

2022 Regular Session

HOUSE BILL NO. 801

BY REPRESENTATIVE GOUDEAU

SECONDHAND DEALERS: Provides relative to scrap metal recyclers

1 AN ACT

2 To amend and reenact R.S. 37:1963 and to enact R.S. 37:1963.1 and 1969(D) and (E),
3 relative to second hand dealers; to require licensure; to provide for unlawful conduct;
4 to provide for nonferrous metals and catalytic converters; to provide the minimum
5 requisite number of licenses per capacity and location; to provide penalties for
6 violation; to require a form for application; to provide procedures for application; to
7 provide for bond; to provide for rulemaking; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 37:1963 is hereby amended and reenacted and R.S. 37:1963.1 and
10 1969(D) and (E) are hereby enacted to read as follows:

11 §1963. License required; application; penalties; bonds; rulemaking

12 A. No person shall do business as a scrap metal recycler in this state without
13 having first obtained the occupational license required by law. Any person desiring
14 a license as a scrap metal recycler shall make application in writing, ~~specifying the~~
15 ~~street number and house number of the building where the business is to be carried~~
16 ~~on~~ in accordance with this Section. He shall also submit with his application a bond
17 in favor of the city or parish, as the case may be, where the business is to be
18 established in the sum of two thousand five hundred dollars with security
19 conditioned for the due observance of all provisions of this Chapter.

20 B.(1) It shall be unlawful and shall constitute a misdemeanor for any person,
21 firm, association, corporation, limited liability company, or trust to engage in

1 business as, serve in the capacity of, or act as a scrap metal recycler in this state
2 without first obtaining a license as provided for in this Section.

3 (2) Any person, firm, association, corporation, limited liability company, or
4 trust that engages in business as, serves in the capacity of, or acts as a scrap metal
5 recycler pursuant to this Section shall obtain and hold a current license for each
6 capacity and each location in which he engages in business as, serves in the capacity
7 of, or acts as a scrap metal recycler, to the extent that all scrap metal recyclers have
8 at least one licensed person per location.

9 (3) Any person, firm, association, corporation, limited liability company, or
10 trust which violates Paragraph (1) of this Subsection or Subparagraph (C)(4)(e) of
11 this Section shall be fined not less than three hundred dollars nor more than one
12 thousand dollars, imprisoned for not more than ninety days, or both.

13 C.(1) The commission shall create a form to be used as an application for
14 licensure as a scrap metal recycler and shall provide the form to an applicant.

15 (2) The commission shall require all of the following information in the
16 application:

17 (a) The name of the applicant.

18 (b) The street address of applicant's principal place of business and each
19 additional place of business.

20 (c) The type of business organization of applicant.

21 (d) The applicant's financial standing.

22 (e) The applicant's business integrity.

23 (f) Whether the applicant has an established place of business and is engaged
24 in the pursuit, avocation, or business for which each license is applied for.

25 (g) Whether the applicant is able to properly conduct the business for which
26 each license is applied for.

27 (h) Any other pertinent information consistent with the safeguarding of the
28 public interest and the public welfare.

1 (i) Any other information the commission deems necessary to enable it to
2 fully determine the qualifications and eligibility of the several applicants to receive
3 the license or licenses.

4 (3) The applicant shall sign the application prior to submission to the
5 commission.

6 (4)(a) Upon submission of an application, an applicant shall pay all
7 applicable fees in accordance with this Section. If an application is denied and the
8 license is not issued, the commission shall return all licensing fees to the applicant.

9 (b) Any scrap metal recycler who submits a renewal application after the
10 expiration date of an existing license shall be subject to a late penalty of one hundred
11 dollars in addition to any penalty, fine, or cost assessed for operating without a
12 license which shall be paid to the commission.

13 (c) Any scrap metal recycler having a previous annual license shall be
14 presumed to be a renewal applicant.

15 (d) Any scrap metal recycler changing the name of the recyclers, the
16 recycler's address, the ownership of the recycler, or opening any additional place of
17 business shall notify the commission within ten days of the change or be in violation
18 of this Section.

