

Regular Session, 2012

HOUSE BILL NO. 751

BY REPRESENTATIVE RICHARDSON

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

1 AN ACT

2 To amend and reenact the title of Part II of Chapter 21 of Title 37 of the Louisiana Revised
3 Statutes of 1950, R.S. 37:1861(A) and (B)(introductory paragraph), 1861.1, 1862(A),
4 1862.1, 1863, 1864(A)(1)(introductory paragraph), 1864.1(A), 1864.2, 1864.3,
5 1864.4, 1865, 1866, 1867(A), 1869, and 1870(A), to enact R.S. 37:1861(B)(6) and
6 Part II-B of Chapter 21 of Title 37 of the Louisiana Revised Statutes of 1950, to be
7 comprised of R.S. 37:1891 through 1894, and to repeal R.S. 37:1861.2, 1868, and
8 1869.1, relative to used or secondhand property; to define "scrap metal dealer"; to
9 define "scrap metal"; to provide for an exemption for the purchase of aluminum in
10 the form of cans; to prohibit certain purchases of scrap metal; to require an
11 occupational license to do business as a scrap metal dealer; to provide for an
12 exemption for pawnbrokers; to require changes in location of scrap metal dealers to
13 be noted on the occupational license; to require a record of scrap metal purchased;
14 to require photographic or other record of persons selling scrap metal; to prohibit the
15 purchase of scrap metal from minors; to prohibit cash payment for the purchase of
16 copper; to establish a maximum cash payment for metals other than copper; to
17 require a statement of ownership from the seller; to provide that failure to obtain the
18 statement shall be prima facie evidence of fraud; to provide for exoneration from
19 fraudulent, willful, or criminal knowledge; to require records to be made available
20 for inspection by law enforcement; to require daily reporting of non-personally

1 identifiable information to law enforcement; to require the release of information
 2 pursuant to an investigation by law enforcement; to prohibit the immediate disposal
 3 of scrap metal by a dealer unless ownership has been proven; to provide for
 4 violations; to provide for penalties; to require retailers who purchase used goods to
 5 maintain records of the purchases; to provide for inspection of the records by law
 6 enforcement officers; to provide for retention of the records; to define "retailer"; to
 7 require photographic records; to repeal the limit on the location of secondhand dealer
 8 facilities; to repeal the limit on hours of business for secondhand dealers; to prohibit
 9 the sale of used law enforcement and public utility uniforms; to provide for
 10 exceptions; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. The title of Part II of Chapter 21 of Title 37 of the Louisiana Revised
 13 Statutes of 1950, R.S. 37:1861(A) and (B)(introductory paragraph), 1861.1, 1862(A),
 14 1862.1, 1863, 1864(A)(1)(introductory paragraph), 1864.1(A), 1864.2, 1864.3, 1864.4,
 15 1865, 1866, 1867(A), 1869, and 1870(A) are hereby amended and reenacted and R.S.
 16 37:1861(B)(6) and Part II-B of Chapter 21 of Title 37 of the Louisiana Revised Statutes of
 17 1950, comprised of R.S. 37:1891 through 1894, are hereby enacted to read as follows:

18 PART II. ~~SECONDHAND~~ SCRAP METAL DEALERS

19 §1861. "~~Secondhand~~ Scrap metal dealer" defined

20 A.(1) Every person in this state engaged in the business of buying, selling,
 21 trading in, or otherwise acquiring or disposing of ~~junk or used or secondhand~~
 22 ~~property, including but not limited to jewelry, silverware, diamonds, precious metals,~~
 23 ~~ferrous materials, catalytic converters, auto hulks, copper, copper wire, copper alloy,~~
 24 ~~bronze, zinc, aluminum, stainless steel, nickel alloys, or brass, whether in the form~~
 25 ~~of bars, cable, ingots, rods, tubing, wire, wire scraps, clamps or connectors, railroad~~
 26 ~~track materials, water utility materials, furniture, pictures, objects of art, clothing,~~
 27 ~~mechanic's tools, carpenter's tools, automobile hubcaps, automotive batteries,~~
 28 ~~automotive sound equipment such as radios, CB radios, stereos, speakers, cassettes,~~
 29 ~~compact disc players, and similar automotive audio supplies, used building~~

1 ~~components, and items defined as cemetery artifacts is a secondhand dealer.~~
2 ~~Anyone, other than a nonprofit entity, who buys, sells, trades in, or otherwise~~
3 ~~acquires or disposes of junk or used or secondhand property more frequently than~~
4 ~~once per month from any other person, other than a nonprofit entity, shall be~~
5 ~~deemed as being engaged in the business of a secondhand dealer~~ scrap metal is a
6 scrap metal dealer.

