

Regular Session, 2013

HOUSE BILL NO. 547

BY REPRESENTATIVE PRICE

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

MOTOR VEHICLES: Makes changes relative to the regulation of used motor vehicles

1 AN ACT

2 To amend and reenact R.S. 32:781(4), (7), and (14), 782, 784(A)(introductory paragraph)
3 and (5), 785, 790(B), 792(A)(introductory paragraph), and 794(A)(3) and to enact
4 R.S. 32:784(A)(6) and 792(A)(5), relative to the regulation of used motor vehicles;
5 to provide for definitions; to provide for jurisdiction and authority of the Louisiana
6 Used Motor Vehicle Commission; to provide for rent-to-own dealers; to provide for
7 used motor vehicle salespersons; to provide procedures for denial, suspension or
8 revocation of a license; to provide for notice, hearings and appeals; to provide for
9 abandonment of businesses; to increase the fine for violations of black market sales;
10 to provide for grounds for denial of a license; to provide relative to wholesale motor
11 vehicle auctions; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 32:781(4), (7), and (14), 782, 784(A)(introductory paragraph) and
14 (5), 785, 790(B), 792(A)(introductory paragraph), and 794(A)(3) are hereby amended and
15 reenacted and R.S. 32:784(A)(6) and 792(A)(5) are hereby enacted to read as follows:

16 §781. Definitions

17 As used in this Chapter:

18 * * *

1 (4) "Dismantler and parts recycler sales representative" shall include anyone
2 who, for compensation of any kind, sells or brokers any used motor vehicle or any
3 usable part of a used motor vehicle.

4 * * *

5 (7) "Place of business" means the place owned or leased and regularly
6 occupied by a person, partnership, corporation, limited liability company, or other
7 entity licensed under the provisions of this Chapter for the principal purpose of
8 auctioning, renting, or selling used motor vehicles, crushing, or compacting used
9 motor vehicles and selling the crushed or compacted vehicle for scrap, or engaging
10 in the business of a dismantler and parts recycler, where the products for sale are
11 displayed and offered for sale, and where the books and records required for the
12 conduct of the business are maintained and kept.

13 * * *

14 (14) "Used motor vehicle salesperson" shall include anyone who is actively
15 engaged in the sale, offering for sale, or negotiations to sell a used motor vehicle ~~or~~
16 ~~recreational product~~, including those engaged in management or finance and
17 insurance, and who for compensation of any kind operates as a broker or is
18 compensated for any referral of a prospective buyer to a used motor vehicle dealer.
19 "Compensation" for purposes of this Chapter means any thing of value including
20 money, merchandise, rebates on purchases, trading stamps, or any other thing of
21 value.

22 * * *

23 §782. Jurisdiction and authority of commission

24 The provisions of this Chapter shall not apply to any person, partnership,
25 corporation, limited liability company, or other entity that is licensed ~~or regulated to~~
26 sell new motor vehicles by the Louisiana Motor Vehicle Commission. If any
27 provision of this Chapter conflicts with any provision of Chapter 6 of this Title, the
28 provisions of Chapter 6 of this Title shall prevail.

29 * * *

1 §784. Dealers, dismantlers, and auctions to be licensed; exception

2 A. No person, firm, or corporation, unless licensed ~~to do so~~ by the
3 commission under the provisions of this Chapter, shall carry on or conduct the
4 business of:

5 * * *

6 (5) ~~Rental dealer as defined in R.S. 32:793(A)(5).~~ Rent-to-own dealer as
7 defined in R.S. 32:793(A)(6) or rent on a daily basis used motor vehicles as
8 authorized by R.S. 37:781(13)(a)(ii).

9 (6) Used motor vehicle salesperson for any dealer licensed pursuant to this
10 Chapter.