19 (e) Any recycler ceasing to maintain its business shall surrender the recycler
20 license to the commission within ten days and any failure to do so shall constitute a
21 misdemeanor. Violations of this Subparagraph shall be subject to the penalties
22 provided in Paragraph (B)(3) of this Section.

23 D. The commission shall specify the location of the place of business on
24 each license issued to a scrap metal recycler. If the business location is changed, the
25 commission shall be notified immediately of the change and the commission may
26 endorse the change of location on the license without charge. The license of each
27 recycler shall be posted in a conspicuous place in the recycler's place or places of
28 business.

1 E.(1) Every applicant for licensure or renewal of a license as a scrap metal
2 recycler shall show proof of responsibility by depositing with the commission a
3 continuing bond in the amount of two thousand five hundred dollars. All bonds shall
4 be with a commercial surety authorized to do business in the state and approved by
5 the commission.

6 (2) The bond shall be for the license period and is nontransferable. A new
7 bond or a proper continuation certificate shall be delivered to the commission at the
8 beginning of each license period, but the aggregate liability of the surety in any
9 calendar year shall not exceed fifty thousand dollars.

10 F. The bond required by this Section shall be maintained throughout the
11 period of licensure. If the bond is canceled for any reason, the recycler's license shall
12 be revoked as of the date of cancellation unless a new bond is furnished prior to the
13 date of cancellation.

14 G. The commission shall promulgate rules to implement the provisions of
15 this Section.

16 §1963.1. Special rules for nonferrous metals

17 A.(1) It is unlawful to transport nonferrous metals in a vehicle or have
18 nonferrous metals in a person's possession.

19 (2) The provisions of Paragraph (1) of this Subsection do not apply if the
20 person transporting the nonferrous metals can provide either of the following:

21 (a) A valid permit to transport and sell nonferrous metals issued pursuant to
22 this Section.

23 (b) A valid bill of sale for the nonferrous metals.

24 (3) If the person produces either form of documentation provided for in
25 Paragraphs (A)(2) and (3) of this Section or if a law enforcement officer determines
26 that the nonferrous metals are not stolen goods and are in the rightful possession of
27 the person, the law enforcement officer shall not issue a citation for a violation of
28 this Section.

1 (4) A person who violates Subsection A of this Section shall be subject to
2 the following:

3 (a) For a first offense the person is guilty of a misdemeanor and, upon
4 conviction, shall be fined not more than two hundred dollars or imprisoned not more
5 than thirty days.

6 (b) For a second offense, the person is guilty of a misdemeanor and, upon
7 conviction, shall be fined not more than five hundred dollars, imprisoned not more
8 than one year, or both.

9 (c) For each subsequent offense, the person is guilty of a misdemeanor and,
10 upon conviction, shall be fined not more than one thousand dollars, imprisoned not
11 more than three years, or both. For an offense to be considered a subsequent offense,
12 only those offenses that occurred within a period of ten years, including and
13 immediately preceding the date of the last offense, shall constitute a prior offense as
14 provided for in this Subsection.

15 (5)(a) A person who does any of the following is guilty of a felony and upon
16 conviction shall be fined at the discretion of the court, imprisoned for not more than
17 ten years, or both:

18 (i) Transports, by vehicle, nonferrous metals that person knows are stolen.

19 (ii) Possesses nonferrous metals that the person knows are stolen.

20 (iii) Operates a vehicle used in the ordinary course of business to transport
21 nonferrous metals that the person knows are stolen.

22 (iv) Presents a valid or falsified license to transport and sell nonferrous
23 metals that the person knows are stolen.

24 (v) Presents a valid or falsified bill of sale for nonferrous metals that the
25 person knows to be stolen.

26 B. If the person is found to be in violation of Subsection A of this Section
27 and has obtained a permit to transport and sell nonferrous metals pursuant to this
28 Section, the permit shall be revoked.