7 (2) For purposes of this Part, ~~"cemetery artifacts"~~ "scrap metal" means any
8 ~~object produced or shaped by human workmanship or tools, including ornaments of~~
9 ~~archaeological, historical, cultural, or sentimental significance or interest, which may~~
10 ~~be used to memorialize the dead and shall include but not be limited to all cemetery~~
11 ~~items, objects, and properties including but not limited to any type of religious or~~
12 ~~sentimental addition or adornment, inside or outside of a tomb, gravesite, plot,~~
13 ~~mausoleum, vault or interment location, whether placed privately or by assignment,~~
14 ~~regardless of monetary worth, age, size, shape, or condition including but not limited~~
15 ~~to statues, bricks, signage, plaques, tablets, urns, pots, planters, benches, chairs,~~
16 ~~crosses or other religious symbols, vases, gates, fences, or any portions thereof~~ shall
17 include but not be limited to copper, copper wire, copper alloy, bronze, zinc,
18 aluminum, stainless steel, nickel alloys, or brass, whether in the form of bars, cable,
19 ingots, rods, tubing, wire, wire scraps, clamps or connectors, ferrous materials,
20 catalytic converters, auto hulks, railroad track materials, water utility materials, and
21 gold, silver, platinum, or other precious metals including jewelry or objects
22 composed of such precious metals.

23 (3) For purposes of this Part, a ~~"used building component"~~ shall mean any
24 ~~object produced or shaped by human workmanship or tools that is an element of~~
25 ~~structural, architectural, archaeological, historical, ornamental, cultural, utilitarian,~~
26 ~~decorative, or sentimental significance or interest, which has been and may be used~~
27 ~~as an adjunct to, or component or ornament of any building or structure, regardless~~
28 ~~of monetary worth, age, size, shape, or condition, that is immovable property or~~
29 ~~fixture, including but not limited to bricks, siding, gutters, downspouts, lightning~~

1 rods, chimney roofs, lights, chandeliers, stoves, tubs, sinks, faucets, faucet handles,
2 toilets, bidets, showers, fans, furnaces, air conditioners, water heaters, sprinkling
3 systems, shelving, countertops, cabinets, built-in speakers, shutters, trim, rafters, roof
4 tiles, roofing, studs, foundation, barge boards, paneling, stairs, risers, banisters,
5 wiring, plumbing, hinges, door latches, door knobs, medallions, mantles, flooring,
6 carpet, tiles, molding, wainscoting, pavers, doors, windows, sills, transoms, joists,
7 mailboxes, signage, fountains, decking, gates, fences, planters, landscaping,
8 plantings or portions thereof, or component parts of immovable property of any
9 nature or kind whatsoever.

10 (4) For purposes of this Part, a "lot of used building components" shall mean
11 a group of like used building components.

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

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

18 (7) (4) For the purposes of this Part, "water utility materials" shall include
19 but not be limited to water meters, valves, pipes, and fittings.

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

22 * * *

23 (6) The purchase of aluminum in the form of cans.
24 §1861.1. ~~Secondhand property~~ Scrap metal; purchase when forbidden

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

27 §1862. License required; application; bond; exemptions

28 A. No person shall do business as a ~~secondhand~~ scrap metal dealer in this
29 state without having first obtained the occupational license required by law. Any

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

1 person desiring a license as ~~secondhand~~ scrap metal dealer shall make application
 2 in writing, specifying the street number and house number of the building where the
 3 business is to be carried on. This application shall be signed by at least three
 4 property taxpayers of the city or parish where the business is to be established
 5 certifying that the applicant is of good moral character. He shall also submit with
 6 his application a bond in favor of the city or parish, as the case may be, where the
 7 business is to be established in the sum of two thousand five hundred dollars with
 8 security conditioned for the due observance of all provisions of this Part.

9 * * *

10 §1862.1. Record and reporting requirements; application

11 The provisions of R.S. 37:1864, 1864.1, 1864.3, 1865, and 1866 shall not
 12 apply to a person operating as a ~~secondhand~~ scrap metal dealer pursuant to R.S.
 13 37:1785. Persons operating as ~~secondhand~~ scrap metal dealers pursuant to R.S.
 14 37:1785 shall be subject to the record acquisition, maintenance, and reporting
 15 requirements of R.S. 37:1796, 1797, and 1798.

16 §1863. Change in location to be noted on license

17 If after issuance and delivery of a license under the provisions of this Part any
 18 change is made in the location of the place of business designated therein, the
 19 business shall not be conducted at the new location or under such license, until the
 20 official issuing the licenses notes the change on the license, and the superintendent
 21 of police of the city or the sheriff of the parish in which the ~~second-hand~~ scrap metal
 22 dealer is doing business is notified in writing of the change.

