

Regular Session, 2014

SENATE BILL NO. 475

BY SENATOR KOSTELKA

COMMERCIAL REGULATIONS. Provides relative to scrap metal. (gov sig)

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AN ACT

To amend and reenact R.S. 37:1962, 1966, the introductory paragraph of 1967(A) and 1967(B), 1968, 1969, 1970(A), (B), the introductory paragraph of 1970(C)(1), and 1970(C)(2), 1971, 1972, 1973(A), (C), and (D), 1974, and 1975(A) and to repeal R.S. 32:718 and R.S. 37:1970(D), relative to scrap metal; to provide for the purchase of auto hulk; to provide for the purchase of scrap metal by scrap metal recyclers; to provide for the form of payment for scrap metal; to provide for preservation of scrap metal by purchaser; to provide for penalties and fines; to provide relative to unfair trade practices; to provide for terms, conditions, and procedures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 37:1962, 1966, the introductory paragraph of 1967(A) and 1967(B), 1968, 1969, 1970(A), (B), the introductory paragraph of 1970(C)(1) and 1970(C)(2), 1971, 1972, 1973(A), (C), and (D), 1974, and 1975(A) are hereby amended and reenacted to read as follows:

§1962. Definitions

As used in this Chapter, the following words shall have the meaning ascribed

1 to them in this Section unless the context clearly indicates otherwise:

2 (1) ~~"Operator" means any person employed in responsible charge of~~
3 ~~operating all or any portion of a scrap metal recycling facility.~~

4 (2) "Railroad track materials" means steel in the form of railroad tracks or in
5 the form of rail, switch components, spikes, angle bars, tie plates, or bolts of the type
6 used in constructing railroads, or any combination of such materials.

7 (2) "Scrap metal" means metal materials which are purchased for resale
8 to be recycled, including but not limited to ferrous materials, catalytic converters,
9 auto hulks, copper, copper wire, copper alloy, bronze, zinc, aluminum other than in
10 the form of cans, stainless steel, nickel alloys, or brass, whether in the form of bars,
11 cable, ingots, rods, tubing, wire, wire scraps, clamps or connectors, railroad track
12 materials, water utility materials, and used building components. The term shall not
13 include precious metals, including but not limited to gold, silver, and platinum.

14 (3) **"Scrap metal recycler" means any person in this state engaged in the**
15 **business of buying, selling, recycling, or otherwise acquiring or disposing of**
16 **scrap metal.**

17 (4) "Scrap metal recycling facility" means any physical entity that has the
18 function of recycling scrap metal.

19 (5) "Used building component" means any object produced or shaped by
20 human workmanship or tools that is an element of structural, architectural,
21 archaeological, historical, ornamental, cultural, utilitarian, decorative, or sentimental
22 significance or interest, which has been and may be used as an adjunct to or
23 component or ornament of any building or structure, regardless of monetary worth,
24 age, size, shape, or condition, that is immovable property, or fixtures or component
25 parts of immovable property of any nature or kind whatsoever.

26 (6) "Water utility materials" shall include but not be limited to water meters,
27 valves, pipes, and fittings.

28 * * *

29 §1966. Hours of business

1 An operator ~~A~~ **scrap metal recycler** shall not enter into any transactions for
2 the purchase of scrap metal before the hour of 7:00 a.m. nor after the hour of 7:00
3 p.m. except on Saturdays and during the month of December, during which time the
4 hour of 7:00 p.m. shall be extended to 10:00 p.m.

5 §1967. Record of scrap metal purchased required; exceptions; retention period;
6 inspections by law enforcement; violations; penalty

7 A. Every operator **scrap metal recycler** shall either keep a register and file
8 reports or electronically maintain data and be capable of readily providing reports,
9 as specified in Subsection B of this Section, in the form prescribed by the
10 Department of Public Safety and Corrections which shall contain the following
11 information:

12 * * *

13 B. Each operator **scrap metal recycler** shall keep either one copy of such
14 completed form in a separate register or book or maintain the information in
15 electronic format as provided in Subsection A of this Section which shall be kept for
16 a period of three years at his place of business and shall be made available for
17 inspection by any peace officer or law enforcement official at any time during the
18 three-year period.

