payment must be made by check mailed to the address on the seller's photo ID or by cash after the third business day.

Unfortunately, according to the Author and sponsor, since the passage of AB 1583, recyclers and junk dealers have found it increasingly difficult for individuals in their industries to provide the service of collecting pallets en masse from local retailers. To this point, the Author and sponsor write:

Pallets accumulate quickly at large retail sites and businesses often do not have the room to store them. Additionally, they are under great pressure from fire marshals to have pallets removed quickly because they pose a significant fire hazard. Therefore, it is key that pallet recyclers be able to buy and receive both owned and leased pallets from

retailers. Current law prevents recyclers from receiving leased pallets, even in good faith and without payment. Recyclers provide an essential service to retailers and especially small recyclers are put in a precarious place negotiating with retailers who threaten to cancel contracts in favor of larger companies who will accept all pallets, regardless of what the law allows.

CHEP (Commonwealth Handling Equipment Pool) is a large multi-national corporation and one of the largest pallet manufacturers in California and the nation. CHEP leases its pallets and retains ownership, rather than selling pallets like most other manufacturers. Should a pallet borrower want to transfer its pallets to a company that does not contract with CHEP, CHEP allows the customer to pay an additional service fee and agrees to do the work of finding the pallet and collecting it from the company they do not have a contract with. In this way CHEP knowingly releases their pallets into the stream of commerce, allows them to be mixed with pallets from other manufacturers, and agrees to assume responsibility for collecting them. However, CHEP often does not collect their pallets and rather offers to pay recyclers to return the pallets that come into their possession.

CHEP pays recyclers a very small amount, between \$1 and \$3/pallet, to schedule a time to drop off the pallets at a CHEP facility, which can take up to four hours. This is not fair payment for the amount of time and labor that goes into dropping off pallets, yet NAPA's efforts to negotiate to raise the return payment have failed. Additionally, CHEP does not collect their pallets in a timely manner should the recycler choose not to accept CHEP's offer to return pallets for payment. Then, they are left storing pallets they cannot sell without compensation for the storage.

Seeking to strike a balance between the interests of pallet owners and the recyclers/junk dealers upon which retailers rely, this bill would continue to allow recyclers and junk dealers to *purchase* pallets when the seller can provide proof that they are the actual owner of the pallet, but would also permit junk dealers and recyclers to *receive* pallets from sellers when the seller cannot locate the owner or has had no success in getting the owner to pick the pallets up. In the latter event, the bill would permit the junk dealer or recycler to store and charge storage fees/sell pallets after 35 days in which an indicated owner has not responded to a notice of the transfer of possession.

- 4) **AB 1760 creates a “good faith acquisition” framework for junk dealers and recyclers enabling them to take possession of pallets that have been abandoned by owners:** This bill would permit a junk dealer or recycler to take possession of pallets based on the representation of a seller that the indicated owner cannot be located or has failed to retrieve the pallets on a timely basis. In support of this bill, the Inland Empire Economic Partnership writes:

We recognize the need for reform in this area as many retailers in the state have been harmed by the current market practices of one of the largest pallet manufacturers in North America, CHEP. When pallets loaned by CHEP are not collected from retailers in a timely manner, they accumulate quickly and impose a heavy storage burden on businesses. By allowing recyclers and junk dealers to receive these pallets in good faith, the storage burden is alleviated and recyclers are compensated for abandoned pallets.

In addition to permitting junk dealers and recyclers to take possession of pallets with an indicia of ownership, AB 1760 would additionally authorize junk dealers and recyclers to charge owners a reasonable storage fee or otherwise sell the pallets, if the owner does not respond to a notice from the junk dealer or recycler notifying the pallet owner of the location of the pallets. After 35 calendar days, the owner shall be deemed to have relinquished possession of the merchandise pallets, at which time the junk dealer or recycler may either sell the pallets or charge reasonable storage fees if the indicated owner demands a return and the pallets are still in the possession of the junk dealer or recycler.

In support, Quality Pallets Inc. writes:

CHEP has long been known for claiming sole ownership of their pallets in an aggressive manner and forcing local pallet companies to comply with their Asset Recovery Program (ARP) as the ONLY option to return CHEP pallets. This program can not handle the incredible number of pallets that are rented out and are supposed to be returned through their regular cycle of use but get lost. In many situations regular pallet recyclers are stuck with stray CHEP pallets having to sort and store them until enough pallets are collected to warrant a return delivery to an ARP facility. Appointments could be more than a month out and check-ins have a small window before waiting several hours to get unloaded all for a minimum amount that is meant to just reimburse us for whatever CHEP think it could have cost us. CHEP representatives have stated to us that the Asset Recovery Program is not designed to make pallets recyclers a profit in any way, the truth is that returning CHEP pallets has always costs us money out of our pocket to do.

CHEP's business model outsources the vast majority of their work to be able to have global reach. This model rents out pallets many times with no clear path of recovering them but through the ARP, and this program only stands because it is standing on the backs of recyclers that have no other option than to comply or face legal actions taken against them. This bill will help us and every pallet recycler like us from getting taken advantage of by the big corporation that feeds its bottom line from the backs of small family owned companies like ourselves.

In sum, by requiring a significant amount of time before a junk dealer or recycler may sell or charge storage fees for pallets, AB 1760 appears to strike an appropriate balance between the rights, obligations, and business practices of the pallet owners, retail establishments, and junk dealers/recyclers.

5) **Prior legislation:** AB 1583 (Hernández, Ch. 300, Stats. 2012) *See* Comment 3.

SB 520 (Committee on Governmental Organization, Ch. 349, Stats. 2007) prohibits junk dealers or recyclers from purchasing or receiving aluminum beer kegs with marks indicating ownership, unless the kegs are being provided directly by the owner, as specified.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

North American Pallet Association (sponsor)  
A.G Pallets  
G.O. Pallets, INC.

GC Pallets, INC.  
Inland Empire Economic Partnership  
Pallets-R-Us, INC.  
Quality Pallets INC.  
Salas Pallets Recycling, LP  
San Gabriel Valley Economic Partnership

**Opposition**

None on file

**Analysis Prepared by:** Nichole Rocha / P. & C.P. / (916) 319-2200