

Regular Session, 2011

HOUSE BILL NO. 195

BY REPRESENTATIVE RICHARDSON

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

SECONDHAND DEALERS: Provides relative to the purchase of junk or used or secondhand property

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AN ACT

To amend and reenact R.S. 37:1861(A)(1), 1862.1, 1864, 1864.2(B), 1869(A), and 1870, to enact R.S. 37:1861(A)(5) and (6), 1861.1, 1864.2(C) and (D), 1864.3, and 1864.4, and to repeal Part V of Chapter 2 of Title 51 of the Louisiana Revised Statutes of 1950, comprised of R.S. 51:571 through 579, relative to secondhand dealers; to define "secondhand dealer"; to prohibit certain purchases of secondhand property; to provide an exemption for pawnbrokers; to require a record of secondhand property purchased; to require the record to be kept for three years; to require the record to be made available for inspection by law enforcement; to prohibit the purchase of junk from minors; to require a statement of ownership from the seller; to provide that failure to obtain the statement shall be prima facie evidence of fraud; to provide for exoneration from fraudulent, willful, or criminal knowledge; to require reporting of cash transactions; to require daily reports; to provide for violations; to provide for penalties; to repeal provisions regulating the purchase of junk; to repeal provisions regulating the purchase of certain metals; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 37:1861(A)(1), 1862.1, 1864, 1864.2(B), 1869(A), and 1870 are hereby amended and reenacted and R.S. 37:1861(A)(5) and (6), 1861.1, 1864.2(C) and (D), 1864.3, and 1864.4 are hereby enacted to read as follows:

1 §1861. "Secondhand dealer" defined

2 A.(1) Every person in this state engaged in the business of buying, selling,  
3 trading in, or otherwise acquiring or disposing of junk or used or secondhand  
4 property, including but not limited to jewelry, silverware, diamonds, precious metals,  
5 copper, copper wire, copper alloy, bronze, zinc, aluminum other than in the form of  
6 cans, or brass, whether in the form of bars, cable, ingots, rods, tubing, wire, wire  
7 scraps, clamps or connectors, railroad track materials, furniture, pictures, objects of  
8 art, clothing, mechanic's tools, carpenter's tools, automobile hubcaps, automotive  
9 batteries, automotive sound equipment such as radios, CB radios, stereos, speakers,  
10 cassettes, compact disc players, and similar automotive audio supplies, used building  
11 components, and items defined as cemetery artifacts is a secondhand dealer. Anyone  
12 who buys, sells, trades in, or otherwise acquires or disposes of junk or used or  
13 secondhand property more frequently than once per month shall be deemed as being  
14 engaged in the business of a secondhand dealer.

15 \* \* \*

16 (5) For the purposes of this Part, "junk" shall include any property or  
17 material commonly known as "junk".

18 (6) For the purposes of this Part, "railroad track materials" shall include steel  
19 in the form of railroad tracks or in the form of rail, switch components, spikes, angle  
20 bars, tie plates, or bolts of the type used in constructing railroads, or any combination  
21 of such materials valued in excess of five hundred dollars.

22 \* \* \*

23 §1861.1. Secondhand property; purchase when forbidden

24 No person shall willfully or knowingly purchase junk or used or secondhand  
25 property, unpaid for by the seller, or not owned by the seller.

26 \* \* \*

27 §1862.1. Record and reporting requirements; application

28 The provisions of R.S. 37:1864, 1864.1, 1864.3, 1865, and 1866 shall not  
29 apply to a person operating as a secondhand dealer pursuant to R.S. 37:1785.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 Persons operating as secondhand dealers pursuant to R.S. 37:1785 shall be subject  
2 to the record acquisition, maintenance, and reporting requirements of R.S. 37:1796,  
3 1797, and 1798.