11 * * *

12 §785. Procedures for denial, suspension, or revocation of license; notice; hearings;
13 appeals; abandonment of business

14 ~~A.(1) The commission, without prior notice, may deny any application for a~~
15 ~~license within sixty days after receipt thereof by written notice to the applicant stating~~
16 ~~the grounds for such denial. Upon request by the applicant whose application has~~
17 ~~been so denied, the commission shall set the time and place of a hearing to review~~
18 ~~such denial, the same to be heard with reasonable promptness. The commission may~~
19 ~~suspend or revoke a license only after a hearing of which the licensee affected shall~~
20 ~~be given at least fifteen days written notice specifying the grounds or reasons for~~
21 ~~revocation or suspension.~~

22 (2) ~~Notices may be served as provided by law for the service of notices or by~~
23 ~~mailing a copy by certified mail to the last known residence or business address of~~
24 ~~such applicant or licensee. A copy of such notice shall be mailed by certified mail to~~
25 ~~the surety on the licensee's bond at the address of the surety given in the bond. The~~
26 ~~hearing on charges shall be at such time and place as the commission may prescribe~~
27 ~~and the aforementioned notice shall further specify the time and place. If the~~
28 ~~applicant or licensee is a used motor vehicle salesperson, the commission shall in like~~
29 ~~manner also notify the person, firm, association, corporation, limited liability~~

1 company, or trust with whom the licensee is associated or in whose association he is
2 about to enter.

3 ~~(3)(a) The commission shall have the power to compel the production of~~
4 ~~records and papers bearing upon the issues to be presented for hearing.~~

5 ~~(b) The commission shall have the power to subpoena and bring before it any~~
6 ~~person in this state, or take testimony of any such person by deposition, with the same~~
7 ~~fees and mileage and in the same manner as prescribed by law in judicial procedure~~
8 ~~before courts of the state in civil cases.~~

9 ~~(c) Any party to the hearing shall have the right to the attendance of witnesses~~
10 ~~on his behalf upon designating to the commission the person or persons sought to be~~
11 ~~subpoenaed.~~

12 ~~(4) If the commission determines that any applicant is not qualified to receive~~
13 ~~a license, a license shall not be granted to the applicant, and if the commission~~
14 ~~determines that any licensee is guilty of violation of any of the provisions of this~~
15 ~~Chapter, his or its license shall be suspended or revoked.~~

16 ~~(5) Upon the determination by the commission that either the applicant is not~~
17 ~~qualified to receive a license or that a licensee is guilty of violating any of the~~
18 ~~provisions of this Chapter, then all costs of the hearing procedure shall be charged to~~
19 ~~and borne by the applicant or licensee so affected. These costs shall include but not~~
20 ~~be limited to attorney fees, court reporter fees, and mileage and per diem of~~
21 ~~commissioners, as well as other applicable and reasonable costs.~~

22 ~~B.(1) The decision of the commission imposing a civil penalty, granting or~~
23 ~~refusing to grant an application for a license, or suspending or revoking a license shall~~
24 ~~not become final for a period of thirty days from the date thereof, during which time~~
25 ~~said applicant or licensee may appeal from the decision of the commission to the~~
26 ~~Nineteenth Judicial District Court by:~~

27 ~~(a) Filing a petition in the court setting forth the facts relied upon and praying~~
28 ~~for a review of the decision.~~

1 ~~(b) Mailing by certified mail a copy of the petition to the executive director~~
2 ~~of the commission or causing service of summons directed to the executive director~~
3 ~~of the commission to be issued, the petition to be mailed, or the summons to be issued~~
4 ~~within thirty days from the date of the decision of the commission from which appeal~~
5 ~~is taken.~~

6 ~~(2) On appeal, the issue shall be heard in accordance with the Administrative~~
7 ~~Procedure Act. Nothing herein shall be construed to limit the authority of the court~~
8 ~~to grant relief as prescribed by R.S. 49:964. If the issues involved were first presented~~
9 ~~to the commission by a complaint filed with the commission, the complainant may~~
10 ~~appeal from the decision of the commission in the same manner as herein above~~
11 ~~prescribed.~~

12 ~~C.(1) In holding and conducting hearings on complaints of violations of the~~
13 ~~provisions of this Chapter or hearings on the imposition of a civil penalty for any such~~
14 ~~violation, the commission shall give the licensee or other person, firm, association,~~
15 ~~corporation, limited liability company, or trust alleged to have committed such~~
16 ~~violation at least fifteen days written notice specifying the violation charged.~~

17 ~~(2) Notices may be served as provided by law for the service of notices or by~~
18 ~~mailing a copy by certified mail to the last known residence or business address of the~~
19 ~~party charged with such violation. Hearings shall be at such time and place as the~~
20 ~~commission may prescribe and the aforementioned notice shall specify the time and~~
21 ~~place thereof.~~

