

Regular Session, 2013

ACT No. 204

HOUSE BILL NO. 547

BY REPRESENTATIVE PRICE

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

11 Be it enacted by the Legislature of Louisiana:

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

15 §781. Definitions

16 As used in this Chapter:

17 * * *

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

21 * * *

22 (7) "Place of business" means the place owned or leased and regularly occupied
23 by a person, partnership, corporation, limited liability company, or other entity licensed
24 under the provisions of this Chapter for the principal purpose of auctioning, renting, or

1 selling used motor vehicles, crushing; or compacting used motor vehicles and selling the
2 crushed or compacted vehicle for scrap, or engaging in the business of a dismantler and
3 parts recycler, where the products for sale are displayed and offered for sale, and where
4 the books and records required for the conduct of the business are maintained and kept.

5 * * *

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

13 * * *

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

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

17 * * *

18 (5) ~~Rental dealer as defined in R.S. 32:793(A)(5).~~ A rent-to-own dealer as defined
19 in R.S. 32:793(A)(6) or renting on a daily basis used motor vehicles as authorized by R.S.
20 32:781(13)(a)(ii).

21 (6) A used motor vehicle salesperson for any dealer licensed pursuant to this
22 Chapter.

23 * * *

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

26 ~~A.(1) The commission, without prior notice, may deny any application for a~~
27 ~~license within sixty days after receipt thereof by written notice to the applicant stating the~~
28 ~~grounds for such denial. Upon request by the applicant whose application has been so~~
29 ~~denied, the commission shall set the time and place of a hearing to review such denial,~~
30 ~~the same to be heard with reasonable promptness. The commission may suspend or~~

1 ~~revoke a license only after a hearing of which the licensee affected shall be given at least~~
 2 ~~fifteen days written notice specifying the grounds or reasons for revocation or suspension.~~

3 ~~(2) Notices may be served as provided by law for the service of notices or by~~
 4 ~~mailing a copy by certified mail to the last known residence or business address of such~~
 5 ~~applicant or licensee. A copy of such notice shall be mailed by certified mail to the surety~~
 6 ~~on the licensee's bond at the address of the surety given in the bond. The hearing on~~
 7 ~~charges shall be at such time and place as the commission may prescribe and the~~
 8 ~~mentioned notice shall further specify the time and place. If the applicant or licensee~~
 9 ~~is a used motor vehicle salesperson, the commission shall in like manner also notify the~~
 10 ~~person, firm, association, corporation, limited liability company, or trust with whom the~~
 11 ~~licensee is associated or in whose association he is about to enter.~~

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

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

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

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

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

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

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

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

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

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

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 the~~
 24 ~~party charged with such violation. Hearings shall be at such time and place as the~~
 25 ~~commission may prescribe and the aforementioned notice shall specify the time and place~~
 26 ~~thereof.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (2)(a) 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 (b) 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 on the licensee, or if a dealer, by service on any
18 one of its employees or by posting notice at the entrance of the licensed premises where
19 the alleged violation occurred.

20 (c) 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 (d) 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 (e) 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 (f) 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 (3) 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 the delivery of the subpoenas.
6 The commission may compel the attendance of its own witnesses by the issuance of
7 subpoenas.

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

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

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

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

24 (c) The commission decisions revoking or suspending a license or enjoining a
25 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 a
29 license shall not constitute a stay of the decision of the commission.

1 (2) Appeals of any decision of the commission shall be heard in accordance with
2 the Administrative Procedure Act.

3 D.(1) When the licensed premises of a used motor vehicle dealer are abandoned,
4 the license of the dealer and any salespersons shall be revoked without a hearing if a
5 request or application for a hearing on the revocation is not made within five business
6 days following the posting of a notice on the front door of the business that the license
7 will be revoked for abandonment.

8 (2) Licensed premises shall be considered abandoned if any one of the following
9 exists:

10 (a) There are no salespersons or dealer on the premises during the posted business
11 hours for a period of more than one week without notice to the commission.

12 (b) The business telephone, as provided on the dealer's license application, is
13 disconnected or no longer in service.

14 (c) The business sign has been removed.

15 * * *

16 §790. Black market sales; prohibition

17 * * *

18 B. Any person who violates this Section shall be liable for a fine of up to ~~one~~
19 three thousand dollars.

20 * * *

21 §792. Denial, revocation, or suspension of license; grounds; unauthorized acts

22 A. Except as otherwise provided in this Section, the commission may deny an
23 application for a license ~~as a used motor vehicle dealer, dealer in used parts or used~~
24 ~~accessories of motor vehicles, used motor vehicle auctioneer, or salesperson~~ issued
25 pursuant to the provisions of this Chapter for any of the following reasons:

26 * * *

27 (5) Where the applicant is an immediate family member of, the former employee
28 of, or a former business associate of a dealer whose license was previously revoked or
29 suspended by the commission, and the applicant intends to operate the same or
30 substantially the same business as operated by the revoked licensee, or the revoked

1 licensee will be participating in the business with the applicant. As used in this
2 Paragraph, "immediate family" shall have the meaning ascribed in R.S. 42:1102(13).

3 * * *

4 §794. Wholesale motor vehicle auctions; unlawful acts

5 A. It shall be unlawful and constitute a violation of this Chapter for any wholesale
6 motor vehicle auction to:

7 * * *

8 (3) Permit any person other than a licensed dealer or a ~~salesperson~~ person who
9 holds a current authorization to bid for a licensed dealer, to bid, offer to bid, participate
10 in the bid process, purchase, or offer to purchase a used motor vehicle placed up for bid
11 at the auction.

12 * * *

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____