4 \* \* \*

5 §1864. Record of secondhand goods or objects purchased required; exceptions;  
6 retention period; inspections by law enforcement; violations; penalty

7 ~~A.(1) Every secondhand dealer as defined in this Part shall be required to~~  
8 ~~maintain a book or ledger setting forth each purchase of secondhand or used~~  
9 ~~merchandise when the value of any single piece of merchandise or article received,~~  
10 ~~or any single lot of used building components, shall be twenty-five dollars or more~~  
11 ~~for each single transaction. The price at which a piece of merchandise is offered for~~  
12 ~~sale by a secondhand dealer shall be considered prima facie evidence of the value of~~  
13 ~~the piece of merchandise. Each ledger entry shall be entered at the time of each~~  
14 ~~transaction and shall contain an accurate description in the English language of the~~  
15 ~~merchandise or article received including serial numbers of said objects, if~~  
16 ~~distinguishable, along with the amount paid therefor.~~

17 Every individual, firm, corporation, entity, or partnership, except  
18 municipalities, political subdivisions, and public utility companies, engaged in the  
19 business of purchasing and reselling any of the materials provided for in this Part  
20 located either at a permanently established place of business or in connection with  
21 a business of an itinerant nature, including junk shops, junk yards, junk stores, auto  
22 wreckers, scrap metal dealers or processors, salvage yards, collectors of or dealers  
23 in junk or secondhand property, and junk trucks, shall either keep a register and file  
24 reports or electronically maintain data and be capable of readily providing reports,  
25 as specified in Subsection B of this Section, in the form prescribed by the  
26 Department of Public Safety and Corrections which shall contain the following  
27 information:

1           (a) The name and address of the residence or place of business of the person  
2           required to either keep the register and file reports or electronically maintain the data  
3           and generate the requested reports.

4           (b) The date and place of each such purchase.

5           (c) The name and address of the person or persons from whom the material  
6           was purchased, including the distinctive number of the person's or persons' Louisiana  
7           driver's license, driver's license from another state, passport, military identification,  
8           or identification issued by a governmental agency or the United States Postal  
9           Service. If the person cannot produce any of the above forms of identification at the  
10          time of purchase, the purchaser shall not complete the transaction.

11          (d) The motor vehicle license number of the vehicle or conveyance on which  
12          such material was delivered.

13          (e) A full description of all such material purchased, including the weight of  
14          the material and whether it consists of bars, kegs, cable, ingots, rods, tubing wire,  
15          wire scraps, clamps, connectors, or other appurtenances or some combination  
16          thereof.

17          (f) A full description of railroad track materials in excess of five hundred  
18          pounds purchased, including the weight and whether it consists of rail, switch  
19          components, spikes, angle bars, tie plates, or bolts of the type used to construct  
20          railroads or other appurtenances or some combination thereof.

21          (2) This Section shall not apply to purchases of materials from any  
22          manufacturing, industrial, or other commercial vendor that generates, as a byproduct  
23          or recyclable waste, or sells such materials in the ordinary course of its business.

24          ~~B. The name, address, sex, race, height, weight, and driver's license number~~  
25          ~~of the person or persons selling or delivering said merchandise or articles to the~~  
26          ~~dealer shall be obtained and included with each ledger entry. Records of each~~  
27          ~~purchase shall be preserved for a period of at least three years.~~

28          Each such person shall keep either one copy of such completed form in a  
29          separate register or book or maintain the information in electronic format as provided

1 in Subsection A of this Section which shall be kept for a period of three years at his  
2 place of business and shall be made available for inspection by any peace officer or  
3 law enforcement official at any time during the three-year period.

4 C. Failure to maintain the information or the register or to produce a report  
5 requested by any peace officer or law enforcement official as required by this  
6 Section shall be prima facie evidence that the person receiving such material  
7 described in this Section and not registered or reported, received it knowing it to be  
8 stolen, in violation of R.S. 14:69.

9 D. Whoever violates this Section shall be fined not less than one thousand  
10 dollars or imprisoned for not less than thirty days nor more than six months, or both.

