

Regular Session, 2012

HOUSE BILL NO. 1188 (Substitute for House Bill No. 802 by Representative Anders)

BY REPRESENTATIVES ANDERS, ADAMS, ARMES, BADON, BILLIOT, BROWN, BURRELL, DIXON, GISCLAIR, HARRIS, HARRISON, HENSGENS, KATRINA JACKSON, LEOPOLD, JAY MORRIS, PONTI, PYLANT, REYNOLDS, RICHARDSON, AND ST. GERMAIN AND SENATOR THOMPSON

1 AN ACT

2 To amend and reenact R.S. 37:1861(B)(introductory paragraph) and 1864.3 and to enact  
3 R.S. 37:1861(B)(6) and Chapter 22 of Title 37 of the Louisiana Revised Statutes of  
4 1950, to be comprised of R.S. 37:1961 through 1977, relative to used or secondhand  
5 property; to provide for an exemption to the secondhand dealer law; to prohibit cash  
6 payments for the purchase of copper and other metals; to establish the Louisiana  
7 Scrap Metal Recyclers Law; to provide for definitions; to require an occupational  
8 license to operate as a scrap metal recycler; to require changes in location to be noted  
9 on a license; to provide for hours of operation; to require records of scrap metal  
10 purchased; to require the records to be kept for three years; to require the records to  
11 be made available for inspection by law enforcement; to require photographic  
12 records of scrap metal purchased and of the sellers; to provide for form of payments;  
13 to prohibit the purchase of scrap metal not owned by the seller; to prohibit scrap  
14 metal purchases from persons under the age of eighteen; to require a statement of  
15 ownership from the seller; to provide that failure to obtain the statement shall be  
16 prima facie evidence of fraud; to provide for exoneration from fraudulent, willful,  
17 or criminal knowledge; to require daily reports; to require the use of a national  
18 database; to provide for violations; to provide for penalties; to provide for  
19 preemption; to provide for a sunset date; to provide for an effective date; and to  
20 provide for related matters.

21 Be it enacted by the Legislature of Louisiana:

22 Section 1. R.S. 37:1861(B)(introductory paragraph) and 1864.3 are hereby amended  
23 and reenacted and R.S. 37:1861(B)(6) and Chapter 22 of Title 37 of the Louisiana Revised

1 Statutes of 1950, comprised of R.S. 37:1961 through 1977, is hereby enacted to read as  
2 follows:

3 §1861. "Secondhand dealer" defined

4 \* \* \*

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

7 \* \* \*

8 (6) Purchases of scrap metal by persons operating as a scrap metal recycler  
9 under the provisions of R.S. 37:1961 et seq.

10 \* \* \*

11 §1864.3. Payment by check ~~or money order~~ for copper or other metals required;  
12 check cashing prohibited; penalties

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

20 (2) A secondhand dealer shall not enter into any cash transactions in excess  
21 of three hundred dollars in payment for the purchase of metal property other than  
22 copper. Payments in excess of three hundred dollars for metals other than copper  
23 shall be made in the form of a check made payable to the name and address of the  
24 seller and may be tendered to the seller at the time of the transaction. The  
25 secondhand dealer, at his discretion, may make payment by either cash or other  
26 method for transactions of three hundred dollars or less for all metals other than  
27 copper.

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



1                   (4) "Scrap metal recycling facility" means any physical entity that has the  
 2                   function of recycling scrap metal.

3                   (5) "Used building component" means any object produced or shaped by  
 4                   human workmanship or tools that is an element of structural, architectural,  
 5                   archaeological, historical, ornamental, cultural, utilitarian, decorative, or sentimental  
 6                   significance or interest, which has been and may be used as an adjunct to or  
 7                   component or ornament of any building or structure, regardless of monetary worth,  
 8                   age, size, shape, or condition, that is immovable property, or fixtures or component  
 9                   parts of immovable property of any nature or kind whatsoever.

10                   (6) "Water utility materials" shall include but not be limited to water meters,  
 11                   valves, pipes, and fittings.

12                   §1963. License required; application; bond

13                   No person shall do business as a scrap metal recycler in this state without  
 14                   having first obtained the occupational license required by law. Any person desiring  
 15                   a license as a scrap metal recycler shall make application in writing, specifying the  
 16                   street number and house number of the building where the business is to be carried  
 17                   on. He shall also submit with his application a bond in favor of the city or parish, as  
 18                   the case may be, where the business is to be established in the sum of two thousand  
 19                   five hundred dollars with security conditioned for the due observance of all  
 20                   provisions of this Chapter.

21                   §1964. Exemptions

22                   The provisions of this Chapter shall not apply to:

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

25                   (2) Persons solely engaged in the business of buying, selling, trading in, or  
 26                   otherwise acquiring or disposing of motor vehicles and used parts of motor vehicles,  
 27                   excluding tires and rims, nor wreckers or dismantlers of motor vehicles who are  
 28                   licensed pursuant to the provisions of R.S. 32:783 et seq.

