HLS 23RS-816 REENGROSSED

2023 Regular Session

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HOUSE BILL NO. 547

BY REPRESENTATIVE RISER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

AN ACT

SECONDHAND DEALERS: Provides relative to catalytic converter sales law

2 To amend and reenact the heading of Part II-B of Chapter 21 of Title 37 of the Louisiana 3 Revised Statutes of 1950, R.S. 37:1891, 1892(2) and (4), 1893(A), (B), (C)(1) and 4 (4)(a), (d), and (e), and (E), 1894(2), 1895(A)(introductory paragraph) and (C), and 5 1896(A) and (D) and to enact R.S. 37:1893.1 through 1893.6 and 1895 (A)(7), 6 relative to catalytic converter sales law; to provide for catalytic converter transfers; 7 to provide for definitions; to provide for license requirements; to provide for notice 8 to an applicant; to provide for procedures for a denial, revocation, or suspension of 9 a license; to provide for licensing hearings and appeals by the Louisiana Used Motor 10 Vehicle Commission; to provide for certain cease and desist orders; to provide for 11 certain penalties and fines; to provide for procedures for an abandoned catalytic 12 converter business; to provide for certain exceptions; to provide for recordkeeping 13 for the purchase and sale of a catalytic converter; and to provide for related matters. 14 Be it enacted by the Legislature of Louisiana: 15 Section 1. The heading of Part II-B of Chapter 21 of Title 37 of the Louisiana 16 Revised Statutes of 1950, R.S. 37:1891, 1892(2) and (4), 1893(A), (B), (C)(1) and (4)(a), (d), 17 and (e), and (E), 1894(2), 1895(A)(introductory paragraph) and (C), and 1896(A) and (D) 18 are hereby amended and reenacted and R.S. 37:1893.1 through 1893.6 and 1895 (A)(7) are 19 hereby enacted to read as follows:

Page 1 of 12

PART II-B. CATALYTIC CONVERTER PURCHASERS TRANSFERS

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

1	§1891. Short title
2	This Part shall be known and may be cited as the "Louisiana Catalytic
3	Converter Sales Transfer Law".
4	§1892. Definitions
5	* * *
6	(2) "Catalytic converter purchaser dealer" is means a person licensed by the
7	commission to buy purchase or sell used or detached catalytic converters pursuant
8	to the provisions of this Part.
9	* * *
10	(4) "Person" means any natural or juridical person and includes any firm,
11	association, corporation, limited liability company, partnership, trust, or two or more
12	natural or juridical persons having a joint or common interest. Person also includes
13	a transient merchant as defined by R.S. 37:1901.
14	§1893. License required; application
15	A.(1) No person shall do business as a catalytic converter purchaser dealer
16	in this state without having first obtained a business catalytic converter dealer license
17	from the commission and either of the following:
18	(a) An occupational license from an occupational licensing board if an
19	occupational license is required in the jurisdiction where the business is conducted.
20	(b) A transient merchant license pursuant to R.S. 37:1902.
21	(2) Any person desiring a license as a catalytic converter purchaser dealer
22	shall make an application in writing, specifying the address of the building where the
23	business is to be carried on. A license issued pursuant to this Part shall be valid for
24	two years.
25	B.(1) It shall be unlawful for any person, firm, association, corporation,
26	limited liability company, or trust to engage in the business of purchasing or selling
27	used or detached catalytic converters in this state without first obtaining a license as
28	required by this Section unless the person acquired the catalytic converter from the
29	owner of the vehicle in the normal course of business.