11 \* \* \*

12 §1864.2. Purchase of precious metals and stones from minors; purchase of junk  
13 from minors prohibited; penalty

14 \* \* \*

15 B. No owner, employee, keeper, or proprietor of a junk shop, junk store or  
16 yard, of a junk cart or other vehicle or boat, or collector of or dealer in junk, shall  
17 receive or purchase from any minor under seventeen years of age, any goods,  
18 chattels, wares, or other merchandise.

19 C. The provisions of this Section shall not apply to the sale or purchase of  
20 manufactured registered bullion bars, coins, or other numismatic items. The  
21 provisions of this Section shall not apply to a retail tire outlet or an automobile dealer  
22 dealing in tires.

23 D. Whoever violates this Section shall be fined not less than twenty-five  
24 dollars nor more than one hundred dollars, or imprisoned for not less than fifteen  
25 days nor more than three months, or both.

26 §1864.3. Cash transactions reported

27 All payments of cash in excess of twenty-five dollars given in exchange for  
28 junk or used or secondhand property shall be reported separately in the daily reports  
29 required by R.S. 37:1866.



1 Section 2. Part V of Chapter 2 of Title 51 of the Louisiana Revised Statutes of 1950,  
2 comprised of R.S. 51:571 through 579, is hereby repealed in its entirety.

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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)]

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Richardson

HB No. 195

**Abstract:** Regulates the purchase of junk or used or secondhand property by secondhand dealers.

Present law provides that every person in this state engaged in the business of buying, selling, trading in, or otherwise acquiring or disposing of used or secondhand property, including but not limited to jewelry, silverware, diamonds, precious metals, furniture, pictures, objects of art, clothing, mechanic's tools, carpenter's tools, automobile hubcaps, automotive batteries, automotive sound equipment such as radios, CB radios, stereos, speakers, cassettes, compact disc players, and similar automotive audio supplies, used building components, and items defined as cemetery artifacts is a secondhand dealer.

Proposed law provides that every person in this state engaged in the business of buying, selling, trading in, or otherwise acquiring or disposing of junk or used or secondhand property, including but not limited to jewelry, silverware, diamonds, precious metals, copper, copper wire, copper alloy, bronze, zinc, aluminum other than in the form of cans, or brass, whether in the form of bars, cable, ingots, rods, tubing, wire, wire scraps, clamps or connectors, railroad track materials, furniture, pictures, objects of art, clothing, mechanic's tools, carpenter's tools, automobile hubcaps, automotive batteries, automotive sound equipment such as radios, CB radios, stereos, speakers, cassettes, compact disc players, and similar automotive audio supplies, used building components, and items defined as cemetery artifacts is a secondhand dealer.

Proposed law further provides that anyone who buys, sells, trades in, or otherwise acquires or disposes of junk or used or secondhand property more frequently than once per month shall be deemed as being engaged in the business of a secondhand dealer.

Proposed law defines "junk" as any property or material commonly known as "junk".

Proposed law provides that "railroad track materials" shall include steel in the form of railroad tracks or in the form of rail, switch components, spikes, angle bars, tie plates, or bolts of the type used in constructing railroads, or any combination of such materials valued in excess of \$500.

Proposed law prohibits any person from willfully or knowingly purchasing junk or used or secondhand property, unpaid for by the seller, or not owned by the seller.

Present law provides that the record acquisition, maintenance, and reporting requirements of present law shall not apply to a person operating as a pawnshop.

Proposed law retains present law and adds an exemption for the separate reporting of all payments of cash in excess of \$25 as required by proposed law.

Present law requires every secondhand dealer to maintain a book or ledger setting forth each purchase of secondhand or used merchandise when the value of any single piece of merchandise or article received, or any single lot of used building components, is \$25 or

more for each single transaction. The price at which a piece of merchandise is offered for sale by a secondhand dealer shall be considered prima facie evidence of the value of the piece of merchandise. Each ledger entry shall be entered at the time of each transaction and shall contain an accurate description in the English language of the merchandise or article received including serial numbers of the objects, if distinguishable, along with the amount paid therefor.