23 §1864. Record of ~~secondhand goods or objects~~ scrap metal purchased required;
 24 exceptions; retention period; inspections by law enforcement; violations;
 25 penalty

26 A.(1) Every individual, firm, corporation, entity, or partnership, except
 27 municipalities, political subdivisions, and public utility companies, engaged in the
 28 business of purchasing and reselling ~~any of the materials provided for in this Part~~
 29 scrap metal located either at a permanently established place of business or in

1 connection with a business of an itinerant nature, including junk shops, junk yards,
2 junk stores, auto wreckers, scrap metal dealers or processors, salvage yards,
3 collectors of or dealers in junk or secondhand property, and junk trucks, shall either
4 keep a register and file reports or electronically maintain data and be capable of
5 readily providing reports, as specified in Subsection B of this Section, in the form
6 prescribed by the Department of Public Safety and Corrections which shall contain
7 the following information:

8 * * *

9 §1864.1. Photographic and other records; exceptions

10 A.(1) In addition to the information required in R.S. 37:1864, every
11 ~~secondhand~~ scrap metal dealer shall be required to obtain a photograph of a person
12 selling or delivering ~~merchandise or articles~~ scrap metal to the dealer. The quality
13 of such photograph shall be sufficient ~~to~~ readily ~~to~~ identify the person depicted. In
14 lieu of the photograph of the person selling or delivering the ~~merchandise~~ scrap
15 metal, the dealer may obtain either a thumbprint of such person, the quality of which
16 thumbprint shall be sufficient to identify the person, or a photocopy of the person's
17 Louisiana driver's license, driver's license from another state, passport, military
18 identification, or identification issued by a governmental agency or the United States
19 Postal Service. Each photograph, thumbprint, or photocopy, as the case may be,
20 shall be cross-referenced with the ledger entry required by R.S. 37:1864. The
21 photograph, thumbprint, or photocopy shall be preserved for a period of at least a
22 year.

23 (2) Pursuant to a request from a law enforcement agency, a ~~secondhand~~ scrap
24 metal dealer shall be required to capture photographically ~~used merchandise or~~
25 ~~articles~~ scrap metal purchased pursuant to R.S. 37:1864(A). Photographs shall be
26 made available to the law enforcement agency within twenty-four hours after the
27 request.

28 * * *

1 §1864.2. Purchase of ~~precious scrap~~ metals and stones from minors; ~~purchase of~~
2 ~~junk from minors~~ prohibited; penalty

3 A. No ~~secondhand scrap metal~~ dealer shall purchase ~~gold, silver, copper,~~
4 ~~brass, aluminum other than in the form of cans, or other precious metals, jewelry,~~
5 ~~precious stones, or objects composed of such precious scrap~~ metals or stones from
6 a person under the age of eighteen. Lack of knowledge of age shall not be a defense
7 to a violation of this Section.

8 B. No ~~owner, employee, keeper, or proprietor of a junk shop, junk store or~~
9 ~~yard, of a junk cart or other vehicle or boat, or collector of or dealer in junk, scrap~~
10 ~~metal dealer~~ shall receive or purchase from any minor under seventeen years of age,
11 any goods, chattels, wares, or other merchandise, including any material defined in
12 R.S. 37:1861.

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

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

20 §1864.3. Payment by electronic transfer, check, or money order required for certain
21 metal transactions

22 A ~~secondhand scrap metal~~ dealer shall not enter into any cash transactions in
23 ~~payment for the purchase of junk or used or secondhand~~ for copper or in excess of
24 five hundred dollars for all other metals in payment for the purchase of the metal
25 property. Payment for copper or in excess of five hundred dollars for all other metals
26 shall be made in the form of ~~check~~, electronic ~~transfers~~ transfer, or money order
27 issued to the seller of the ~~junk or used or secondhand~~ property and made payable to
28 ~~the name and address of the seller~~ or check issued to the seller of the metal and
29 mailed to the recorded address of the seller or picked up in person by the seller. The

1 scrap metal dealer, at his discretion, may make payment by either cash or other
2 method for transactions of five hundred dollars or less for all metals other than
3 copper. All payments made by check, electronic transfers, or money order shall be
4 reported separately in the daily reports required by R.S. 37:1866.

5 §1864.4. Statement by seller required; failure to exact statement evidence of
6 fraudulent intent; exoneration from criminal knowledge

7 A.(1) Every ~~secondhand~~ scrap metal dealer shall obtain a signed statement
8 from the seller that the ~~junk or used or secondhand property~~ scrap metal has been
9 paid for or is owned by the seller, and a failure of the dealer to exact a statement
10 from the seller shall be prima facie evidence of the fraudulent intent and guilty
11 knowledge on the part of the dealer within the meaning of this Part, sufficient to
12 warrant a conviction.

13 (2) In transactions involving railroad track materials, a ~~secondhand~~ scrap
14 metal dealer shall require the party seeking to sell or dispose of the materials to
15 furnish a signed statement from the appropriate railroad company consenting to the
16 sale of the railroad track materials identified in the statement, which shall be retained
17 by the ~~secondhand~~ scrap metal dealer. The statement shall include the name of the
18 railroad company consenting to the sale and the name, employee number, and phone
19 number of the person signing the statement authorizing the sale. The ~~secondhand~~
20 scrap metal dealer shall attempt to verify the authenticity of the statement
21 authorizing the sale of the railroad track materials.

22 B. A ~~secondhand~~ scrap metal dealer who obtains the required statement from
23 the seller shall be exonerated from any fraudulent, willful, or criminal knowledge
24 within the meaning of this Part.

