

Attorney General—Appellate Briefs; Legal Representation Charges; Scrap Metal Theft Reduction Act—Enforcement Delay; Civil Penalties; Office of the Inspector General—Transfer; SB 149

SB 149 creates and amends law related to the Attorney General, the Scrap Metal Theft Reduction Act, and the Office of the Inspector General within the Kansas Department of Health and Environment (KDHE), as follows.

Attorney General—Appellate Briefs

The bill creates law concerning criminal matters or postconviction cases in the Kansas Supreme Court or the Kansas Court of Appeals. Specifically, the bill requires a copy of each brief to be served on the Kansas Attorney General and prohibits briefs from being filed by or on behalf of the State or any officer or agent of the State unless the approval of the Attorney General or a member of the Attorney General's staff is endorsed on the brief.

Attorney General—Legal Representation Charges

The bill creates law allowing the Attorney General to determine, fix, establish, and collect legal representation charges for legal services provided to state agencies, as defined by the bill. The Attorney General may determine the charges to any agency based on a schedule of fees and costs published by the Attorney General or by agreement with the state agency. Any schedule of fees adopted by the Attorney General may not exceed the limits established in KSA 22-4507 and the amendments thereto, which relates to compensation and reimbursement for legal services provided to indigent defendants.

The bill creates the Attorney General's State Agency Representation Fund (Fund) and requires charges collected under the provisions of the bill be placed in the Fund. Moneys in the Fund may be used by the Attorney General only for operations of the Office of the Attorney General (AG's Office).

The bill specifies it does not obligate the Attorney General to provide legal services to any state agency. The Attorney General is authorized to adopt rules and regulations as necessary to implement the provisions of the bill.

The bill defines several terms, including the following:

- “Legal representation charges” means costs, fees, expenses, or other financial liability incurred by the Attorney General, including, but not limited to, attorney fees, to provide legal services to a state agency;
- “Legal services” means any form of legal advice, representation, or counseling involving an attorney-client relationship, including, but not limited to, general counsel services and representation of a state agency in an administrative law matter. It includes services provided at the discretion of the Attorney General and legal services required to be provided by the Attorney General. It does not include any representation provided pursuant to the Kansas Tort Claims Act or

the defense of civil rights claims pursuant to KSA 75-6116 and the amendments thereto; and

- “State agency” means any department of state government, or any agency thereof, that collects fees for licensing, regulating, or certifying a person or profession.

Scrap Metal Theft Reduction Act Amendments

The bill amends the Scrap Metal Theft Reduction Act (Act) to delay, from July 1, 2016, until January 1, 2019, a requirement for the Attorney General to establish and maintain a database as a central repository for information required to be provided under the Act. The Act also declares certain provisions of the Act unenforceable until January 1, 2019. The delayed provisions include:

- The statute allowing imposition of a civil penalty of \$100-\$5,000 on any scrap metal dealer who violates any of the provisions of the Act;
- A provision requiring scrap metal dealers to forward information to the database described above;
- A provision changing the permissible range of scrap metal dealer registration fees from \$100-\$400 to \$500-\$1,500; transferring the authority to set such fees from the board of county commissioners or governing body of the city to the Attorney General; and requiring the fee be paid for each particular place of business;
- A provision changing the permissible range of renewal fees from \$25-\$50 to “not more than \$1,500” and transferring the authority to set such fees from the governing body of a city or board of county commissioners to the Attorney General;
- A provision disqualifying a person for registration if the person does not own the premises for which a license is sought, unless the person has a written lease for at least three-fourths of the period of the license; and
- A provision allowing a criminal history records check for applicants for registration, including fingerprinting provisions.

The bill amends a provision requiring a dealer to photograph the seller and the item(s) being sold and to keep such photographs with the record of the transaction by removing the requirement that the seller be photographed. The bill further amends this provision to allow the Attorney General to impose a civil penalty of \$100-\$5,000 for each failure to comply with these requirements between the effective date of the bill and January 1, 2019. The bill adds the same civil penalty provision for a failure to comply with a continuing paragraph requiring a scrap metal dealer to include a copy of the seller’s identification card or document containing such identifying number in the register of information the dealer is required to maintain. Finally, the bill

adds the same civil penalty provision to a continuing statute prohibiting certain actions by a scrap metal dealer or employees or agents of the dealer. [Note: These penalties could have been imposed under the general civil penalty provision in previous law that was delayed by the bill.]