Proposed law requires every individual, firm, corporation, entity or partnership, except municipalities, political subdivisions, and public utility companies, engaged in the business of purchasing and reselling any of the materials provided for in proposed law located either at a permanently established place of business or in connection with a business of an itinerant nature, including junk shops, junk yards, junk stores, auto wreckers, scrap metal dealers or processors, salvage yards, collectors of or dealers in junk or secondhand property, and junk trucks, to either keep a register and file reports or electronically maintain data and be capable of readily providing reports in the form prescribed by the DPS&C.

Present law requires the name, address, sex, race, height, weight, and driver's license number of the person or persons selling or delivering the merchandise or articles to the dealer to be obtained and included with each ledger entry. Records of each purchase are to be preserved for a period of at least three years.

Proposed law requires the register to contain the following information:

- (1) The name and address of the residence or place of business of the person required to either keep the register and file reports or electronically maintain the data and generate the requested reports.
- (2) The date and place of each such purchase.
- (3) The name and address of the person or persons from whom the material was purchased, including the distinctive number of the person's or persons' La. driver's license, driver's license from another state, passport, military identification, or identification issued by a governmental agency or the U. S. Postal Service. If the person cannot produce any of the above forms of identification at the time of purchase, the purchaser shall not complete the transaction.
- (4) The motor vehicle license number of the vehicle or conveyance on which the material was delivered.
- (5) A full description of all the material purchased, including the weight of the material and whether it consists of bars, kegs, cable, ingots, rods, tubing wire, wire scraps, clamps, connectors, or other appurtenances or some combination thereof.
- (6) A full description of railroad track materials in excess of 500 pounds purchased, including the weight and whether it consists of rail, switch components, spikes, angle bars, tie plates, or bolts of the type used to construct railroads or other appurtenances or some combination thereof.

Proposed law provides that proposed law shall not apply to purchases of materials from any manufacturing, industrial, or other commercial vendor that generates, as a byproduct or recyclable waste, or sells such materials in the ordinary course of its business.

Proposed law requires each such person to keep either one copy of the completed form in a separate register or book or maintain the information in electronic format which shall be kept for a period of three years at his place of business and shall be made available for inspection by any peace officer or law enforcement official at any time during the three-year period.



Proposed law provides that failure to maintain the information or the register or to produce a report requested by any peace officer or law enforcement official shall be prima facie evidence that the person receiving such material described in proposed law and not registered or reported, received it knowing it to be stolen.

Proposed law provides that whoever violates present law and proposed law shall be fined not less than \$1,000 or imprisoned for not less than 30 days nor more than six months, or both.

Proposed law prohibits an owner, employee, keeper, or proprietor of a junk shop, junk store or yard, of a junk cart or other vehicle or boat, or collector of or dealer in junk, from receiving or purchasing from any minor under 17 years of age, any goods, chattels, wares, or other merchandise.

Present law provides that present law shall not apply to the sale or purchase of manufactured registered bullion bars, coins, or other numismatic items or to a retail tire outlet or an automobile dealer dealing in tires.

Proposed law retains present law.

Proposed law provides that whoever violates present law and proposed law shall be fined not less than \$25 nor more than \$100, or imprisoned for not less than 15 days nor more than three months, or both.

Proposed law requires all payments of cash in excess of \$25 given in exchange for junk or used or secondhand property to be reported separately in the daily reports required by proposed law.

Proposed law requires every secondhand dealer to obtain a signed statement from the seller that the junk or used or secondhand property has been paid for or is owned by the seller, and a failure of the dealer to exact a statement from the seller shall be prima facie evidence of the fraudulent intent and guilty knowledge on the part of the dealer, sufficient to warrant a conviction.

Proposed law provides that a secondhand dealer who obtains the required statement from the seller shall be exonerated from any fraudulent, willful, or criminal knowledge.