1	(2) Any person, firm, association, corporation, limited liability company, or
2	trust that who engages in the business of purchasing or selling used or detached
3	catalytic converters pursuant to this Section shall obtain and hold a current license
4	to engage in the business of purchasing or selling used or detached catalytic
5	converters.
6	C.(1) The commission shall create a form to be used as an application for
7	licensure as a purchaser of used catalytic converter dealer converters and shall
8	provide the form to an applicant.
9	* * *
10	(4)(a) Upon submission of an application, an applicant shall pay all
11	applicable fees in accordance with this Section R.S. 32:791(D). If an application is
12	denied and the license is not issued, the commission shall return all licensing fees to
13	the applicant.
14	* * *
15	(d) Any licensee changing that changes its name, mailing address, or
16	ownership shall notify the commission within ten calendar days of the change.
17	Failure to timely notify the commission of a change of name, mailing address, or
18	ownership or shall be in violation of this Section Part.
19	(e) Any licensee ceasing that ceases to maintain its business locations shall
20	surrender its license to the commission within ten calendar days. and any failure
21	<u>Failure</u> to <u>do so timely surrender the license</u> shall constitute a violation <u>of this Part</u> .
22	* * *
23	E. The commission shall may promulgate rules to implement the provisions
24	of this Section.
25	§1893.1. Denial, revocation, or suspension of license; grounds; unauthorized acts
26	A. Except as otherwise provided in this Section, the commission may deny
27	an application for a license issued pursuant to the provisions of this Part for any of
28	the following reasons:

1	(1) Receiving satisfactory proof of unfitness of the applicant pursuant to the
2	standards established by this Part or in rules or regulations adopted and promulgated
3	by the commission.
4	(2) Finding that the applicant has been convicted of a felony crime.
5	(3) Finding a material false statement made by the applicant on any
6	application for licensure in accordance with the provisions of this Part.
7	(4) Finding the applicant has, under a previous license, committed a violation
8	of any law or rule or regulation adopted and promulgated by the commission.
9	(5) Finding the applicant is an immediate family member, the former
10	employee, or a former business associate of a dealer whose license was previously
11	revoked or suspended by the commission, and the applicant intends to operate the
12	same or substantially the same business as operated by the revoked licensee, or the
13	revoked licensee will be participating in the business with the applicant. As used in
14	this Paragraph, "immediate family" shall have the meaning ascribed in R.S.
15	<u>42:1102(13).</u>
16	B. The commission may revoke or suspend a license, issue a fine or penalty,
17	or enjoin a catalytic converter dealer for any of the following reasons:
18	(1) Changing conditions after the license has been granted resulting in failure
19	to maintain the qualifications for licensure.
20	(2) Committing a fraudulent act in selling, purchasing, or dealing in catalytic
21	converters.
22	(3) Engaging in his business in such a manner as to cause injury to the public
23	or those with whom he is dealing.
24	(4) Violating any provision of this Part or any rule or regulation adopted by
25	the commission, or any provision of law not administered by the commission.
26	C. In the performance of its duties in accordance with this Part, the
27	commission may obtain from the Department of Public Safety and Corrections and
28	other governmental agencies information relating to the criminal records of
29	applicants for licensure pursuant to this Part.

1	§1893.2. Applicant notification of licensure or denial; procedures for denial of
2	license
3	A. The executive director of the commission shall notify in writing each
4	applicant for licensure of the action taken by the commission on an application.
5	B.(1) An applicant who has been denied a license shall be notified of the
6	grounds for denial as set forth in R.S. 37:1893.1.
7	(2) An applicant whose application has been denied may request in writing
8	a review of the denial by the commission within thirty days from receipt of the
9	denial.
10	C.(1) The commission shall hear all denials upon reasonable notice to the
11	applicant.
12	(2) An applicant who requests a review of the denial of his application shall
13	provide either written or oral support for his request. Without such support, the
14	request for review shall be denied.
15	(3) The commission shall either affirm or reverse the denial following the
16	review of the denial.
17	D. The commission's decision to affirm the denial shall be final when
18	rendered. The applicant may appeal the decision as provided in R.S. 37:1893.3.
19	§1893.3. Notice; hearings; appeals
20	A. Any licensee charged with violating the provisions of this Part shall be
21	entitled to a hearing on the alleged violation.
22	B.(1) The commission shall determine whether the licensee has violated any
23	provisions of this Part or any rules and regulations promulgated by the commission.
24	(2) The commission shall serve the licensee with written notice of the
25	hearing at least twenty calendar days prior to conducting the hearing on the alleged
26	violation.
27	(3) The commission shall serve the notice of the hearing on the licensee by
28	certified or registered mail to the address for the licensee as provided on the
29	licensee's application, by personal physical service on the licensee, by service on an