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

1                   (4) Any bona fide charity possessing a valid exemption under Section  
2                   501(c)(3) of the Internal Revenue Code.

3                   (5) The operations of a company that has received a permit, registration, or  
4                   other authorization from the Department of Environmental Quality for the collection,  
5                   transportation, treatment, storage, processing of materials to be recycled or reused  
6                   or disposal of solid waste as defined in R.S. 30:2153.

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

8                   (7) The purchase of firearms for disposal from a law enforcement agency.

9                   (8) The purchase of materials from any manufacturing, industrial, or other  
10                  commercial vendor that generates the materials as a byproduct or recyclable waste  
11                  or sells such materials in the ordinary course of its business.

12                  §1965. Change in location to be noted on license

13                  If after issuance and delivery of a license under the provisions of this Chapter  
14                  any change is made in the location of the place of business designated therein, the  
15                  business shall not be conducted at the new location or under such license, until the  
16                  official issuing the license notes the change on the license, and the superintendent  
17                  of police of the city or the sheriff of the parish in which the scrap metal recycling  
18                  facility is doing business is notified in writing of the change.

19                  §1966. Hours of business

20                  An operator shall not enter into any transactions for the purchase of scrap  
21                  metal before the hour of 7:00 a.m. nor after the hour of 7:00 p.m. except on  
22                  Saturdays and during the month of December, during which time the hour of 7:00  
23                  p.m. shall be extended to 10:00 p.m.

24                  §1967. Record of scrap metal purchased required; exceptions; retention period;  
25                  inspections by law enforcement; violations; penalty

26                  A. Every operator shall either keep a register and file reports or  
27                  electronically maintain data and be capable of readily providing reports, as specified  
28                  in Subsection B of this Section, in the form prescribed by the Department of Public  
29                  Safety and Corrections which shall contain the following information:

1                   (1) The name and address of the residence or place of business of the person  
 2                   required to either keep the register and file reports or electronically maintain the data  
 3                   and generate the requested reports.

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

5                   (3) The name and address of the person or persons from whom the material  
 6                   was purchased, including the distinctive number of each person's Louisiana driver's  
 7                   license, driver's license from another state, passport, military identification, or  
 8                   identification issued by a governmental agency or the United States Postal Service.  
 9                   If the person cannot produce any of the above forms of identification at the time of  
 10                  purchase, the purchaser shall not complete the transaction.

11                  (4) The motor vehicle license number of the vehicle or conveyance on which  
 12                  such material was delivered.

13                  (5) A full description of all such material purchased, including the weight of  
 14                  the material and whether it consists of bars, kegs, cable, ingots, rods, tubing wire,  
 15                  wire scraps, clamps, connectors, or other appurtenances or some combination  
 16                  thereof.

17                  (6) A full description of railroad track materials purchased, including the  
 18                  weight and whether it consists of rail, switch components, spikes, angle bars, tie  
 19                  plates, or bolts of the type used to construct railroads or other appurtenances or some  
 20                  combination thereof.

21                  B. Each operator shall keep either one copy of such completed form in a  
 22                  separate register or book or maintain the information in electronic format as provided  
 23                  in Subsection A of this Section which shall be kept for a period of three years at his  
 24                  place of business and shall be made available for inspection by any peace officer or  
 25                  law enforcement official at any time during the three-year period.

26                  C. Failure to maintain the information or the register or to produce a report  
 27                  requested by any peace officer or law enforcement official as required by this  
 28                  Section shall be prima facie evidence that the person receiving such material  
 29                  described in this Section that is not registered or reported, received it knowing it to  
 30                  be stolen, in violation of R.S. 14:69.

1           §1968. Photographic and other records; exceptions

2                   A. In addition to the information required in R.S. 37:1967, every operator  
3           shall be required to obtain a photograph of a person selling or delivering scrap metal  
4           to the facility. The quality of such photograph shall be sufficient to readily identify  
5           the person depicted. In lieu of the photograph of the person selling or delivering the  
6           scrap metal, the operator may obtain either a thumbprint of such person, the quality  
7           of which thumbprint shall be sufficient to identify the person, or a photocopy of the  
8           person's Louisiana driver's license, driver's license from another state, passport,  
9           military identification, or identification issued by a governmental agency or the  
10          United States Postal Service. Each photograph, thumbprint, or photocopy, as the  
11          case may be, shall be cross-referenced with the ledger entry required by R.S.  
12          37:1967. The photograph, thumbprint, or photocopy shall be preserved for a period  
13          of at least a year. Photographs shall be made available to the law enforcement  
14          agency within twenty-four hours after the request.