Present law provides that any secondhand dealer who violates, neglects, or refuses to comply with any provision of present law, shall be fined not less than \$250, nor more than \$500 or be imprisoned for not less than 30 days nor more than 60 days, or both.

Proposed law retains present law but specifies that the penalty is for violations committed by a licensed secondhand dealer.

Present law provides that anyone acting as a secondhand dealer without complying with the provisions of present law shall be fined not less than \$250 or be imprisoned not less than 30 days nor more than 60 days, or both.

Proposed law retains present law but specifies that the penalty is for violations committed by an unlicensed secondhand dealer.

Proposed law provides that, for a second offense, the unlicensed secondhand dealer shall be fined not more than \$2,000 or be imprisoned with or without hard labor for not more than two years, or both.

Proposed law provides that, for a third or subsequent offense, the unlicensed secondhand dealer shall be fined not more than \$10,000 or be imprisoned with or without hard labor for not more than five years, or both.

Present law (R.S. 51:571) provides that, when used in present law, "junk" means any property or material commonly known as "junk" or any secondhand property.

Proposed law repeals present law.

Present law (R.S. 51:572) provides that no person shall willfully or knowingly purchase junk, unpaid for by the seller, or not owned by the seller.

Proposed law repeals present law.

Present law (R.S. 51:573) requires every purchaser of junk to make a monthly report of purchases to the DPS&C before the 10th day of the next succeeding month, giving a description of the junk together with the name and address of the person from whom purchased and the date of the purchase.

Proposed law repeals present law.

Present law (R.S. 51:574) requires every purchaser of junk to exact a signed statement from the seller that the junk has been paid for or is owned by the seller, and a failure of the purchaser to exact a statement from the seller shall be prima facie evidence of the fraudulent intent and guilty knowledge on the part of the purchaser, sufficient to warrant a conviction.

Proposed law repeals present law.

Present law (R.S. 51:575) provides that a purchaser exacting and securing a statement from the seller shall be exonerated from any fraudulent, willful, or criminal knowledge.

Proposed law repeals present law.

Present law (R.S. 51:576) provides that nothing in present law shall prohibit or interfere with the right of the owner of any property, the sale of which is subject to the provisions of present law and which has been taken or stolen from the owner, from recovering the property or recovering damages in a civil proceeding brought for that purpose.

Proposed law repeals present law.

Present law (R.S. 51:577) provides that whoever violates present law shall be fined not less than \$25 nor more than \$500, or imprisoned for not less than 30 days nor more than six months, or both.

Proposed law repeals present law.

Present law (R.S. 51:578) prohibits an owner, employee, keeper, or proprietor of a junk shop, junk store or yard, of a junk cart or other vehicle or boat, or collector of or dealer in junk, from receiving or purchasing from any minor under 17 years of age, any goods, chattels, wares, or other merchandise.

Proposed law repeals present law.

Present law (R.S. 51:578) provides that whoever violates present law shall be fined not less than \$25 nor more than \$100, or imprisoned for not less than 15 days nor more than three months, or both.

Proposed law repeals present law.

Present law (R.S. 51:579) requires every individual, firm, corporation, entity, or partnership, except municipalities, political subdivisions, and public utility companies, engaged in the business of purchasing and reselling any of the materials provided for in present law, located

either at a permanently established place of business or in connection with a business of an itinerant nature, including junk shops, junk yards, junk stores, auto wreckers, scrap metal dealers or processors, salvage yards, collectors of or dealers in junk or secondhand property, and junk trucks, to either keep a register and file reports or electronically maintain data and be capable of readily providing reports in the form prescribed by the DPS&C which shall contain the following information:

