

HOUSE BILL No. 2312

AN ACT concerning regulated scrap metal; relating to licensure for scrap metal dealers; unlawful acts; criminal penalties; amending K.S.A. 2010 Supp. 50-6,109, 50-6,110, 50-6,111 and section 87 of chapter 136 of the 2010 Session Laws of Kansas and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) On or after January 1, 2012, no business shall purchase any regulated scrap metal without having first registered each place of business as herein provided. In case such place of business is located within the corporate limits of a city, the registration shall be made to the governing body of such city. In all other cases, the registration shall be made to the board of county commissioners in the county in which such place of business is to be located.

(b) A board of county commissioners shall provide the clerk of the township with written notice of the filing of a registration by a scrap metal dealer within 10 days of registration or renewal.

(c) The governing body of any city and the board of county commissioners shall provide the sheriff, chief of police or director of all law enforcement agencies in the county written notice of the filing of registration by a scrap metal dealer within 10 days of registration or renewal.

(d) A registration for a scrap metal dealer shall be verified and upon a form approved by the attorney general and contain:

- (1) The name and residence of the applicant;
- (2) the length of time that the applicant has resided within the state of Kansas and a list of all residences outside the state of Kansas during the previous 10 years;
- (3) the particular place of business for which a registration is desired;
- (4) the name of the owner of the premises upon which the place of business is located; and

(5) the applicant shall disclose any prior convictions within 10 years immediately preceding the date of making the registration for theft, as defined in K.S.A. 21-3701, prior to its repeal, or section 87 of chapter 136 of the 2010 Session Laws of Kansas, theft of property lost, mislaid or delivered by mistake, as defined in K.S.A. 21-3703, prior to its repeal, or section 88 of chapter 136 of the 2010 Session Laws of Kansas, theft of services, as defined in K.S.A. 21-3704, prior to its repeal, criminal deprivation of property, as defined in K.S.A. 21-3705, prior to its repeal, or section 89 of chapter 136 of the 2010 Session Laws of Kansas, or any other crime involving possession of stolen property.

(e) Each registration for a scrap metal dealer to purchase regulated scrap metal shall be accompanied by a fee of not less than \$100 nor more than \$400, as prescribed by the board of county commissioners or the governing body of the city, as the case may be.

(f) The board of county commissioners or the governing body of a city shall accept a registration for a scrap metal dealer as otherwise provided for herein, from any scrap metal dealer engaged in business in such county or city and qualified to file such registration, to purchase regulated scrap metals. Such registration shall be issued for a period of 10 years.

(g) If an original registration is accepted, the governing body of the city or the board of county commissioners shall grant and issue renewals thereof upon application of the registration holder, if the registration holder is qualified to receive the same and the registration has not been revoked as provided by law. The registration fee for such renewal, which shall be in addition to the fee provided by subsection (e), shall be not less than \$25 nor more than \$50.

(h) No registration issued under this act shall be transferable.

(i) Violation of subsection (a) is a class A nonperson misdemeanor.

(j) This section shall not apply to a business licensed under the provisions of K.S.A. 8-2404, and amendments thereto, unless such business buys or recycles regulated scrap metal that are not motor vehicle components.

New Sec. 2. (a) After examining the information contained in a filing for a scrap metal dealer registration and determining the registration meets the statutory requirements for such registration, the governing body of the city or the board of county commissioners shall accept such filing and the scrap metal dealer shall be deemed to be properly registered.

(b) No scrap metal registration shall be accepted for:

(1) A person who is under 18 years of age and whose parents or legal guardians have been convicted of a felony or other crime which would disqualify a person from registration under this section and such crime was

committed during the time that such parents or legal guardians held a registration under this act.

(2) A person who, within five years immediately preceding the date of filing, has pled guilty to, been convicted of, released from incarceration for or released from probation or parole for committing, attempting to commit, or conspiring to commit a violation of article 37 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or sections 87 through 125 and subsection (a)(6) of section 223 of chapter 136 of the 2010 Session Laws of Kansas, perjury, K.S.A. 21-3805, prior to its repeal, or section 128 of chapter 136 of the 2010 Session Laws of Kansas, compounding a crime, K.S.A. 21-3807, prior to its repeal, obstructing legal process or official duty, K.S.A. 21-3808, prior to its repeal, falsely reporting a crime, K.S.A. 21-3818, prior to its repeal, interference with law enforcement, section 129 of chapter 136 of the 2010 Session Laws of Kansas, interference with judicial process, section 130 of chapter 136 of the 2010 Session Laws of Kansas, or any crime involving moral turpitude.