22 ~~(3)(a) The commission shall have the power to compel the production of~~
23 ~~records and papers bearing upon the issues to be presented for hearing or any matter~~
24 ~~under investigation.~~

25 ~~(b) The commission shall have the power to subpoena and bring before it any~~
26 ~~person in this state, or take testimony of any such person by deposition, with the same~~
27 ~~fees and mileage and in the same manner as prescribed by law in judicial procedure~~
28 ~~before courts of the state in civil cases.~~

1 ~~(c) Any party to the hearing shall have the right to the attendance of witnesses~~
2 ~~in his behalf upon designating to the commission the person or persons sought to be~~
3 ~~subpoenaed.~~

4 ~~(4) Upon the determination by the commission that the party charged is guilty~~
5 ~~of violating any of the provisions of this Chapter, then all costs of the hearing~~
6 ~~procedure shall be charged to and borne by the parties so affected. The costs shall~~
7 ~~include but not be limited to attorney fees, court reporter fees, and mileage and per~~
8 ~~diem of commissioners, as well as other applicable and reasonable costs.~~

9 ~~D. When the licensed premises of a used motor vehicle dealer are abandoned,~~
10 ~~the dealer is no longer in business, there are no salespersons on the premises, all~~
11 ~~attempts to locate the dealer have been exhausted, the business telephone is~~
12 ~~disconnected, and the business sign has been removed, then the used motor vehicle~~
13 ~~dealer's license and the salesperson's licenses shall be revoked without a hearing if a~~
14 ~~request or application for hearing on the revocation is not made within five business~~
15 ~~days following the posting of a notice on the front door of the business that said~~
16 ~~license will be revoked for abandonment or violation of the provisions of this Part.~~

17 ~~E. When a licensee is found in violation of any provision of this Chapter,~~
18 ~~relative to the Louisiana Used Motor Vehicle Commission, the licensee shall attend~~
19 ~~a four-hour educational seminar. The licensee who is found in violation of any~~
20 ~~provision of this Chapter shall complete the four-hour educational seminar within~~
21 ~~three months of the date the hearing decision becomes final.~~

22 ~~A.(1) The executive director shall notify each applicant for licensure in~~
23 ~~writing of the action taken by the commission on the application.~~

24 ~~(2) Any applicant who has been denied a license shall be notified of the~~
25 ~~grounds for denial as set forth in R.S. 32:792(A).~~

26 ~~(3) Within thirty days from receipt of the denial, an applicant whose~~
27 ~~application has been denied may request in writing a review of the denial by the~~
28 ~~commission.~~

1 (4) The commission shall hear all denials with reasonable promptness upon
2 reasonable notice to the applicant.

3 (5) Any applicant who requests a review of the denial of his application shall
4 provide either written or oral support for his application. Without such support, the
5 request for review shall be denied.

6 (6) Following the review, the commission shall either affirm or reverse the
7 denial.

8 (7) The commission's decision to affirm the denial shall be final when
9 rendered. The applicant may appeal the decision as provided in Subsection C of this
10 Section.

11 B.(1) Any licensee charged with violating the provisions of this Chapter shall
12 be entitled to a hearing on the alleged violation.

13 (2) The commission shall serve the licensee with written notice of the hearing
14 at least twenty calendar days prior to conducting the hearing on the alleged violation.

15 (a) The commission shall serve the notice of the hearing on the licensee by
16 certified or registered mail to the address for the licensee as provided on the licensee's
17 application, by personal physical service to the licensee, or if a dealer, by service on
18 any one of its employees or by posting notice at the entrance of the licensed premises
19 where the alleged violation occurred.

20 (b) The notice shall contain the time and place of the hearing, the alleged
21 violations, the facts in support of the alleged violations, the possible penalty, and the
22 licensee's rights at the hearing.

23 (c) A copy of the notice shall be mailed by certified or registered mail to the
24 surety on the licensee's bond at the address of the surety as written on the bond.

25 (d) If the licensee is a salesperson, a copy of the notice shall be mailed by
26 certified or registered mail to the licensed dealer.

27 (e) If the issues alleging a possible violation were first presented to the
28 commission by a complaint filed with the commission, a copy of the notice shall be
29 mailed to the complainant by United States mail.