1	employee of a dealer, or by posting notice at the entrance of the licensed premises
2	where the alleged violation occurred.
3	(4) The notice shall contain the time and place of the hearing, the alleged
4	violation, the facts in support of the alleged violation, the penalty, if any, and the
5	rights of the licensee during the hearing.
6	(5) If the alleged violation was first presented to the commission by a
7	complaint filed with the commission, a copy of the notice shall be mailed to the
8	complainant by United States mail.
9	C.(1) Any party to a hearing shall have the right to compel the attendance of
10	witnesses by requesting the issuance of subpoenas. The commission shall issue a
11	subpoena requested in writing no later than ten days prior to the hearing. The party
12	requesting a subpoena to be issued shall pay all witness fees in accordance with R.S.
13	13:3661, as well as the estimated cost to be incurred in the delivery of the subpoenas.
14	(2) The commission may compel the attendance of its own witnesses by the
15	issuance of subpoenas.
16	D. The commission shall consider a pleading filed by the licensee no later
17	than five days prior to the hearing.
18	E.(1) The commission may impose sanctions including restrictions on a
19	license, revocation or suspension of a license, civil fines, restitution or injunction,
20	assessment of all costs of the hearing including the commission's attorney fees,
21	witness fees, travel expenses and per diem of commissioners, and the requirement
22	that the licensee attend a four-hour educational seminar within three months of the
23	hearing decision. The commission may also enter into stipulations.
24	(2) The findings and orders of the commission shall be reduced to writing
25	and served on the licensee in any manner consistent with the service provided for in
26	Paragraph (B)(3) of this Section.
27	(3) A decision of the commission to revoke or suspend a license or enjoin
28	a licensee shall be final and enforceable when rendered.

1	(4) A civil penalty imposed by the commission shall become payable thirty
2	days from the date the order is served on the licensee.
3	F.(1) An appeal of a decision by the commission to deny, revoke, or suspend
4	a license shall not constitute a stay of the decision of the commission.
5	(2) An appeal of a decision of the commission shall be heard in accordance
6	with the Administrative Procedure Act.
7	§1893.4. Injunctions; cease and desist orders
8	A. The commission may institute injunctive actions in courts of competent
9	jurisdiction in the name of the state without cost, bond, or deposit to enforce the
10	provisions of this Part.
11	B. A person who violates or threatens to violate any provision of this Part or
12	rule or regulation promulgated by the commission may be enjoined from committing
13	or continuing the violation or engaging in any business for which a license has been
14	issued in accordance with this Part. In addition to any other proper venue, the parish
15	of East Baton Rouge shall constitute a proper venue for the institution by the
16	commission of judicial actions authorized pursuant to this Part.
17	C. All costs, including reasonable attorney fees set by the court incurred by
18	the commission, shall be borne by the person who has been so enjoined.
19	D.(1) If it appears to the commission at any time that a person is violating
20	the provisions of this Part or any rule or order of the commission issued pursuant to
21	this Part, it shall notify the person engaged in such conduct to appear and show cause
22	why a cease and desist order shall not be issued prohibiting the proscribed conduct.
23	An interlocutory cease and desist order may be granted with or without bond or other
24	undertaking if any of the following conditions exists:
25	(a) Such an order is necessary for the performance of the duties delegated to
26	the commission by this Part or is otherwise necessary or convenient to maintaining
27	the status quo between two or more adverse parties before the commission.