1 C. A secondary metals recycler shall not purchase or otherwise acquire a
2 coil, unless the seller is an exempted entity pursuant to this Section or the seller
3 presents a bill of sale from a company licensed pursuant to Chapter 11 of Title 40
4 indicating that the seller acquired the coil as the result of a unit replacement or
5 repair. The bill of sale is sufficient proof of ownership and serves the same purpose
6 as a permit to transport and sell nonferrous metals. A person who presents a falsified
7 bill of sale is guilty of a misdemeanor and, upon conviction, shall be fined in the
8 discretion of the court, imprisoned not more three years, or both.

9 D.(1) It is unlawful for any individual or entity other than a permitted
10 secondary metals recycler to purchase, or to attempt to purchase, a used, detached
11 catalytic converter or any nonferrous part of a catalytic converter.

12 (2) Except as otherwise provided for in this Section, it is unlawful for any
13 individual or entity to possess, obtain or otherwise acquire, transport, or sell a used,
14 detached catalytic converter or any nonferrous part of a catalytic converter without
15 a permit and without providing all of the following documentation to law
16 enforcement or a permitted secondary metals recycler:

17 (a) The name of the person or company that removed the catalytic converter.

18 (b) The name of the person for whom the work was completed.

19 (c) The make and model of the vehicle from which the catalytic converter
20 was removed.

21 (d) The vehicle identification number of the vehicle from which the catalytic
22 converter was removed.

23 (e) The part number or other identifying number of the catalytic converter
24 that was removed.

25 (f) The certificate of title or certificate of registration showing the seller's
26 ownership interest in the vehicle.

27 (3) It is unlawful for a seller of a used, detached catalytic converter or any
28 nonferrous part of a catalytic converter to provide any false, fraudulent, altered or
29 counterfeit information or documentation as required by this Section.

1 (4) Any person who violates any provision of this Subsection is subject to
2 the following:

3 (a) For a first offense, the person is guilty of a misdemeanor and, upon
4 conviction, shall be fined in the discretion of the court, imprisoned not more than
5 three years, or both.

6 (b) For a second offense, the person is guilty of a felony and, upon
7 conviction, shall be fined in the discretion of the court, imprisoned not more than
8 five years, or both.

9 (5) Each unlawfully obtained, possessed, or transported used, detached
10 catalytic converter is a separate violation that subjects the individual or entity to a
11 separate charge. Upon conviction, the court may order the person to pay restitution
12 for the value of the repair and replacement of the catalytic converter or the individual
13 or he may be held liable as otherwise provided by law.

14 (6) A person in possession of a used, detached catalytic converter without
15 identifying documentation is presumed to be in possession of contraband subject to
16 forfeiture as otherwise provided by law.

17 (7) For purposes of this Section, a used, detached catalytic converter does
18 not include a catalytic converter that has been tested, certified, and labeled for reuse
19 in accordance with applicable U.S. Environmental Protection Agency Clean Air Act
20 regulations, as may from time to time be amended.

21 E. It is unlawful for a secondary metals recycler to purchase a used, detached
22 catalytic converter or any nonferrous part of a used catalytic converter unless the
23 secondary metals recycler has a permit from the local sheriff's office, the sale occurs
24 at the secondary metals recycler's fixed site or at the seller's fixed site, if the seller
25 is a licensed automotive repair service, a licensed demolisher as defined in R.S.
26 40:1749.12, a licensed secondary metals recycler, or a licensed motor vehicle dealer
27 and the purchase is made by a permitted secondary metals recycler who maintains
28 a fixed site within this state, and meets one of the following requirements:

1 (1) The catalytic converter or nonferrous part was purchased as part of a
2 vehicle.

3 (2) The catalytic converter or nonferrous part was purchased from a
4 secondary metals recycler, new or used motor vehicle dealer, automotive repair
5 service, motor vehicle manufacturer, vehicle demolisher, or distributor of catalytic
6 converters and a copy of the seller's valid business license is received and maintained
7 by the purchaser at the time of the transaction.

8 (3) The business selling the catalytic converter or nonferrous part provides
9 a record or receipt showing all of the following:

10 (a) The repair order number, when applicable.

11 (b) The date of repair or the date on which the catalytic converter was
12 removed from a vehicle, including the identity of the individual or entity that
13 removed the catalytic converter, when applicable.