19 * * *

20 §1968. Photographic and other records; exceptions

21 A. In addition to the information required in R.S. 37:1967, every operator
22 **scrap metal recycler** shall be required to obtain a photograph of a person selling or
23 delivering scrap metal to the facility. The quality of such photograph shall be
24 sufficient to readily identify the person depicted. In lieu of the photograph of the
25 person selling or delivering the scrap metal, the operator **scrap metal recycler** may
26 obtain either a thumbprint of such person, the quality of which thumbprint shall be
27 sufficient to identify the person, or a photocopy of the person's Louisiana driver's
28 license, driver's license from another state, passport, military identification, or
29 identification issued by a governmental agency or the United States Postal Service.

1 Each photograph, thumbprint, or photocopy, as the case may be, shall be
 2 cross-referenced with the ledger entry required by R.S. 37:1967. The photograph,
 3 thumbprint, or photocopy shall be preserved for a period of at least a year.
 4 Photographs shall be made available to the law enforcement agency within twenty-
 5 four hours after the request.

6 B. In addition to the information required in R.S. 37:1967, every ~~operator~~
 7 **scrap metal recycler** shall be required to obtain a photograph of all scrap metal
 8 purchased. The quality of the photograph shall be sufficient to readily identify each
 9 type of scrap metal depicted. The ~~operator~~ **scrap metal recycler** shall obtain
 10 multiple photographs if necessary to properly record the scrap metal purchased.
 11 Each photograph shall be cross-referenced with the ledger entry required by R.S.
 12 37:1967 and shall be preserved for a period of at least one year. Photographs shall
 13 be made available to law enforcement within twenty-four hours after a request.

14 §1969. Scrap metal; purchase when forbidden

15 A. No ~~operator~~ **scrap metal recycler** shall willfully or knowingly purchase
 16 scrap metal unpaid for by the seller or not owned by the seller.

17 B. No ~~operator~~ **scrap metal recycler** shall purchase scrap metal, other than
 18 aluminum in the form of cans, from a person under the age of eighteen. Lack of
 19 knowledge of age shall not be a defense to a violation of this Subsection.

20 C. No ~~operator~~ **scrap metal recycler** shall purchase precious metals.

21 §1970. Statement by seller required; ~~failure to exact statement evidence of~~
 22 ~~fraudulent intent; exoneration from criminal knowledge~~

23 A. Every ~~operator~~ **scrap metal recycler** shall obtain a signed statement ~~an~~
 24 **affidavit** from the seller that the scrap metal has been paid for or is owned by the
 25 seller, and a failure of the ~~operator~~ **scrap metal recycler** to ~~exact a statement~~ **obtain**
 26 **an affidavit** from the seller shall be prima facie evidence of the fraudulent intent and
 27 guilty knowledge on the part of the ~~operator within the meaning of this Chapter~~
 28 **scrap metal recycler**, sufficient to warrant a conviction.

29 B. In transactions involving railroad track materials, ~~an operator~~ **a scrap**

1 metal recycler shall require the party seeking to sell or dispose of the materials to
 2 furnish ~~a signed statement~~ an affidavit from the appropriate railroad company
 3 consenting to the sale of the railroad track materials identified in the statement,
 4 which shall be retained by the ~~operator~~ scrap metal recycler. The ~~statement~~
 5 affidavit shall include the name of the railroad company consenting to the sale and
 6 the name, employee number, and phone number of the person signing the statement
 7 authorizing the sale. ~~The operator shall attempt to verify the authenticity of the~~
 8 ~~statement authorizing the sale of the railroad track materials.~~

9 C.(1) ~~An operator~~ A scrap metal recycler shall not purchase any of the
 10 following materials without first receiving ~~a signed statement~~ an affidavit from the
 11 company or governmental entity owning the materials and consenting to the sale of
 12 the materials identified in the statement:

13 * * *

14 (2) The ~~statement~~ affidavit shall include the name of the company or
 15 governmental entity consenting to the sale and the name, employee number, and
 16 phone number of the person signing the statement authorizing the sale. The operator
 17 shall attempt to verify the authenticity of the ~~statement~~ affidavit authorizing the sale
 18 of the materials. The ~~statement~~ affidavit shall be retained by the ~~operator~~ scrap
 19 metal recycler.