1	(b) A party before the commission is entitled to relief demanded of the
2	commission, and all or part of the relief requires the restraint of some act prejudicial
3	to the party.
4	(c) A person is performing or is about to perform or is procuring or allowing
5	the performance of an act relating to the subject of a contested case pending before
6	the commission, and the act would tend to render the commission's order in that case
7	ineffectual.
8	(d) Substantial injury to the rights of a person subject to the jurisdiction of
9	the commission is threatened irrespective of any remedy at law.
10	(2) An interlocutory cease and desist order shall remain in effect until it is
11	vacated or incorporated into a final commission order. A permanent cease and desist
12	order may be issued without regard to the enumerations in Paragraph (1) of this
13	Subsection but only in accordance with the provisions of this Part pertaining to the
14	issuance of final commission orders.
15	(3) Appeal of an interlocutory cease and desist order shall be made to the
16	commission prior to seeking judicial review in accordance with the provisions of this
17	Part. Appeal of a permanent cease and desist order shall be conducted pursuant to the
18	provisions of this Part pertaining to judicial review of final orders.
19	§1893.5. Civil penalties
20	A. A license shall not be granted to an applicant if the commission
21	determines that an applicant is not qualified to receive a license. A license may be
22	suspended or revoked or a civil penalty may be imposed by the commission if the
23	commission determines that a licensee is guilty of violating any provisions of this
24	Part or the rules and regulations of the commission. The commission may also
25	impose a civil penalty against a person who is determined by the commission to have
26	violated any of the provisions of this Part or the rules and regulations of the
27	commission.
28	B.(1) No civil penalty imposed for a violation shall exceed two thousand
29	dollars for each day such violation continues.

1	(2) On a second or subsequent violation, no civil penalty imposed shall
2	exceed three thousand dollars for each day such second or subsequent violation
3	continues. A lapse of at least one day following the first or previous violation shall
4	occur to constitute a second or subsequent violation.
5	C. A civil penalty imposed by the commission may be suspended in whole
6	or in part at the discretion of the commission.
7	D. Upon the failure of a person to timely pay a civil penalty imposed by the
8	commission when civil penalty is due, the commission is entitled to recover by suit
9	or otherwise all costs of collection, including court costs, deposition, and other
10	discovery costs, and reasonable attorney fees incurred by the commission in
11	collecting such civil penalty.
12	§1893.6. Abandonment of business; revocation of license
13	A. A business location shall be considered abandoned upon any of the
14	following:
15	(1) The business is closed during the posted business hours for a period of
16	more than two weeks without notice to the commission.
17	(2) The business telephone, as provided on the dealer's license application,
18	is disconnected or no longer in service.
19	(3) The business sign has been removed.
20	B. When a business location of a catalytic converter dealer is abandoned, the
21	license of the dealer shall be revoked without a hearing if a request for a hearing on
22	the revocation is not made within five business days following the posting of a notice
23	on the front door of the abandoned business.
24	§1894. Exceptions
25	The provisions of this Part shall not apply to either of the following:
26	* * *
27	(2) A person possessing not more than one the used detached catalytic
28	converter converters from one vehicle owned by the person if there is documentation
29	to indicate how the detached catalytic converter was acquired.

27

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1	§1895. Requirements of purchaser and seller; recordkeeping
2	A. Except as otherwise provided for in this Section, it is unlawful for any
3	person not licensed as a dealer by the commission pursuant to R.S. 32:781(3) or (4)
4	to possess, obtain, or otherwise acquire, transport, or sell more than one the used, or
5	detached catalytic converter converters from one vehicle owned by the person or any
6	nonferrous part of a catalytic converter without providing all of the following
7	documentation to law enforcement upon request:
8	* * *
9	(7) The year, make, model and vehicle identification number of the vehicle
10	from which the catalytic converter was detached.
11	* * *
12	C. Any person who purchases a used, or detached catalytic converter shall
13	obtain a signed statement from the seller prior to the purchase attesting that the
14	catalytic converter has been paid for or is owned by the seller. A failure of the
15	purchaser to obtain a statement from the seller shall be prima facie evidence of the
16	fraudulent intent and guilty knowledge on the part of the purchaser within the
17	meaning of this Part and shall be sufficient to warrant a conviction. A purchaser who
18	obtains the required statement from the seller shall be exonerated from any
19	fraudulent, willful, or criminal knowledge within the meaning of this Chapter.
20	* * *
21	§1896. Failure to comply; <u>criminal</u> penalty
22	A. Anyone acting as an unlicensed catalytic converter purchaser or seller,
23	who obtains, possesses, acquires, or transports used or detached catalytic converters
24	or who provides false, fraudulent, altered, or counterfeit information or
25	documentation in violation of the provisions of this Part shall be fined not less than
26	five hundred dollars and be imprisoned not less than thirty days nor more than sixty

days per violation as provided for in Subsection D of this Section.

