

Regular Session, 2012

HOUSE BILL NO. 1187 (Substitute for House Bill No. 751 by Representative Richardson)

BY REPRESENTATIVE RICHARDSON

SECONDHAND DEALERS: Provides for the purchase of used or secondhand goods

1 AN ACT

2 To amend and reenact R.S. 37:1861(B)(2) and (5), 1862(A), 1864.1(A), 1864.2(C), and
3 1864.3, to enact R.S. 37:1861(B)(6), and to repeal R.S. 37:1862(B), 1864(A)(1)(d),
4 1864.1(C)(2), and 1867(B), relative to used or secondhand property; to prohibit cash
5 payment for the purchase of copper; to establish a maximum cash payment for
6 metals other than copper; to require an occupational license to act as a secondhand
7 dealer; to require photographic records of certain goods upon request of law
8 enforcement; to exempt the purchase of educational course materials; to repeal the
9 exemption for tires and rims; to repeal the requirement that secondhand dealers
10 record the license plate of a seller; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 37:1861(B)(2) and (5), 1862(A), 1864.1(A), 1864.2(C), and 1864.3
13 are hereby amended and reenacted and R.S. 37:1861(B)(6) is hereby enacted to read as
14 follows:

15 §1861. "Secondhand dealer" defined

16 * * *

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

19 * * *

20 (2) Persons solely engaged in the business of buying, selling, trading in, or
21 otherwise acquiring or disposing of motor vehicles and used parts of motor vehicles,

1 excluding tires and rims, and shall not apply to wreckers or dismantlers of motor
2 vehicles who are licensed under the provisions of R.S. 32:783 et seq.

3 * * *

4 (5) ~~Collectors, transporters, or disposers of waste whose waste collection,~~
5 ~~transportation, and disposal activities are regulated by the Department of~~
6 ~~Environmental Quality, or persons who collect, transport, or manage recyclable~~
7 ~~materials pursuant to a residential collection, recycling, or disposal contract with a~~
8 ~~municipality or political subdivision.~~ The operations of a company that has received
9 a permit, registration, or other authorization from the Department of Environmental
10 Quality for the collection, transportation, treatment, storage, processing, or disposal
11 of solid waste as defined in R.S. 30:2153.

12 (6) The purchase of educational course materials and products including but
13 not limited to books, classroom response devices, and calculators.

14 * * *

15 §1862. License required; application; bond; exemptions

16 A. No person shall do business as a secondhand dealer in this state without
17 having first obtained the occupational license required by law. Any person desiring
18 a license as secondhand dealer shall make application in writing, specifying the street
19 number and house number of the building where the business is to be carried on.
20 This application shall be signed by at least three property taxpayers of the city or
21 parish where the business is to be established certifying that the applicant is of good
22 moral character. He shall also submit with his application a bond in favor of the city
23 or parish, as the case may be, where the business is to be established in the sum of
24 two thousand five hundred dollars with security conditioned for the due observance
25 of all provisions of this Part.

26 * * *

1 §1864.1. Photographic and other records; exceptions

2 A.(1) In addition to the information required in R.S. 37:1864, every
3 secondhand dealer shall ~~be required to~~ obtain a photograph of a person selling or
4 delivering merchandise or articles to the dealer if the fair market value of the
5 merchandise is one hundred dollars or greater. The quality of such photograph shall
6 be sufficient readily to identify the person depicted. In lieu of the photograph of the
7 person selling or delivering the merchandise, the dealer may obtain either a
8 thumbprint of such person, the quality of which thumbprint shall be sufficient to
9 identify the person, or a photocopy of the person's Louisiana driver's license, driver's
10 license from another state, passport, military identification, or identification issued
11 by a governmental agency or the United States Postal Service. Each photograph,
12 thumbprint, or photocopy, as the case may be, shall be cross-referenced with the
13 ledger entry required by R.S. 37:1864. The photograph, thumbprint, or photocopy
14 shall be preserved for a period of at least a year.

15 (2) Pursuant to a request from a law enforcement agency, a secondhand
16 dealer shall be required to capture photographically uniquely identifiable used
17 merchandise or articles purchased pursuant to R.S. 37:1864(A). Photographs shall
18 be made available to the law enforcement agency within twenty-four hours after the
19 request.