15                   B. In addition to the information required in R.S. 37:1967, every operator  
16          shall be required to obtain a photograph of all scrap metal purchased. The quality  
17          of the photograph shall be sufficient to readily identify each type of scrap metal  
18          depicted. The operator shall obtain multiple photographs if necessary to properly  
19          record the scrap metal purchased. Each photograph shall be cross-referenced with  
20          the ledger entry required by R.S. 37:1967 and shall be preserved for a period of at  
21          least one year. Photographs shall be made available to law enforcement within  
22          twenty-four hours after a request.

23          §1969. Scrap metal; purchase when forbidden

24                   A. No operator shall willfully or knowingly purchase scrap metal unpaid for  
25          by the seller or not owned by the seller.

26                   B. No operator shall purchase scrap metal, other than aluminum in the form  
27          of cans, from a person under the age of eighteen. Lack of knowledge of age shall not  
28          be a defense to a violation of this Subsection.

29                   C. No operator shall purchase precious metals.

1            §1970. Statement by seller required; failure to exact statement evidence of  
 2            fraudulent intent; exoneration from criminal knowledge

3            A. Every operator shall obtain a signed statement from the seller that the  
 4            scrap metal has been paid for or is owned by the seller, and a failure of the operator  
 5            to exact a statement from the seller shall be prima facie evidence of the fraudulent  
 6            intent and guilty knowledge on the part of the operator within the meaning of this  
 7            Chapter, sufficient to warrant a conviction.

8            B. In transactions involving railroad track materials, an operator shall require  
 9            the party seeking to sell or dispose of the materials to furnish a signed statement  
 10           from the appropriate railroad company consenting to the sale of the railroad track  
 11           materials identified in the statement, which shall be retained by the operator. The  
 12           statement shall include the name of the railroad company consenting to the sale and  
 13           the name, employee number, and phone number of the person signing the statement  
 14           authorizing the sale. The operator shall attempt to verify the authenticity of the  
 15           statement authorizing the sale of the railroad track materials.

16           C.(1) An operator shall not purchase any of the following materials without  
 17           first receiving a signed statement from the company or governmental entity owning  
 18           the materials and consenting to the sale of the materials identified in the statement:

19           (a) Infrastructure grade regulated material that has been burned to remove  
 20           insulation, unless the seller can produce written proof that the regulated material was  
 21           lawfully burned.

22           (b) Burnt wire.

23           (c) Regulated material where the manufacturer's make, model, serial or  
 24           personal identification number, or other identifying marks engraved or etched upon  
 25           the material have been conspicuously removed or altered.

26           (d) Regulated material marked with the name, initials, or otherwise identified  
 27           as the property of an electrical company, a telephone company, a cable company, a  
 28           water company or other utility company, or a governmental entity.

29           (e) A utility access cover.

30           (f) A water meter cover.

1                    (g) A road or bridge guard rail.

2                    (h) A highway or street sign.

3                    (i) A traffic directional or control sign or signal.

4                    (j) A metal beer keg that is clearly marked as being the property of the beer  
 5 manufacturer.

6                    (k) A catalytic converter that is not part of an entire motor vehicle.

7                    (2) The statement shall include the name of the company or governmental  
 8 entity consenting to the sale and the name, employee number, and phone number of  
 9 the person signing the statement authorizing the sale. The operator shall attempt to  
 10 verify the authenticity of the statement authorizing the sale of the materials. The  
 11 statement shall be retained by the operator.

12                    D. An operator who obtains the required statement from the seller shall be  
 13 exonerated from any fraudulent, willful, or criminal knowledge within the meaning  
 14 of this Chapter.

15                    §1971. Book to be open for inspection

16                    The book containing the record of purchase as provided for in R.S. 37:1967  
 17 and the various articles purchased and referred to therein shall at all times be open  
 18 to the inspection of law enforcement officers of the office of state police, or the  
 19 superintendent of police or sheriff of the parish or anyone designated by them of the  
 20 city, town, or parish in which the operator does business.

21                    §1972. Daily report of entries

22                    A.(1) Every operator licensed pursuant to this Chapter shall produce and  
 23 deliver to the chief of police of the city or town or to the sheriff of the parish in  
 24 which he is doing business, every day before the hour of twelve noon, a legible and  
 25 correct copy of the entries in the book mentioned in R.S. 37:1967 during the previous  
 26 day. The means for providing the transactional information required under this  
 27 Section shall be by electronic transmission.

28                    (2) The appropriate law enforcement official may, for purposes of an  
 29 investigation of a crime relating to a particular scrap metal transaction, request the  
 30 operator to mail or fax the official the personally identifiable information relating to

1           the transaction under investigation. The operator shall deliver the personally  
2           identifiable information relating to the identified transaction to the appropriate law  
3           enforcement official within twenty-four hours of the request.