25 §1865. Book to be open for inspection

26 The book containing the record of purchase as provided for in R.S. 37:1864
27 and the various ~~articles~~ scrap metal purchased and referred to therein shall at all
28 times be open to the inspection of law enforcement officers of the ~~Office of State~~
29 ~~Police~~ office of state police, or the superintendent of police or sheriff of the parish

1 or anyone designated by them of the city, town, or parish in which the ~~second-hand~~
2 scrap metal dealer does business.

3 §1866. Daily report of entries

4 A.(1) Every ~~secondhand~~ scrap metal dealer licensed under the provisions of
5 this Part shall make out and deliver to the chief of police of the city or town or to the
6 sheriff of the parish in which he is doing business, every day before the hour of
7 twelve noon, a legible and correct copy of the entries not containing personally
8 identifiable information in the book mentioned in R.S. 37:1864 during the previous
9 day. The means for providing the transactional information required under this
10 Section shall be by electronic transmission.

11 (2) The appropriate law enforcement official may, for purposes of an
12 investigation of a crime relating to a particular ~~secondhand~~ transaction, request the
13 ~~secondhand~~ scrap metal dealer to mail or fax such official the personally identifiable
14 information relating to such transaction under investigation. The ~~secondhand~~ scrap
15 metal dealer shall deliver the personally identifiable information relating to the
16 identified transaction to the appropriate law enforcement official within twenty-four
17 hours of the request.

18 B. The ~~secondhand~~ scrap metal dealer shall have the responsibility of
19 tendering the information provided for in Subsection A of this Section regardless of
20 its use or nonuse by the chief of police in the city or town in which he is doing
21 business or, alternatively, to the sheriff of the parish in which he is doing business.
22 The tender of this information is a courtesy mandated by state law and which
23 provides a benefit to the general public. The chief of police or sheriff shall not be
24 mandated to take any particular action concerning the information tendered.

25 §1867. Disposal or changing identity prohibited during thirty-day period; exceptions

26 A. No ~~secondhand~~ scrap metal dealer shall sell or dispose of or change or
27 destroy the identity of any ~~goods, articles, or things~~ scrap metal purchased by him
28 before an interval of thirty calendar days from the date of purchase has elapsed.
29 During the thirty calendar days after purchase, a ~~secondhand~~ scrap metal dealer shall

1 keep the purchased ~~goods, articles, or things~~ scrap metal on the premises of the
 2 ~~secondhand~~ scrap metal dealer's business location or at such other location within the
 3 parish where the ~~secondhand~~ scrap metal dealer's business is located and the item
 4 was purchased. In all instances, a ~~secondhand~~ scrap metal dealer shall make the item
 5 immediately available upon request by a law enforcement agency. Any ~~secondhand~~
 6 scrap metal dealer may sell, dispose of, change, or destroy any ~~goods, article, or~~
 7 ~~thing~~ scrap metal purchased by him from a client without any delay, provided that
 8 the dealer can prove that the client had valid title to the ~~goods, article, or thing~~ scrap
 9 metal of which he intends to dispose.

10 §1869. Violations; penalty

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

15 B. For the second offense, his occupational license shall be suspended for
 16 a thirty-day period. For a third offense, his license shall be revoked and he shall not
 17 thereafter be permitted to engage in the business of ~~secondhand~~ scrap metal dealer
 18 in the state of Louisiana.

19 C. Any ~~secondhand~~ scrap metal dealer convicted of selling stolen goods shall
 20 have his occupational retail license revoked.

21 D. The occupational license tax collector is hereby vested with the authority,
 22 upon motion in a court of competent jurisdiction, to rule the noncomplying
 23 ~~secondhand~~ scrap metal dealer to show cause in not less than two nor more than ten
 24 days, exclusive of holidays, as to why the noncomplying ~~secondhand~~ scrap metal
 25 dealer's retail occupational license should not be suspended or revoked as prescribed
 26 under this Part. This rule may be tried out of term and in chambers and shall be tried
 27 with preference and priority. If the rule is made absolute, the order rendered therein
 28 shall be considered a judgment in favor of the municipality or parish.

1 §1870. Failure to comply; penalty

2 A. Anyone acting as an unlicensed ~~secondhand~~ scrap metal dealer without
3 complying with the provisions of this Part shall be fined not less than two hundred
4 fifty dollars or be imprisoned not less than thirty days nor more than sixty days, or
5 both.

6 * * *

7 PART II-B. PURCHASE OF USED GOODS BY RETAILERS

8 §1891. Record of used goods purchased required; retention period; inspections by
9 law enforcement; violations; retailer defined; exceptions; penalty

10 A. Every retailer engaged in the business of purchasing and reselling any
11 used goods shall either keep a register and file reports or electronically maintain data
12 and be capable of readily providing reports, as specified in Subsection B of this
13 Section, in the form prescribed by the Department of Public Safety and Corrections
14 which shall contain the following information:

15 (1) 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 (2) The date and place of each such purchase.

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

25 (4) A full description of all used goods purchased.

