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.

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#### **ENROLLED**

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

§1861. "Secondhand dealer" defined

4 A.(1) 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 5 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.

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

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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. <del>32:771</del> <u>32:783</u> 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, <u>1864.3</u> , 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

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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.

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1	(f) A full description of railroad track materials purchased, including the
2	weight and whether it consists of rail, switch components, spikes, angle bars, tie
3	plates, or bolts of the type used to construct railroads or other appurtenances or some
4	combination thereof.
5	(2) This Section shall not apply to purchases of materials from any
6	manufacturing, industrial, or other commercial vendor that generates, as a byproduct
7	or recyclable waste, or sells such materials in the ordinary course of its business.
8	B. The name, address, sex, race, height, weight, and driver's license number
9	of the person or persons selling or delivering said merchandise or articles to the
10	dealer shall be obtained and included with each ledger entry. Records of each
11	purchase shall be preserved for a period of at least three years.
12	Each such person shall keep either one copy of such completed form in a
13	separate register or book or maintain the information in electronic format as provided
14	in Subsection A of this Section which shall be kept for a period of three years at his
15	place of business and shall be made available for inspection by any peace officer or
16	law enforcement official at any time during the three-year period.
17	C. Failure to maintain the information or the register or to produce a report
18	requested by any peace officer or law enforcement official as required by this
19	Section shall be prima facie evidence that the person receiving such material
20	described in this Section and not registered or reported, received it knowing it to be
21	stolen, in violation of R.S. 14:69.
22	D. Whoever violates this Section shall be fined not less than one thousand
23	dollars or imprisoned for not less than thirty days nor more than six months, or both.
24	* * *
25	§1864.2. Purchase of precious metals and stones from minors; purchase of junk
26	from minors prohibited; penalty
27	* * *
28	B. No owner, employee, keeper, or proprietor of a junk shop, junk store or
29	yard, of a junk cart or other vehicle or boat, or collector of or dealer in junk, shall
30	receive or purchase from any minor under seventeen years of age, any goods,

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1	chattels, wares, or other merchandise, including any material defined in R.S.
2	<u>37:1861.</u>
3	$\underline{C}$ . 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	<u>§1864.3.</u> 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

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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	<u>A.</u> Anyone acting as a second-hand an unlicensed second hand 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: \_\_\_\_\_

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