20 * * *

21 §1864.2. Purchase of precious metals and stones from minors; purchase of junk
22 from minors prohibited; penalty

23 * * *

24 C. The provisions of this Section shall not apply to the sale or purchase of
25 manufactured registered bullion bars, coins, or other numismatic items. ~~The~~
26 ~~provisions of this Section shall not apply to a retail tire outlet or an automobile dealer~~
27 ~~dealing in tires.~~

28 * * *

1 §1864.3. Payment by check ~~or money order~~ for copper or other metals required;
2 check cashing prohibited; penalties

3 A.(1) A secondhand dealer shall not enter into any cash transactions in
4 payment for the purchase of ~~junk or used or secondhand property~~ copper. Payment
5 for copper shall be made in the form of a check, ~~electronic transfers, or money order~~
6 issued to the seller of the ~~junk or used or secondhand property~~ and made payable to
7 the name and address of the seller made payable to the seller of the metal and mailed
8 to the address recorded on the photo identification of the seller no earlier than five
9 business days after the date of the transaction.

10 (2) A secondhand dealer shall not enter into any cash transactions in excess
11 of three hundred dollars in payment for the purchase of metal property other than
12 copper. Payments in excess of three hundred dollars for metals other than copper
13 shall be made in the form of a check made payable to the name and address of the
14 seller and may be tendered to the seller at the time of the transaction. The
15 secondhand dealer, at his discretion, may make payment by either cash or other
16 method for transactions of three hundred dollars or less for all metals other than
17 copper.

18 B. All payments made by check, ~~electronic transfers, or money order~~ shall
19 be reported separately in the daily reports required by R.S. 37:1866.

20 C.(1) No secondhand dealer shall allow a seller to engage in multiple small
21 transactions for the purpose of circumventing this Section.

22 (2) No secondhand dealer shall cash, offer to cash, or provide the means for
23 exchanging for cash a check issued to a seller pursuant to this Section on the
24 premises of the secondhand dealer's place of business, including but not limited to
25 the use of an automatic teller machine.

26 D. Violations of this Section shall be subject to the penalties provided for in
27 R.S. 37:1869 and 1870.

1 Section 2. R.S. 37:1862(B), 1864(A)(1)(d), 1864.1(C)(2), and 1867(B) are hereby
2 repealed in their 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. 1187

Abstract: Regulates the purchase of junk or used or secondhand property by secondhand dealers.

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.

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 automobile tires and rims from the scope of the exemptions, clarifies the exemption for solid waste collectors, and adds an exemption for the purchase of educational course materials.

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 retains present law but specifies that required license is an occupational license.

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 narrows the requirement to merchandise with a fair market value of \$100 or greater.

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

Proposed law retains present law, but narrows the requirement to used merchandise or articles that are uniquely identifiable.

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 secondhand dealer from entering into any cash transactions in payment for the purchase of copper. Proposed law requires payment for copper to be made in the form of a check issued to the seller of the metal and mailed to the address recorded on the photo identification of the seller no earlier than five business days after the date of the transaction.

Proposed law prohibits a secondhand dealer from entering into any cash transactions in excess of \$300 for the purchase of metal property other than copper. Payments in excess of \$300 for metals other than copper are to be made in the form of a check made payable to the seller of the metal and may be tendered to the seller at the time of the transaction. The secondhand dealer, at his discretion, may make payment by either cash or other method for transactions of \$300 or less for all metals other than copper.

Proposed law requires all payments made by check to be reported separately in the daily reports required by proposed law.

Proposed law prohibits a secondhand dealer from allowing a seller to engage in multiple small transactions for the purpose of circumventing proposed law.

Proposed law prohibits a secondhand dealer from cashing, offering to cash, or providing the means for exchanging for cash a check issued to a seller on the premises of the secondhand dealer's place of business, including but not limited to the use of an automatic teller machine.

Proposed law provides that violations shall be subject to the penalties provided for in proposed law.

Present law requires a secondhand dealer to record the license plate number of the seller of the used property.

Proposed law repeals present law.

Present law contains an exemption for retail tire outlets or an automobile dealers dealing in tires.

Proposed law repeals present law.

(Amends R.S. 37:1861(B)(2) and (5), 1862(A), 1864.1(A), 1864.2(C), and 1864.3; Adds R.S. 37:1861(B)(6); Repeals R.S. 37:1862(B), 1864(A)(1)(d), 1864.1(C)(2), and 1867(B))