

Regular Session, 2011

HOUSE BILL NO. 195

BY REPRESENTATIVES RICHARDSON, BOBBY BADON, BARROW, BISHOP,
CARMODY, FOIL, HARDY, HENDERSON, KATZ, POPE, PUGH, SEABAUGH,
THIBAUT, AND WILLMOTT AND SENATOR ERDEY

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

1 AN ACT

2 To amend and reenact R.S. 37:1861(A)(1) and (B)(introductory paragraph) and (2), 1862.1,
3 1864, 1864.2(B), 1869(A), and 1870, to enact R.S. 37:1861(A)(5), (6), and (7) and
4 (B)(5), 1861.1, 1864.2(C) and (D), 1864.3, and 1864.4 and to repeal Part V of
5 Chapter 2 of Title 51 of the Louisiana Revised Statutes of 1950, comprised of R.S.
6 51:571 through 579, relative to secondhand dealers; to define "secondhand dealer";
7 to provide for an exemption for motor vehicle dismantlers and parts recyclers; to
8 provide for an exemption for certain persons performing waste management and
9 recycling; to prohibit certain purchases of secondhand property; to provide an
10 exemption for pawnbrokers; to require a record of secondhand property purchased;
11 to require the record to be kept for three years; to require the record to be made
12 available for inspection by law enforcement; to prohibit the purchase of junk from
13 minors; to require a statement of ownership from the seller; to provide that failure
14 to obtain the statement shall be prima facie evidence of fraud; to provide for
15 exoneration from fraudulent, willful, or criminal knowledge; to require payment by
16 check or money order; to require daily reports; to provide for violations; to provide
17 for penalties; to repeal provisions regulating the purchase of junk; to repeal
18 provisions regulating the purchase of certain metals; and to provide for related
19 matters.

20 Be it enacted by the Legislature of Louisiana:

21 Section 1. R.S. 37:1861(A)(1) and (B)(introductory paragraph) and (2), 1862.1,
22 1864, 1864.2(B), 1869(A), and 1870 are hereby amended and reenacted and R.S.

1 37:1861(A)(5), (6), and (7) and (B)(5), 1861.1, 1864.2(C) and (D), 1864.3, and 1864.4 are
2 hereby enacted to read as follows:

3 §1861. "Secondhand dealer" defined

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

19 * * *

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

22 (6) For the purposes of this Part, "railroad track materials" shall include steel
23 in the form of railroad tracks or in the form of rail, switch components, spikes, angle
24 bars, tie plates, or bolts of the type used in constructing railroads, or any combination
25 of such materials.

26 (7) For the purposes of this Part, "water utility materials" shall include but
27 not be limited to water meters, valves, pipes, and fittings.

28 B. Except as provided for in R.S. 37:1864.3 and 1869.1, the provisions of
29 this Part shall not apply to:

30 * * *

1 (2) Persons solely engaged in the business of buying, selling, trading in, or
 2 otherwise acquiring or disposing of motor vehicles and used parts of motor vehicles,
 3 and shall not apply to wreckers or dismantlers of motor vehicles who are licensed
 4 under the provisions of R.S. ~~32:771~~ 32:783 et seq.

5 * * *

6 (5) Collectors, transporters, or disposers of waste whose waste collection,
 7 transportation, and disposal activities are regulated by the Department of
 8 Environmental Quality, or persons who collect, transport, or manage recyclable
 9 materials pursuant to a residential collection, recycling, or disposal contract with a
 10 municipality or political subdivision.

11 §1861.1. Secondhand property; purchase when forbidden

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

14 * * *

15 §1862.1. Record and reporting requirements; application

16 The provisions of R.S. 37:1864, 1864.1, 1864.3, 1865, and 1866 shall not
 17 apply to a person operating as a secondhand dealer pursuant to R.S. 37:1785.
 18 Persons operating as secondhand dealers pursuant to R.S. 37:1785 shall be subject
 19 to the record acquisition, maintenance, and reporting requirements of R.S. 37:1796,
 20 1797, and 1798.

21 * * *

22 §1864. Record of secondhand goods or objects purchased required; exceptions;
 23 retention period; inspections by law enforcement; violations; penalty

24 ~~A.(1) Every secondhand dealer as defined in this Part shall be required to~~
 25 ~~maintain a book or ledger setting forth each purchase of secondhand or used~~
 26 ~~merchandise when the value of any single piece of merchandise or article received,~~
 27 ~~or any single lot of used building components, shall be twenty-five dollars or more~~
 28 ~~for each single transaction. The price at which a piece of merchandise is offered for~~
 29 ~~sale by a secondhand dealer shall be considered prima facie evidence of the value of~~
 30 ~~the piece of merchandise. Each ledger entry shall be entered at the time of each~~

1 ~~transaction and shall contain an accurate description in the English language of the~~
2 ~~merchandise or article received including serial numbers of said objects, if~~
3 ~~distinguishable, along with the amount paid therefor.~~

4 Every individual, firm, corporation, entity, or partnership, except
5 municipalities, political subdivisions, and public utility companies, engaged in the
6 business of purchasing and reselling any of the materials provided for in this Part
7 located either at a permanently established place of business or in connection with
8 a business of an itinerant nature, including junk shops, junk yards, junk stores, auto
9 wreckers, scrap metal dealers or processors, salvage yards, collectors of or dealers
10 in junk or secondhand property, and junk trucks, shall either keep a register and file
11 reports or electronically maintain data and be capable of readily providing reports,
12 as specified in Subsection B of this Section, in the form prescribed by the
13 Department of Public Safety and Corrections which shall contain the following
14 information:

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

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

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

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

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

1 chattels, wares, or other merchandise, including any material defined in R.S.
 2 37:1861.

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

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

10 §1864.3. Payment by check or money order required

11 A secondhand dealer shall not enter into any cash transactions in payment for
 12 the purchase of junk or used or secondhand property. Payment shall be made in the
 13 form of check, electronic transfers, or money order issued to the seller of the junk or
 14 used or secondhand property and made payable to the name and address of the seller.
 15 All payments made by check, electronic transfers, or money order shall be reported
 16 separately in the daily reports required by R.S. 37:1866.

17 §1864.4. Statement by seller required; failure to exact statement evidence of
 18 fraudulent intent; exoneration from criminal knowledge

19 A.(1) Every secondhand dealer shall obtain a signed statement from the
 20 seller that the junk or used or secondhand property has been paid for or is owned by
 21 the seller, and a failure of the dealer to exact a statement from the seller shall be
 22 prima facie evidence of the fraudulent intent and guilty knowledge on the part of the
 23 dealer within the meaning of this Part, sufficient to warrant a conviction.

24 (2) In transactions involving railroad track materials, a secondhand dealer
 25 shall require the party seeking to sell or dispose of the materials to furnish a signed
 26 statement from the appropriate railroad company consenting to the sale of the
 27 railroad track materials identified in the statement, which shall be retained by the
 28 secondhand dealer. The statement shall include the name of the railroad company
 29 consenting to the sale and the name, employee number, and phone number of the
 30 person signing the statement authorizing the sale. The secondhand dealer shall

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.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____