- (1) The name and address of the residence or place of business of such person required to either keep the register and file reports or electronically maintain the data and generate the requested reports.
- (2) The date and place of each such purchase.
- (3) The name and address of the person or persons from whom the material was purchased, including the distinctive number of the person's or persons' La. driver's license, driver's license from another state, passport, military identification, or identification issued by a governmental agency or the U.S. Postal Service. If the person cannot produce any of the above forms of identification at the time of purchase, the purchaser shall not complete the transaction.
- (4) A photocopy of a valid driver's license or a valid identification card issued by the seller's current state of residence. If the seller of the material does not have a valid driver's license or a valid state-issued identification card, the purchaser shall not complete the transaction.
- (5) The motor vehicle license number of the vehicle or conveyance on which the material was delivered.
- (6) A full description of all the material purchased, including the weight of the material and whether it consists of bars, kegs, cable, ingots, rods, tubing wire, wire scraps, clamps, connectors, or other appurtenances or some combination thereof.
- (7) A full description of railroad track materials in excess of 500 pounds purchased, including the weight and whether it consists of rail, switch components, spikes, angle bars, tie plates, or bolts of the type used to construct railroads or other appurtenances or some combination thereof.

Proposed law repeals present law.

Present law (R.S. 51:579) provides that present law shall apply to the following materials or any other appurtenance utilized or that can be utilized by common carriers or by persons, firms, corporations, cooperatives, entities, or municipal corporations engaged in either the generation, transmission, or distribution of electric energy or in telephone, telegraph, or other communications:

- (1) Copper, copper wire, copper alloy, bronze, zinc, aluminum other than in the form of cans, or brass, whether in the form of bars, cable, ingots, rods, tubing, wire, wire scraps, clamps, or connectors.
- (2) Steel in the form of railroad tracks or in the form of rail, switch components, spikes, angle bars, tie plates, or bolts of the type used in constructing railroads, or any combination of such materials valued in excess of \$500.

Proposed law repeals present law.

Present law (R.S. 51:579) provides that present law shall not apply to purchases of materials from any manufacturing, industrial, or other commercial vendor that generates, as a byproduct or recyclable waste, or sells such materials in the ordinary course of its business.

Proposed law repeals present law.

Present law (R.S. 51:579) requires each such person to keep either one copy of the completed form in a separate register or book or maintain the information in electronic format as which shall be kept for a period of two years at his place of business and shall be made available for inspection by any peace officer or law enforcement official at any time during the two-year period.

Proposed law repeals present law.

Present law (R.S. 51:579) provides that, upon request by the sheriff of the parish in which the business is located, or if in the parish of Orleans by the police department of the city of New Orleans, during the two-year period and within three days from such request, one copy of the completed form or report shall be filed with the sheriff of the parish in which any purchase is made and with the sheriff of the parish in which such business is located, except in the parish of Orleans, the form or report shall be filed with the police department of the city of New Orleans, and one copy shall be filed with or mailed to DPS&C or such department as may succeed to its functions under present law.

Proposed law repeals present law.

Present law (R.S. 51:579) provides that, for a period of not less than 10 days from the date of purchase, the material purchased or acquired shall be held or captured photographically, including digital format, in the same form, without change, in which it was acquired, and shall be kept separated so that it is readily identifiable from all other purchases. If the material is captured photographically, the time and date shall be digitally recorded on the photograph, and the identity of the person taking the photograph shall be recorded. Any photographs shall be included with the completed form or report submitted.

Proposed law repeals present law.

Present law (R.S. 51:579) provides that failure to maintain the information, the register, or produce a report requested by the sheriffs or DPS&C shall be prima facie evidence that the person receiving such material not registered or reported, received it knowing it to be stolen.

Proposed law repeals present law.

Present law (R.S. 51:579) provides that whoever violates present law shall be fined not less than \$1,000 or imprisoned for not less than 30 days nor more than one year, or both.

Proposed law repeals present law.

(Amends R.S. 37:1861(A)(1), 1862.1, 1864, 1864.2(B), 1869(A), and 1870; Adds R.S. 37:1861(A)(5) and (6), 1861.1, 1864.2(C) and (D), 1864.3, and 1864.4; Repeals R.S. 51:571-579)