4           B. In addition to the daily report required in Subsection A of this Section,  
5           every operator licensed pursuant to this Chapter shall, every day before the hour of  
6           twelve noon, transmit the information contained in the entries in the book required  
7           by R.S. 37:1967(B) during the previous day to an electronic database accessible by  
8           law enforcement.

9           C. The operator shall have the responsibility of tendering the information  
10          provided for in Subsections A and B of this Section regardless of its use or nonuse  
11          by the chief of police in the city or town in which he is doing business or,  
12          alternatively, to the sheriff of the parish in which he is doing business. The tender  
13          of this information is a courtesy mandated by state law and which provides a benefit  
14          to the general public. The chief of police or sheriff shall not be mandated to take any  
15          particular action concerning the information tendered.

16          §1973. Payment by check for copper or other metals required; check cashing  
17          prohibited

18          A.(1) An operator shall not enter into any cash transactions in payment for  
19          the purchase of copper. Payment for copper shall be made in the form of a check  
20          made payable to the seller of the metal and mailed to the address recorded on the  
21          photo identification of the seller no earlier than five business days after the date of  
22          the transaction.

23          (2) An operator shall not enter into any cash transactions in excess of three  
24          hundred dollars in payment for the purchase of metal property other than copper.  
25          Payments in excess of three hundred dollars for metals other than copper shall be  
26          made in the form of a check made payable to the name and address of the seller and  
27          may be tendered to the seller at the time of the transaction. The operator, at his  
28          discretion, may make payment by either cash or other method for transactions of  
29          three hundred dollars or less for all metals other than copper.

1           B. All payments made by check shall be reported separately in the daily  
2           reports required by R.S. 37:1967.

3           C. Except for copper purchases, in lieu of a check, an operator may make  
4           payment to the seller in the form of a loadable payment card. The operator shall  
5           require verification of the seller's identification by a driver's license or similar means,  
6           and shall require verification of the seller's address by a current utility bill. The  
7           operator shall retain a copy of such utility bill.

8           D.(1) No operator shall allow a seller to engage in multiple transactions  
9           within a twenty-four hour period totaling more than three hundred dollars for the  
10           purpose of circumventing this Section.

11           (2) No operator shall cash, offer to cash, or provide the means for  
12           exchanging for cash a check issued to a seller pursuant to this Section on the  
13           premises of the operator's place of business, including but not limited to the use of  
14           an automatic teller machine.

15           E. Violations of this Section shall be subject to the penalties provided for in  
16           R.S. 37:1974 and 1975.

17           §1974. Violations; penalty

18           A. Any licensed operator who violates, neglects, or refuses to comply with  
19           any provision of this Chapter, shall be fined not less than one thousand dollars, nor  
20           more than ten thousand dollars or be imprisoned for not less than thirty days nor  
21           more than sixty days, or both.

22           B. For the second offense, his occupational license shall be suspended for  
23           a thirty-day period. For a third offense, his occupational license shall be revoked and  
24           he shall not thereafter be permitted to engage in the business of scrap metal recycling  
25           in the state of Louisiana.

26           C. Any operator convicted of selling stolen goods shall have his occupational  
27           license revoked.

28           D. The occupational license tax collector is hereby vested with the authority,  
29           upon motion in a court of competent jurisdiction, to rule the noncomplying operator  
30           to show cause in not less than two nor more than ten days, exclusive of holidays, as

1 to why the noncomplying operator's retail occupational license should not be  
2 suspended or revoked as prescribed under this Chapter. This rule may be tried out  
3 of term and in chambers and shall be tried with preference and priority. If the rule  
4 is made absolute, the order rendered therein shall be considered a judgment in favor  
5 of the municipality or parish.

6 §1975. Failure to comply; penalty

7 A. Anyone acting as an unlicensed operator without complying with the  
8 provisions of this Chapter shall be fined not less than one thousand dollars or be  
9 imprisoned not less than thirty days nor more than sixty days, or both.

10 B. For a second offense, the offender shall be fined not less than five  
11 thousand dollars or be imprisoned with or without hard labor for not more than two  
12 years, or both.

13 C. For a third or subsequent offense, the offender shall be fined not less than  
14 ten thousand dollars or be imprisoned with or without hard labor for not more than  
15 five years, or both.

16 §1976. Preemption

17 No governing authority of a political subdivision shall enact an ordinance in  
18 conflict with the provisions of this Chapter.

19 §1977. Expiration

20 The provisions of this Chapter shall expire on July 31, 2016.

1           Section 2. This Act shall become effective upon signature by the governor or, if not  
 2 signed by the governor, upon expiration of the time for bills to become law without signature  
 3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 4 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 5 effective on the day following such approval.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_