26 B. Each retailer shall keep either one copy of such completed form in a
27 separate register or book or maintain the information in electronic format as provided
28 in Subsection A of this Section which shall be kept for a period of three years at his

1 place of business and shall be made available for inspection by any peace officer or
2 law enforcement official at any time during the three-year period.

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

8 D. For the purposes of this Part, "retailer" means any person who is engaged
9 wholly or in part in the business of buying, selling, distributing, or exchanging an
10 interest in new or used goods or services with the intent to make a profit, monetary
11 gain, or any thing of economic value. "Retailer" shall not include:

12 (a) Public officers while performing their official duties.

13 (b) Receivers, trustees, administrators, executors, guardians, or other persons
14 appointed by or acting under the judgment or order of any court.

15 (c) Banks, finance companies, or other loan agencies.

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

18 §1892. Photographic and other records; exceptions

19 A. In addition to the information required in R.S. 37:1891, every retailer
20 purchasing used goods shall be required to obtain a photograph of a person selling
21 or delivering used goods to the retailer if the fair market value of the used goods is
22 one hundred dollars or greater. The quality of such photograph shall be sufficient
23 to readily identify the person depicted. In lieu of the photograph of the person
24 selling or delivering the used goods, the dealer may obtain either a thumbprint of
25 such person, the quality of which thumbprint shall be sufficient to identify the
26 person, or a photocopy of the person's Louisiana driver's license, driver's license
27 from another state, passport, military identification, or identification issued by a
28 governmental agency or the United States Postal Service. Each photograph,
29 thumbprint, or photocopy, as the case may be, shall be cross-referenced with the

1 ledger entry required by R.S. 37:1891. The photograph, thumbprint, or photocopy
2 shall be preserved for a period of at least a year.

3 B. Pursuant to a request from a law enforcement agency, a retailer shall be
4 required to capture photographically uniquely identifiable used goods purchased
5 pursuant to R.S. 37:1891(A). Photographs shall be made available to the law
6 enforcement agency within twenty-four hours after the request.

7 §1893. Prohibitions; sale of certain uniforms

8 No person in this state engaged in the business of buying, selling, trading in,
9 or otherwise acquiring or disposing of junk or used or secondhand property,
10 including those persons exempted by R.S. 37:1894 shall sell or offer for sale any
11 article of clothing, including but not limited to hats, shirts, pants, or jackets, which
12 exhibits or displays the insignia of any law enforcement agency or public utility.

13 §1894. Exceptions

14 Except as provided for in R.S. 37:1893, the provisions of this Part shall not
15 apply to:

16 (1) Dealers in coins and currency, dealers in antiques, nor to gun and knife
17 shows or other trade and hobby shows.

18 (2) Persons solely engaged in the business of buying, selling, trading in, or
19 otherwise acquiring or disposing of motor vehicles and used parts of motor vehicles,
20 including retail tire outlets or automobile dealers dealing in tires, and shall not apply
21 to wreckers or dismantlers of motor vehicles who are licensed pursuant to the
22 provisions of R.S. 32:783 et seq.

23 (3) Private residential sales commonly known as "garage sales" or "yard
24 sales" as long as such sales take place at a residential address.

25 (4) Any bona fide charity possessing a valid exemption under Section
26 501(c)(3) of the Internal Revenue Code.

27 (5) Collectors, transporters, or disposers of waste whose waste collection,
28 transportation, and disposal activities are regulated by the Department of
29 Environmental Quality, or persons who collect, transport, or manage recyclable

1 materials pursuant to a residential collection, recycling, or disposal contract with a
2 municipality or political subdivision.

3 (6) The purchase of college textbooks.

4 (7) Persons operating as pawnbrokers pursuant to R.S. 37:1785.

5 (8) Persons operating as scrap metal dealers pursuant to R.S. 37:1861 et seq.

6 (9) Purchases of used goods from any manufacturing, industrial, or other
7 commercial vendor that generates, as a byproduct or recyclable waste, or sells such
8 materials in the ordinary course of its business.

9 Section 2. R.S. 37:1861.2, 1868, and 1869.1 are hereby repealed in its entirety.

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)]

Richardson

HB No. 751

Abstract: Narrows the scope of the secondhand dealer law to provide for the regulation of scrap metal dealers; provides for the regulation of the purchase of used goods by retailers.

Present 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 is a secondhand dealer. Present law further provides that anyone, other than a nonprofit entity, who buys, sells, trades in, or otherwise acquires or disposes of junk or used or secondhand property more frequently than once per month from any other person, other than a nonprofit entity, shall be deemed as being engaged in the business of 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 scrap metal is a scrap metal dealer.

Present law defines "cemetery artifacts" as any object produced or shaped by human workmanship or tools, including ornaments of archaeological, historical, cultural, or sentimental significance or interest, which may be used to memorialize the dead and shall include but not be limited to all cemetery items, objects, and properties, including but not limited to any type of religious or sentimental addition or adornment, inside or outside of a tomb, gravesite, plot, mausoleum, vault or interment location, whether placed privately or by assignment, regardless of monetary worth, age, size, shape, or condition, including but not limited to statues, bricks, signage, plaques, tablets, urns, pots, planters, benches, chairs, crosses, or other religious symbols, vases, gates, fences, or any portions thereof.

