

Regular Session, 2011

ACT No. 389

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

AN ACT

To amend and reenact R.S. 37:1861(A)(1) and (B)(introductory paragraph) and (2), 1862.1, 1864, 1864.2(B), 1869(A), and 1870, to enact R.S. 37:1861(A)(5), (6), and (7) and (B)(5), 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 provide for an exemption for motor vehicle dismantlers and parts recyclers; to provide for an exemption for certain persons performing waste management and recycling; 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 payment by check or money order; 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) and (B)(introductory paragraph) and (2), 1862.1, 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 ~~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 attempt to verify the authenticity of the statement authorizing the sale of the railroad
2 track materials.

3 B. A secondhand dealer who obtains the required statement from the seller
4 shall be exonerated from any fraudulent, willful, or criminal knowledge within the
5 meaning of this Part.

6 * * *

7 §1869. Violations; penalty

8 A. Any licensed secondhand dealer who violates, neglects, or refuses to
9 comply with any provision of this Part, shall be fined not less than two hundred fifty
10 dollars, nor more than five hundred dollars or be imprisoned for not less than thirty
11 days nor more than sixty days, or both.

12 * * *

13 §1870. Failure to comply; penalty

14 A. Anyone acting as a ~~second-hand~~ an unlicensed secondhand dealer without
15 complying with the provisions of this Part shall be fined not less than two hundred
16 and fifty dollars or be imprisoned not less than thirty days nor more than sixty days,
17 or both.

18 B. For a second offense, the offender shall be fined not more than two
19 thousand dollars or be imprisoned with or without hard labor for not more than two
20 years, or both.

21 C. For a third or subsequent offense, the offender shall be fined not more
22 than ten thousand dollars or be imprisoned with or without hard labor for not more
23 than five years, or both.

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: _____