1 (2) Any party to a hearing shall have the right to compel the attendance of
2 witnesses by requesting the issuance of subpoenas. The commission shall issue any
3 subpoena requested in writing no later than ten days prior to the hearing. The party
4 requesting a subpoena be issued shall pay all witness fees in accordance with R.S.
5 13:3661, as well as the estimated cost to be incurred in delivery of the subpoenas.
6 The commission may compel the attendance of its own witnesses by the issuance of
7 subpoenas.

8 (3) The commission shall consider any pleading filed by the licensee no later
9 five days prior to the hearing.

10 (4) The commission shall determine whether the licensee has violated any of
11 the provisions of this Chapter, any statutes related to the registration of motor
12 vehicles, including the use of temporary license plates and the collection of sales and
13 use tax, and the rules and regulations promulgated by the commission.

14 (5)(a) The commission may impose sanctions including the imposition of
15 restrictions on any license, the revocation or suspension of any license, the imposition
16 of civil fines, the imposition of restitution or injunction, the assessment of all costs
17 of the hearing including commission attorney fees, witness fees and travel expenses
18 and per diem of commissioners, and the requirement that the licensee attend a four-
19 hour educational seminar within three months of the hearing decision. The
20 commission may also enter into stipulations.

21 (b) The commission findings and orders shall be reduced to writing and
22 served on the licensee in any manner consistent with the service provided for in
23 Subparagraph (B)(2)(a) of this Section.

24 (c) The commission decisions revoking or suspending a license or enjoining
25 a licensee shall be final and enforceable when rendered.

26 (d) The commission decisions imposing a civil penalty shall become payable
27 thirty days from the date the order is served on the licensee.

28 C.(1) Appeals of any decision denying a license or revoking or suspending
29 a license shall not constitute a stay of the decision of the commission.

Proposed law makes various changes to the procedures for denial, suspension or revocation of a license and notice, hearing and appeals as follows:

- (1) Requires the executive director to notify each applicant for licensure in writing of the action taken by the commission on the application. Requires notification of grounds to any applicant denied a license. Allows an applicant whose application was denied to request a review in writing within 30 days of receipt of the denial. Requires the commission to hear all denials promptly and with reasonable notice. Requires the applicant to provide written or oral support for his application. Requires the commission to affirm or reverse the denial after the review.
- (2) Allows any licensee charged with a violation to have a hearing on the alleged violation. Requires the commission to serve the licensee with written notice of the hearing at least 20 days prior to the hearing and provides for types of service. Requires the notice to contain certain information. Requires copies of the notice to be mailed to certain applicable persons. Allows any party to the hearing to request the subpoena of witnesses and requires the commission to issue them at least 10 days prior to the hearing. Requires the party requesting the subpoenas to pay all costs. Allows the commission to subpoena witnesses. Requires the commission to consider any pleading filed by a licensee at least 5 days prior to the hearing. Requires the commission to determine violations. Allows the commission to impose various sanctions and enter into stipulations. Requires all commission orders to be reduced to writing and served on the licensee. Requires appeals to be heard in accordance with the APA.
- (3) Requires the license of the dealer and any salespersons of an abandoned premise to be revoked without hearing after posting notice on the door of the abandoned premise if a hearing is not requested within 5 days. Considers a premise abandoned if there are no salespersons or dealer on the premises, the business telephone has been disconnected or the business sign has been removed.

Present law provides for a fine of up to \$1000 for any person who violates the black market sales prohibitions. Proposed law increases the fine for violation to \$3000.

Present law allows for the denial of a license as a used motor vehicle dealer, dealer in used parts or used accessories, used motor vehicle auctioneer, or salesperson for various reasons. Proposed law specifies that the commission is allowed to deny any license issued under the provisions present law. Further that where the applicant is related to, the former employee of or a former business associate of a dealer whose license was previously revoked or suspended, and the applicant plans to operate the same or similar business or will be participating with the revoked licensee, the commission may deny licensure.

Present law provides for unlawful acts by wholesale motor vehicle auctioneers including prohibiting any person other than a licensed dealer or salesperson to participate in the bid process for the purchase of a used motor vehicle at auction. Proposed law deletes the reference to salesperson and specifies that any person other than one who holds a current authorization to bid for a licensed dealer is prohibited from participating in the auction.

(Amends R.S. 32:781(4), (7), and (14), 782, 784(A)(intro. para.) and (5), 785, 790(B), 792(A)(intro. para.), and 794(A)(3); Adds R.S. 32:784(A)(6) and 792(A)(5))