14 (c) The vehicle identification number of the vehicle from which the catalytic
15 converter was removed.

16 (4) The individual selling the catalytic converter or nonferrous part provides
17 the secondary metals recycler with the following information for the motor vehicle
18 that the catalytic converter was taken from to include all of the following:

19 (a) The name of the person or company that removed the catalytic converter.

20 (b) The name of the person for whom the work was completed.

21 (c) The make and model of the vehicle from which the catalytic converter
22 was removed.

23 (d) The vehicle identification number of the vehicle from which the catalytic
24 converter was removed.

25 (e) The part number or other identifying number of the catalytic converter
26 that was removed.

27 (f) The certificate of title or certificate of registration showing the seller's
28 ownership interest in the vehicle.

1 (5) Nothing in this Subsection prevents an out-of-state secondary metals
2 recycler who maintains a fixed site and who complies with all other provisions of
3 applicable law from obtaining, purchasing, or otherwise acquiring a used, detached
4 catalytic converter or any nonferrous part of a used catalytic converter.

5 F. Before each purchase or acquisition of a used, detached catalytic
6 converter, a secondary metals recycler, including an agent, employee, or
7 representative of the secondary metals recycler, shall do both of the following:

8 (1) Verify, with the applicable documentation, that the person transferring
9 or selling the used, detached catalytic converter acquired it legally and has the right
10 to transfer or sell it.

11 (2) Retain a record of the applicable verification and other information
12 required pursuant to R.S. 37:1963(G) and note in his records any obvious marking
13 on the used, detached catalytic converter such as paint, labels, or engravings that
14 would aid in the identification of the catalytic converter.

15 G. A seller of used, detached catalytic converters or any nonferrous metal
16 part of such is subject to the provisions of all applicable laws regulating the
17 permitting of a person or entity to transport and sell nonferrous metals except for an
18 automotive repair service who, in lieu of a permit, may produce a record or receipt
19 containing all of the following:

20 (1) The repair order number, when applicable.

21 (2) The date of repair or the date on which the catalytic converter was
22 removed from the vehicle, including the identity of the individual or entity that
23 removed the catalytic converter, when applicable.

24 (3) The vehicle identification number of the vehicle from which the catalytic
25 converter was removed.

26 H. It is unlawful for a secondary metals recycler to fail to collect or retain
27 all required documentation from a seller of a used, detached catalytic converter or
28 any nonferrous part of a catalytic converter as required by this Section. A secondary
29 metals recycler who obtains all documentation as required by this Section is exempt

1 from prosecution as provided in this Section unless he knew or had reason to believe
2 that the documentation provided was false, fraudulent, altered or counterfeit or knew
3 or had reason to believe that the used, detached catalytic converter or any nonferrous
4 part of a catalytic converter was stolen.

5 I.(1) A licensed secondary metals recycler who is exempt from the
6 provisions of Paragraph (I)(2) of this Section but violates a provision of Paragraph
7 (I)(3) shall be subject to the following:

8 (a) For a first offense, is guilty of a misdemeanor and, upon conviction, shall
9 be fined not more than two hundred dollars or imprisoned not more than thirty days.

10 (b) For a second offense, is guilty of a misdemeanor and, upon conviction,
11 shall be fined not more than five hundred dollars, imprisoned not more than one year,
12 or both.

13 (c) For each subsequent offense, is guilty of a misdemeanor and, upon
14 conviction, shall be fined not more than one thousand dollars, imprisoned not more
15 than three years, or both.

16 (2) Each unlawfully obtained or possessed used, detached catalytic converter
17 or part of a used catalytic converter is a separate violation and subjects the secondary
18 metals recycler to a separate charge for each. Any unlawfully possessed used,
19 detached catalytic converter is subject to forfeiture as otherwise provided for by law.
20 Upon conviction, the court may order the secondary metals recycler to pay restitution
21 for the value of the repair and replacement of the catalytic converter or the secondary
22 metals recycler may be held liable as otherwise provided for by law.

23 J.(1) Except as provided in Paragraph (2) of this Subsection, the provisions
24 of this Section do not apply to any of the following:

25 (a) The purchase or sale of aluminum cans.