Transfer of the Office of the Inspector General

The bill enacts and amends law to transfer the Office of the Inspector General (IG's Office) within KDHE to the IG's Office within the AG's Office. The powers, duties, functions, records, and property of the IG's Office within KDHE are transferred to the IG's Office within the AG's Office. References to the IG's Office within KDHE in statute, contract, or other document are deemed to apply to the IG's Office within the AG's Office. The bill replaces references to the Secretary of Health and Environment or KDHE regarding the IG's Office with the Attorney General or AG's Office, as applicable. Additional details follow.

The orders and directives of the IG's Office within KDHE existing on the effective date of the bill shall continue in effect and be deemed to be those of the IG's Office within the AG's Office until revised, amended, repealed, or nullified. All unexpended balances of appropriations of the IG's Office within KDHE on the effective date of the bill shall be transferred to the AG's Office for use by the IG's Office within the AG's Office to carry out the powers, duties, and functions transferred under the bill. The transfer will not abate any suit, action, or other proceeding, judicial or administrative, lawfully commenced or which could have been commenced by or against any existing agency mentioned in the bill or against any state officer in the officer's official capacity or in relation to the discharge of the officer's official duties. No criminal actions commenced or which could have been commenced by the State will be abated by effect of this bill. The Governor shall resolve any conflicts arising as to the disposition of any power, function, or duty or the unexpended balance of any appropriation as a result of any abolition, transfer, attachment, or other change made by the bill or under the bill's authority, with the Governor's decision being final.

Definitions

The bill clarifies the definition of "attorney general" by referencing the State of Kansas. The definition of "department" referencing KDHE is deleted.

Inspector General Position

Change in classification, salary, and appointment. The Inspector General position, upon transfer to the AG's Office, will change from classified to unclassified, with an annual salary in an amount equal to the annual salary paid by the State to a district court judge. The Inspector General shall be appointed by the Attorney General, instead of KDHE, and the appointment will continue to be subject to Senate confirmation. The bill allows the Attorney General to remove the Inspector General from office for cause prior to the expiration of the Inspector General's term of office. The Inspector General shall report to the Attorney General.

Duties. The bill clarifies the duties of the Inspector General extend to oversight, audits, investigations, performance reviews, and independent and ongoing evaluations of the State's programs for Medicaid, MediKan, and the Children's Health Insurance Program or their

successor programs. The bill deletes references to programs administered by KDHE, clients of KDHE, or the department and replace the language with “such a program or programs” or “state agency or agencies which administer such program or programs.”

The bill clarifies the Inspector General is required to conduct independent and ongoing evaluation of these programs or their successor programs over which the Inspector General has oversight, as follows:

- Investigate fraud, waste, abuse, and illegal acts directly relating to such programs;
- Audit state programs (not only KDHE), contractors, vendors, and health care providers related to ensuring appropriate payments are made for services rendered and to the recovery of overpayments;
- Investigate fraud, waste, abuse, or illegal acts committed by clients of the programs or by consumers of services of such programs; and
- Monitor the adherence to the terms of any contract between a state agency (not only KDHE) and any organization with which the state agency has entered into a contract to make claims payments.

Access to information. The bill clarifies the Inspector General, among other authorized access, shall have access to all pertinent information, confidential or otherwise, and to all personnel and facilities of a state agency (not only KDHE) and state vendors necessary to perform the duties of the IG's Office as directly related to the programs over which the Inspector General has oversight.

Reporting and investigation requirements. If credible evidence of fraud, waste, abuse, or illegal acts are found, the Inspector General is required to report the findings to the Attorney General.

The Inspector General is required to report all convictions, terminations, and suspensions taken against vendors, contractors, and health care providers to any agency contracting with or responsible for licensing or regulating those persons or entities. In addition to other entities to which the provision of a report is required, the Inspector General is required to make annual reports, findings, and recommendations regarding the IG's Office's investigations into reports of fraud, waste, abuse, and illegal acts relating to any such programs to the appropriate state agency and the Attorney General.

The bill adds civil actions to the list of those actions for which the Inspector General is required to conduct investigations in a manner that ensures preservation of evidence. The Inspector General is required to notify the Attorney General if the Inspector General determines a possible false claim relating to fraud in the provision or administration of the programs over which the Inspector General had oversight has occurred.

KDHE Closed Meeting with the Inspector General

Language relating to KDHE recessing for a closed, executive meeting to discuss with the Inspector General any information, records, or other matters involved in any investigation or audit is deleted, as this language is no longer applicable. The bill adds that all information and records of the Inspector General made, maintained, or kept under any investigation or audit under the provisions of the bill shall also be confidential, except as required or authorized under the bill.