20 * * *

21 §1971. Book to be open for inspection

22 The book containing the record of purchase as provided for in R.S. 37:1967
 23 and the various articles purchased and referred to therein shall at all times be open
 24 to the inspection of law enforcement officers of the office of state police, or the
 25 superintendent of police or sheriff of the parish or anyone designated by them of the
 26 city, town, or parish in which the ~~operator~~ scrap metal recycler does business.

27 §1972. Daily report of entries

28 A.(1) Every ~~operator~~ scrap metal recycler licensed pursuant to this Chapter
 29 shall produce and deliver to the chief of police of the city or town or to the sheriff

1 of the parish in which he is doing business, every day before the hour of twelve
2 noon, a legible and correct copy of the entries in the book mentioned in R.S. 37:1967
3 during the previous day. The means for providing the transactional information
4 required under this Section shall be by electronic transmission.

5 (2) The appropriate law enforcement official may, for purposes of an
6 investigation of a crime relating to a particular scrap metal transaction, request the
7 ~~operator~~ **scrap metal recycler** to mail or fax the official the personally identifiable
8 information relating to the transaction under investigation. The ~~operator~~ **scrap**
9 **metal recycler** shall deliver the personally identifiable information relating to the
10 identified transaction to the appropriate law enforcement official within twenty-four
11 hours of the request.

12 B. In addition to the daily report required in Subsection A of this Section,
13 every ~~operator~~ **scrap metal recycler** licensed pursuant to this Chapter shall, every
14 day before the hour of twelve noon, transmit the information contained in the entries
15 in the book required by R.S. 37:1967(B) during the previous day to an electronic
16 database accessible by law enforcement.

17 C. The ~~operator~~ **scrap metal recycler** shall have the responsibility of
18 tendering the information provided for in Subsections A and B of this Section
19 regardless of its use or nonuse by the chief of police in the city or town in which he
20 is doing business or, alternatively, to the sheriff of the parish in which he is doing
21 business. The tender of this information is a courtesy mandated by state law and
22 which provides a benefit to the general public. The chief of police or sheriff shall
23 not be mandated to take any particular action concerning the information tendered.
24 §1973. Payment by loadable payment card or check ~~for copper or other metals~~
25 required; check cashing prohibited

26 A.(1) ~~An operator~~ **A scrap metal recycler** shall not enter into any cash
27 transactions in payment for the purchase of copper. After five business days from the
28 date of the transaction, payment for copper shall be made in the form of **either** a
29 check made payable to the name and address of the seller of the **scrap** metal or a

1 loadable payment card ~~and~~. **Such payment** shall be tendered to the seller in any of
2 the following manners:

- 3 (a) By mail to the address recorded on the photo identification of the seller.
- 4 (b) In person at the place of business of the ~~operator~~ **scrap metal recycler**.
- 5 (c) By electronic transfer.

6 (2) ~~An operator~~ **A scrap metal recycler** shall not enter into any cash
7 transactions in excess of three hundred dollars in payment for the purchase of metal
8 property other than copper. Payments in excess of three hundred dollars for metals
9 other than copper shall be made in the form of a check made payable to the name and
10 address of the seller or a loadable payment card and may be tendered to the seller at
11 the time of the transaction. The ~~operator~~ **scrap metal recycler**, at his discretion, may
12 make payment by either cash or other method for transactions of three hundred
13 dollars or less for all metals other than copper.

14 * * *

15 C. Pursuant to the provisions of this Section, if ~~an operator~~ **a scrap metal**
16 **recycler** makes a payment to the seller in the form of a check or loadable payment
17 card, the ~~operator~~ **scrap metal recycler** shall require verification of the seller's
18 identification by a driver's license or similar means and shall require verification of
19 the seller's address by a current utility bill. The ~~operator~~ **scrap metal recycler** shall
20 retain a copy of such utility bill.

21 D.(1) No ~~operator~~ **scrap metal recycler** shall allow a seller to engage in
22 multiple transactions within a twenty-four hour period totaling more than three
23 hundred dollars for the purpose of circumventing this Section.

24 (2) No ~~operator~~ **scrap metal recycler** shall cash, offer to cash, or provide the
25 means for exchanging for cash a check issued to a seller pursuant to this Section on
26 the premises of the ~~operator's~~ **scrap metal recycler's** place of business, including but
27 not limited to the use of an automatic teller machine.