Proposed law repeals present law.

Present law defines "used building component" as any object produced or shaped by human workmanship or tools that is an element of structural, architectural, archaeological, historical, ornamental, cultural, utilitarian, decorative, or sentimental significance or interest, which has been and may be used as an adjunct to or component or ornament of any building

or structure, regardless of monetary worth, age, size, shape, or condition, that is immovable property or fixture or component parts of immovable property of any nature or kind whatsoever.

Proposed law repeals present law.

Present law defines "lot of used building components" as a group of like used building components.

Proposed law repeals present law.

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

Proposed law repeals present law.

Proposed law provides that "scrap metal" shall include but not be limited to copper, copper wire, copper alloy, bronze, zinc, aluminum, stainless steel, nickel alloys, or brass, whether in the form of bars, cable, ingots, rods, tubing, wire, wire scraps, clamps or connectors, ferrous materials, catalytic converters, auto hulks, railroad track materials, water utility materials, and gold, silver, platinum, or other precious metals including jewelry or objects composed of such precious metals.

Present law provides that, except as provided for the prohibition against cash payments and the prohibition against selling uniforms of law enforcement and utilities, the provisions of present law shall not apply to the following:

- (1) Dealers in coins and currency, dealers in antiques, nor to gun and knife shows or other trade and hobby shows.
- (2) Persons solely engaged in the business of buying, selling, trading in, or otherwise acquiring or disposing of motor vehicles and used parts of motor vehicles, and shall not apply to wreckers or dismantlers of motor vehicles who are licensed under the provisions of R.S. 32:783 et seq.
- (3) Private residential sales commonly known as "garage sales" or "yard sales" as long as such sales take place at a residential address.
- (4) Any bona fide charity possessing a valid exemption under Section 501(c)(3) of the Internal Revenue Code.
- (5) Collectors, transporters, or disposers of waste whose waste collection, transportation, and disposal activities are regulated by the Dept. of Environmental Quality, or persons who collect, transport, or manage recyclable materials pursuant to a residential collection, recycling, or disposal contract with a municipality or political subdivision.

Proposed law retains present law but removes the exceptions and adds an exemption for the purchase of aluminum in the form of cans.

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

Proposed law retains present law but changes junk or used or secondhand property to scrap metal.

Present law prohibits a person from doing business as a secondhand dealer in this state without having first obtained the license required by law.

Proposed law prohibits a person from doing business as a scrap metal dealer in this state without having first obtained the occupational license required by law.

Present law requires any person desiring a license as secondhand dealer to make application in writing, specifying the street number and house number of the building where the business is to be carried on and signed by at least three property taxpayers of the city or parish where the business is to be established certifying that the applicant is of good moral character.

Proposed law retains present law but changes secondhand dealer to scrap metal dealer.

Present law requires the applicant to submit a bond in favor of the city or parish, as the case may be, where the business is to be established in the sum of \$2,500 with security conditioned for the due observance of all provisions of present law.

Proposed law retains present law.

Present law provides that record acquisition, maintenance, and reporting requirements of present law shall not apply to a person operating as a pawnbroker licensed by the office of financial institutions.

Proposed law retains present law.

Present law provides that, if after issuance and delivery of a license under the provisions of present law, any change is made in the location of the place of business designated therein, the business shall not be conducted at the new location or under such license, until the official issuing the licenses notes the change on the license, and the superintendent of police of the city or the sheriff of the parish in which the secondhand dealer is doing business is notified in writing of the change.

Proposed law retains present law but changes secondhand dealer to scrap metal dealer.

Present 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 present law located either at a permanently established place of business or in connection with a business of an itinerant nature, to either keep a register and file reports or electronically maintain data and be capable of readily providing reports, as specified in present law, in the form prescribed by the Dept. of Public Safety and Corrections.

Proposed law retains present law but narrows the scope to apply to scrap metal only.

Present law requires every secondhand dealer to obtain a photograph of a person selling or delivering merchandise or articles to the dealer.

Proposed law retains present law but changes secondhand dealer to scrap metal dealer and changes merchandise or articles to scrap metal.

Present law provides that, pursuant to a request from a law enforcement agency, a secondhand dealer shall be required to capture photographically used merchandise or articles purchased and make the photographs shall be made available to the law enforcement agency within 24 hours after the request.

Proposed law retains present law but changes secondhand dealer to scrap metal dealer and changes merchandise or articles to scrap metal.

Present law prohibits a secondhand dealer from purchasing gold, silver, copper, brass, aluminum other than in the form of cans, or other precious metals, jewelry, precious stones, or objects composed of such precious metals or stones from a person under the age of 18.

Proposed law prohibits a scrap metal dealer from purchasing scrap metals from a person under the age of 18.

Present law provides that lack of knowledge of age shall not be a defense to a violation of present law.

Proposed law retains present law.

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

Proposed law retains present law.

Present law 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 retains present law.