26 (b) A transaction between a secondary metals recycler and another secondary
27 metals recycler.

28 (c) A governmental entity.

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 801 Original

2022 Regular Session

Goudeau

Abstract: Provides relative to scrap metal recyclers.

Present law provides that no person shall do business as a scrap metal recycler in this state without having first obtained the occupational license required by law. Present law further provides that any person desiring a license as a scrap metal recycler shall make an application in writing, specifying the street number and house number of the building where the business is to be carried on.

Proposed law deletes the provision that provides for a person specifying in the written application the street number and house number of the building where the business is to be carried. Proposed law otherwise retains present law.

Proposed law provides that it shall be unlawful and it shall constitute as a misdemeanor for any person, firm, association, corporation, limited liability company (LLC), or trust to engage in business as, serve in the capacity of, or act as a scrap metal recycler in this state without first obtaining a license as provided for in proposed law.

Proposed law provides that any person, firm, association, corporation, LLC, or trust who engages in business as, services in the capacity of, or acts as a scrap metal recycler pursuant to proposed law shall obtain and hold a current license for each capacity and each location in which he engages in business as, serves in the capacity of, or acts as a scrap metal recycler, to the extent that all scrap metal recyclers have at least one licensed person per location.

Proposed law provides a fine for those who violate the provisions of proposed law. Proposed law further provides that they shall be fined not less than \$300 and not more than \$1,000, imprisoned for not more than 90 days, or both.

Proposed law provides that every applicant for licensure or renewal of a license as a scrap metal recycler shall show proof of responsibility by depositing with the commission a continuing bond in the amount of \$2,500. Proposed law further provides that all bonds shall be with a commercial surety authorized to do business in the state and approved by the commission.

Proposed law provides that the bond shall be for the license period and is nontransferable. Proposed law further provides that a new bond or a proper continuation certificate shall be delivered to the commission at the beginning of each license period, but the aggregate liability of the surety in any calendar year shall not exceed \$50,000.

Proposed law provides that the commission shall promulgate rules to implement the provisions of proposed law.

Proposed law provides that it is unlawful to transport nonferrous metals in a vehicle or have nonferrous metals in a person's possession.

Proposed law provides that proposed law does not apply if the person transporting the nonferrous metal can provide either of the following:

- (1) A valid permit to transport and sell nonferrous metals issued pursuant to proposed law.
- (2) A valid bill of sale for the nonferrous metals.

Proposed law provides that a person who violates proposed law shall be subject to the following:

- (1) For a first offense the person is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$200 or imprisoned not more than 30 days.
- (2) For a second offense, the person is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500, imprisoned not more than 1 year, or both.
- (3) For each subsequent offense, the person is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000, imprisoned not more than 3 years, or both. For an offense to be considered a subsequent offense, only those offenses that occurred within a period of 10 years, including and immediately preceding the date of the last offense, shall constitute a prior offense as provided for in proposed law.

Proposed law provides that a person who does any of the following is guilty of a felony and upon conviction shall be fined at the discretion of the court, imprisoned for not more than 10 years, or both:

- (1) Transports, by vehicle, nonferrous metals that person knows are stolen.
- (2) Possesses nonferrous metals that the person knows are stolen.
- (3) Operates a vehicle used in the ordinary course of business to transport nonferrous metals that the person knows are stolen.
- (4) Presents a valid or falsified license to transport and sell nonferrous metals that the person knows are stolen.
- (5) Presents a valid or falsified bill of sale for nonferrous metals that the person knows to be stolen.

Present law provides that an operator shall not willfully or knowingly purchase scrap metal unpaid for by the seller or not owned by the seller.

Present law provides that an operator shall not purchase scrap metal, other than aluminum in the form of cans, from a person under 18. Present law further provides that lack of knowledge of age will not constitute as a defense.

Present law provides that an operator shall not purchase precious metals.

Proposed law retains present law and adds an operator shall not purchase an iron or steel manhole cover and an iron or steel drainage gate.

(Amends R.S. 37:1963; Adds R.S. 37:1963.1 and 1969(D) and (E))