28 * * *

29 §1974. Violations; penalty

1 A. Any licensed ~~operator~~ **scrap metal recycler** who violates, neglects, or
2 refuses to comply with any provision of this Chapter, shall be fined not less than one
3 thousand dollars, nor more than ten thousand dollars or be imprisoned for not less
4 than thirty days nor more than sixty days, or both.

5 B. For the second offense, his occupational license shall be suspended for a
6 thirty-day period. For a third offense, his occupational license shall be revoked and
7 he shall not thereafter be permitted to engage in the business of scrap metal recycling
8 in the state of Louisiana.

9 C. Any ~~operator~~ **scrap metal recycler** convicted of selling stolen goods shall
10 have his occupational license revoked.

11 D. The occupational license tax collector is hereby vested with the authority,
12 upon motion in a court of competent jurisdiction, to rule the noncomplying ~~operator~~
13 **scrap metal recycler** to show cause in not less than two nor more than ten days,
14 exclusive of holidays, as to why the noncomplying ~~operator's~~ **scrap metal recycler's**
15 retail occupational license should not be suspended or revoked as prescribed under
16 this Chapter. This rule may be tried out of term and in chambers and shall be tried
17 with preference and priority. If the rule is made absolute, the order rendered therein
18 shall be considered a judgment in favor of the municipality or parish.

19 **E. In addition to the penalties provided in this Section, it shall be an**
20 **unfair trade practice for a licensed scrap metal recycler to fail to comply with**
21 **the provisions of this Section and such failure shall subject a licensed scrap**
22 **metal recycler to the penalties and actions found in the Unfair Trade Practices**
23 **and Consumer Protection Law, R.S. 51:1401 et seq.**

24 §1975. Failure to comply; penalty

25 A. Anyone acting as an unlicensed ~~operator~~ **scrap metal recycler** without
26 complying with the provisions of this Chapter shall be fined not less than one
27 thousand dollars or be imprisoned not less than thirty days nor more than sixty days,
28 or both.

29 * * *

1 Section 2. R.S. 32:718 and R.S. 37:1970(D) are hereby repealed.

2 Section 3. This Act shall become effective upon signature by the governor or, if not
3 signed by the governor, upon expiration of the time for bills to become law without signature
4 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
5 vetoed by the governor and subsequently approved by the legislature, this Act shall become
6 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Michelle Ducharme.

DIGEST

Kostelka (SB 475)

Present law provides for the sale of auto hulk as scrap to a scrap metal processor or a licensed automotive dismantler and parts recycler.

Proposed law repeals present law.

Present law regulates the purchase of scrap metal.

Present law defines the term "operator" as any person employed in responsible charge of operating all or any portion of a scrap metal recycling facility.

Proposed law removes from present law the definition for the term "operator" and defines the term "scrap metal recycler" as any person in this state engaged in the business of buying, selling, recycling, or otherwise acquiring or disposing of scrap metal.

Present law provides for certain duties of an operator.

Proposed law transfers the duties of an operator to a scrap metal recycler.

Present law prohibits a person from doing business as a scrap metal recycler in this state without having first obtained the occupational license required by law.

Present law requires a signed statement to be obtained from the seller that states that the scrap metal has been paid for or is owned by the seller.

Proposed law changes present law to require an affidavit, rather than a signed statement, be obtained from the seller of the scrap metal.

Present law provides that an operator who obtains the required statement from the seller shall be exonerated from any fraudulent, willful, or criminal knowledge.

Proposed law removes from present law the immunity provision.

Present law provides that any licensed operator who violates, neglects, or refuses to comply with certain provisions of law shall be penalized as follows:

- (1) A fine of not less than \$1,000, nor more than \$10,000 or imprisonment for not less than 30 days nor more than 60 days, or both.
- (2) For the second offense, his occupational license shall be suspended for a 30 day

period.

- (3) For a third offense, his occupational license shall be revoked and he shall not thereafter be permitted to engage in the business of scrap metal recycling in the state of Louisiana.

Proposed law retains present law and provides that a licenced scrap metal recycler who violates certain provisions of law shall be subject to penalties and actions of the Unfair Trade Practices and Consumer Protection Law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 37:1962, 1966, 1967(A)(intro para) and (B), 1968, 1969, 1970(A), (B), (C)(1)(intro para) and (C)(2), 1971, 1972, 1973(A), (C), and (D), 1974, and 1975(A); repeals R.S. 32:718 and R.S. 37:1970(D))