1 D.(1) Each unlawfully obtained, possessed, or transported used; or detached 2 catalytic converter is a separate violation that subjects the individual or entity to a 3 separate charge. 4 (2) Each fraudulent, altered, or counterfeit information or documentation is 5 a separate violation that subjects the individual or entity to a separate charge. 6 (3) Upon conviction, the court may order the individual or entity to pay 7 restitution for the value of the repair and replacement of the catalytic converter or be 8 held liable as otherwise provided by law.

DIGEST

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 547 Reengrossed

2023 Regular Session

Riser

Abstract: Provides procedures for the La. Used Motor Vehicle Commission to regulate catalytic converter dealer licenses and catalytic converter purchases and sales.

Proposed law changes the following:

- (1) "Catalytic Converter Purchasers" to "Catalytic Converter Transfers"
- (2) "Louisiana Catalytic Converter Sales Law" <u>to</u> "Louisiana Catalytic Converter Transfer Law"
- (3) "Catalytic converter purchaser" to "catalytic converter dealer"
- (4) "Catalytic converter business license" to "catalytic converter dealer license"

Present law provides that a licensed person may buy detached catalytic converters.

<u>Proposed law</u> provides that a licensed person may purchase or sell used or detached catalytic converters.

Present law defines "person".

<u>Proposed law</u> expands the definition of "person" to include a natural person, juridical person, firm, association, trust, and transient merchant.

<u>Present law</u> requires a person to be licensed in order to sale or purchase catalytic converters.

<u>Proposed law</u> retains <u>present law</u> and requires that a person also have either an occupational license if it is required in the jurisdiction where the business is located or a transient merchant license.

<u>Proposed law</u> provides that the La. Used Motor Vehicle Commission (commission) may deny an application for licensure for certain reasons.

Page 11 of 12

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

<u>Proposed law</u> provides that the commission may revoke or suspend a license, issue a fine or penalty, or enjoin a catalytic converter dealer under certain circumstances.

<u>Proposed law</u> provides that the commission is required to notify each license applicant of the action or application decision taken by the commission.

<u>Proposed law</u> provides that the commission shall hold review of an application denial if an applicant properly requests a hearing in writing and in a reasonable time. <u>Proposed law</u> further provides procedures for notices issued by the commission and hearings held by the commission.

<u>Proposed law</u> provides for appeal procedures for applicants or licensees upon denial, revocation, or suspension of a license.

<u>Proposed law</u> authorizes the commission to institute injunctive actions or impose civil penalties for certain violations.

<u>Proposed law</u> provides that a business location of a catalytic converter dealer is considered abandoned under certain circumstances. <u>Proposed law</u> further provides that the license of the dealer may be revoked without a hearing if a request for a hearing is not made in a timely manner as provided in <u>proposed law</u>.

<u>Present law</u> provides for an exemption from <u>present law</u> for a person who is in possession of one used catalytic converter if the person has documentation that the catalytic converter was acquired.

<u>Proposed law</u> provides that a person is exempt if the person owns the vehicle from which the used catalytic converter was detached.

<u>Present law</u> requires an unlicensed person to provide certain documentation if the person is in possession of a catalytic converter.

<u>Proposed law</u> adds that the person must also provide the year, make, model, and VIN of the vehicle from which the catalytic converter was detached.

<u>Present law</u> provides certain criminal penalties for an unlicensed catalytic converter purchaser. <u>Present law</u> further provides that the amount of the fee and duration of the imprisonment increases with each subsequent violation, and each catalytic converter purchased in violation of <u>proposed law</u> constitutes a separate violation.

<u>Proposed law</u> retains <u>present law</u> and adds that a catalytic converter seller or anyone who provides false information or documentation in violation of <u>present law</u> will be subject to criminal penalty.

(Amends R.S. 37:1891, 1892(2) and (4), 1893(A), (B), (C)(1) and (4)(a), (d), and (e), and (E), 1894(2), 1895(A)(intro. para.) and (C), and 1896(A) and (D); Adds R.S. 37:1893.1-1893.6) and 1895(A)(7)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by <u>House Committee on Commerce</u> to the <u>original</u> bill:

1. Make technical changes.

The House Floor Amendments to the engrossed bill:

1. Make technical changes.