Present law prohibits a secondhand dealer from entering into any cash transactions in payment for the purchase of junk or used or secondhand property.

Proposed law prohibits a scrap metal dealer from entering into any cash transactions for copper or in excess of \$500 for all other metals in payment for the purchase of the metal property.

Present law requires payment to be made in the form of check, money order, or electronic transfer, issued to the seller of the junk or used or secondhand property and made payable to the name and address of the seller.

Proposed law requires payment for copper or in excess of \$500 for all other metals to be made by electronic transfer or money order or check issued to the seller of the metal and mailed to the recorded address of the seller or picked up in person by the seller.

Proposed law authorizes the scrap metal dealer, at his or her discretion, to make payment by either cash or other method for transactions of \$500 or less for all metals other than copper.

Present law requires the transactions to be reported separately in the daily reports required by present law.

Proposed law retains present law.

Present 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 retains present law but changes secondhand dealer to scrap metal dealer and changes junk or used or secondhand property to scrap metal.

Present law provides that, in transactions involving railroad track materials, a secondhand dealer shall require the party seeking to sell or dispose of the materials to furnish a signed statement from the appropriate railroad company consenting to the sale of the railroad track materials identified in the statement and containing the name of the railroad company consenting to the sale and the name, employee number, and phone number of the person signing the statement authorizing the sale. Present law further requires the secondhand dealer to attempt to verify the authenticity of the statement authorizing the sale of the railroad track materials.

Proposed law retains present law but changes secondhand dealer to scrap metal dealer.

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

Proposed law retains present law but changes secondhand dealer to scrap metal dealer.

Present law requires the book containing the record of purchase and the various articles purchased to be open at all times to the inspection of law enforcement officers of the office of state police, or the superintendent of police or sheriff of the parish or anyone designated by them of the city, town, or parish in which the secondhand dealer does business.

Proposed law retains present law but changes secondhand dealer to scrap metal dealer and changes articles to scrap metal.

Present law requires every secondhand dealer licensed under the provisions of present law to make out and deliver by electronic transmission to the chief of police of the city or town or to the sheriff of the parish in which he is doing business, every day before the hour of 12:00 noon, a legible and correct copy of the entries in the required record book during the previous day.

Proposed law retains present law but changes secondhand dealer to scrap metal dealer and specifies that the entries to be sent are those not containing personally identifiable information.

Present law authorizes the appropriate law enforcement official to request, for purposes of an investigation of a crime relating to a particular secondhand transaction, the secondhand dealer to mail or fax such official the personally identifiable information relating to such transaction under investigation. Present law further requires the secondhand dealer to deliver the personally identifiable information relating to the identified transaction to the appropriate law enforcement official within 24 hours of the request.

Proposed law retains present law but changes secondhand dealer to scrap metal dealer.

Present law provides that the secondhand dealer shall have the responsibility of tendering the information regardless of its use or nonuse by the chief of police in the city or town in which he is doing business or, alternatively, to the sheriff of the parish in which he is doing business.

Proposed law retains present law but changes secondhand dealer to scrap metal dealer.

Present law prohibits a secondhand dealer from selling or disposing of or changing or destroying the identity of any goods, articles, or things purchased by him before an interval of 30 calendar days from the date of purchase has elapsed.

Proposed law retains present law but changes secondhand dealer to scrap metal dealer and changes goods, articles, or things to scrap metal.

Present law requires a secondhand dealer, during the 30 calendar days after purchase, to keep the purchased goods, articles, or things on the premises of the secondhand dealer's business location or at such other location within the parish where the secondhand dealer's business is located and the item was purchased. Present law further requires, in all instances, a secondhand dealer to make the item immediately available upon request by a law enforcement agency.

Proposed law retains present law but changes secondhand dealer to scrap metal dealer and changes goods, articles, or things to scrap metal.

Present law authorizes a secondhand dealer to sell, dispose of, change, or destroy any goods, article, or thing purchased by him from a client without any delay, provided that the dealer can prove that the client had valid title to the goods, article, or thing of which he intends to dispose.

Proposed law retains present law but changes secondhand dealer to scrap metal dealer and changes goods, article, or thing to scrap metal.

Present law provides that any licensed 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 changes secondhand dealer to scrap metal dealer.

Present law provides that, for the second offense, a secondhand dealer's occupational license shall be suspended for a 30-day period.

Proposed law retains present law but changes secondhand dealer to scrap metal dealer.

Present law provides that, for a third offense, a secondhand dealer's license shall be revoked and he shall not thereafter be permitted to engage in the business of secondhand dealer in the state of La.

Proposed law retains present law but changes secondhand dealer to scrap metal dealer.

Present law provides that any secondhand dealer convicted of selling stolen goods shall have his occupational retail license revoked.

Proposed law retains present law but changes secondhand dealer to scrap metal dealer.

Present law provides that the occupational license tax collector is vested with the authority, upon motion in a court of competent jurisdiction, to rule the noncomplying secondhand dealer to show cause in not less than two nor more than 10 days, exclusive of holidays, as to why the noncomplying secondhand dealer's retail occupational license should not be suspended or revoked.

Proposed law retains present law but changes secondhand dealer to scrap metal dealer.

Present law provides that anyone acting as an unlicensed 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 changes secondhand dealer to scrap metal dealer.

Proposed law requires every retailer engaged in the business of purchasing and reselling any used goods 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 Dept. of Public Safety and Corrections which shall 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 used goods were 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.
- (4) A full description of all used goods purchased.

Proposed law provides that if the person cannot produce any of the above forms of identification at the time of purchase, the purchaser shall not complete the transaction.

Proposed law requires each retailer to keep either one copy of such 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 used goods described in proposed law and not registered or reported, received it knowing it to be stolen, in violation of R.S. 14:69.

Proposed law defines "retailer" as any person who is engaged wholly or in part in the business of buying, selling, distributing, or exchanging an interest in new or used goods or services with the intent to make a profit, monetary gain, or any thing of economic value.

Proposed law provides that "retailer" shall not include:

- (1) Public officers while performing their official duties.
- (2) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court.
- (3) Banks, finance companies, or other loan agencies.

Proposed law provides that anyone who violates 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 requires every retailer purchasing used goods to obtain a photograph sufficient to readily identify the person depicted, of a person selling or delivering used goods to the retailer if the fair market value of the used goods is \$100 or greater.

Proposed law provides that, in lieu of the photograph of the person selling or delivering the used goods, the dealer may obtain either a thumbprint of such person, the quality of which thumbprint shall be sufficient to identify the person, or a photocopy of the person's 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.

Proposed law requires each photograph, thumbprint, or photocopy to be cross-referenced with the ledger entry required by proposed law. Proposed law further requires the photograph, thumbprint, or photocopy to be preserved for a period of at least a year.

Proposed law provides that, pursuant to a request from a law enforcement agency, a retailer shall be required to capture photographically uniquely identifiable used goods purchased.

Proposed law further provides that the photographs shall be made available to the law enforcement agency within 24 hours after the request.

Proposed law prohibits any 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 those persons exempted by proposed law, from selling or offering for sale any article of clothing, including but not limited to hats, shirts, pants, or jackets, which exhibits or displays the insignia of any law enforcement agency or public utility.

Proposed law provides that proposed law shall not apply to:

- (1) Dealers in coins and currency, dealers in antiques, nor to gun and knife shows or other trade and hobby shows.
- (2) Persons solely engaged in the business of buying, selling, trading in, or otherwise acquiring or disposing of motor vehicles and used parts of motor vehicles, including retail tire stores, and shall not apply to wreckers or dismantlers of motor vehicles who are licensed under the provisions of present law (R.S. 32:783 et seq.).
- (3) Private residential sales commonly known as "garage sales" or "yard sales" as long as such sales take place at a residential address.
- (4) Any bona fide charity possessing a valid exemption under Section 501(c)(3) of the Internal Revenue Code.
- (5) Collectors, transporters, or disposers of waste whose waste collection, transportation, and disposal activities are regulated by the Dept. of Environmental Quality, or persons who collect, transport, or manage recyclable materials pursuant to a residential collection, recycling, or disposal contract with a municipality or political subdivision.
- (6) The purchase of college textbooks.
- (7) Persons operating as pawnbrokers pursuant to present law (R.S. 37:1785).
- (8) Persons operating as scrap metal dealers pursuant to present law (R.S. 37:1861 et seq.).
- (9) Purchases of used goods 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.

Present law provides that no license shall be granted for the operation of a secondhand dealer facility which will be situated within 300 feet or less of any official gaming establishment or designated docking facility of a riverboat licensed to conduct gaming activities or gaming operations. Present law further provides that, as to official gaming establishments, this distance shall be measured as a person walks using the sidewalk from the nearest point of the property line of the official gaming establishment to the nearest point of the dealer's location. As to docking facilities, this distance shall be measured in a straight line from the nearest point of the docking facility to the nearest point of the dealer's location.

Proposed law repeals present law.

Present law provides that a second-hand dealer shall neither open his place of business before the hour of 7:00 a.m. nor keep it open after the hour of 7:00 p.m. except on Saturdays and during the month of Dec., during which time the hour of 7:00 p.m. shall be extended to 10:00 p.m.

Proposed law repeals present law.

Present law prohibits a secondhand dealer, including those secondhand dealers exempted by present law, from selling or offering for sale any article of clothing, including but not limited to hats, shirts, pants, or jackets, which exhibits or displays the insignia of any law enforcement agency or public utility.

Proposed law repeals present law.

(Amends the title of Part II of Chapter 21 of Title 37 of the La. Revised Statutes of 1950, R.S. 37:1861(A) and (B)(intro. para.), 1861.1, 1862(A), 1862.1, 1863, 1864(A)(1)(intro. para.), 1864.1(A), 1864.2, 1864.3, 1864.4, 1865, 1866, 1867(A), 1869, and 1870(A); Adds R.S. 37:1861(B)(6) and 1891-1894; Repeals R.S. 37:1861.2, 1868, and 1869.1)