(3) A person who, within the five years immediately preceding the date of registration, has pled guilty to, been found guilty of, or entered a diversion agreement for violating the provisions of section 1, and amendments thereto, K.S.A. 50-6,109 et seq., and amendments thereto, the laws of another state comparable to such provisions or laws of any county or city regulating the sale or purchase of regulated scrap metal three or more times.

(4) A person who within the three years immediately preceding the date of registration held a scrap metal dealer registration which was revoked, or managed a facility for a scrap metal dealer whose registration was revoked, or was an employee whose conduct led to or contributed to the revocation of such registration.

(5) A person who makes a materially false statement on the registration application or has made a materially false statement on a registration or similar filing within the last three years.

(6) A partnership or limited liability company, unless all members of the partnership or limited liability company are otherwise qualified to file a registration.

(7) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of such corporation, would be ineligible to receive a license hereunder for any reason.

(8) A person whose place of business is conducted by a manager or agent unless the manager or agent possesses all of the qualifications for registration.

(9) A person whose spouse has been convicted of a felony or other crime which would disqualify a person from registration under this section and such crime was committed during the time that the spouse held a registration under this act.

New Sec. 3. (a) The board of county commissioners or the governing body of any city, upon five days notice to the persons holding a registration, may suspend the scrap metal dealer's registration for up to 30 days for any one of the following reasons:

(1) The registrant has been convicted of violating any of the provisions of K.S.A. 50-6,109 et seq., and amendments thereto, or any similar ordinance, resolution or rules or regulations made by the board or the city, as the case may be;

(2) the employment or continuation in employment of a person if the registered scrap metal dealer knows such person has, within the 24 months prior to the notice of suspension or revocation action, been convicted of violating any of the provisions of K.S.A. 50-6,109 et seq., and amendments thereto, or the laws of another state comparable to such provisions, or any city or county ordinance or resolution, or regulation controlling scrap metal sale or purchase in Kansas or any other state; or

(3) permitting any criminal activity under the Kansas criminal code, or similar ordinance, resolution or rules or regulations made by the board or city, as the case may be, in or upon the registrant's place of business.

(b) The board of county commissioners or the governing body of any city may revoke the registration of a scrap metal dealer who has had its registration suspended three or more times within a 24-month period.

(c) The board of county commissioners or the governing body of any

city, upon five days' notice to the person holding the registration, shall revoke or suspend the registration for any one of the following reasons:

(1) The registrant has fraudulently registered by knowingly giving materially false information on the registration form;

(2) the registrant has become ineligible to obtain a registration under this act;

(3) the nonpayment of any registration fees after receiving written notice that such registration fees are more than 30 days past due; or

(4) within 20 days after the order of the board denying, revoking or suspending any registration, the registrant may appeal to the district court and the district court shall proceed to hear such appeal as though the court had original jurisdiction of the matter. Upon request by the registrant, the district court may enjoin the revocation or suspension of a registration until final disposition of any action brought under this act.

(d) Any action brought under subsections (a), (b) or (c) shall be brought individually against a single registrant's site and not against any other scrap metal sites or locations registered by the same individual, company or business entity.

Sec. 4. Section 87 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 87. (a) Theft is any of the following acts done with intent to permanently deprive the owner of the possession, use or benefit of the owner's property or services:

(1) Obtaining or exerting unauthorized control over property or services;

(2) obtaining control over property or services, by deception;

(3) obtaining control over property or services, by threat;

(4) obtaining control over stolen property or services knowing the property or services to have been stolen by another; or

(5) knowingly dispensing motor fuel into a storage container or the fuel tank of a motor vehicle at an establishment in which motor fuel is offered for retail sale and leaving the premises of the establishment without making payment for the motor fuel.

(b) *Except as provided in subsection (c)*, theft of:

(1) Property or services of the value of \$100,000 or more is a severity level 5, nonperson felony;

(2) property or services of the value of at least \$25,000 but less than \$100,000 is a severity level 7, nonperson felony;

(3) property or services of the value of at least \$1,000 but less than \$25,000 is a severity level 9, nonperson felony;

(4) property or services of the value of less than \$1,000 is a class A nonperson misdemeanor, except as provided in subsection (b)(5) or (b)(6);

(5) property regardless of the value from three separate mercantile establishments within a period of 72 hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct is a severity level 9, nonperson felony; and

(6) property of the value of less than \$1,000 is a severity level 9, nonperson felony if committed by a person who has been convicted of theft two or more times.

(c) As used in this section:

(1) "Conviction" or "convicted" includes being convicted of a violation of K.S.A. 21-3701, prior to its repeal, this section or a municipal ordinance which prohibits the acts that this section prohibits;

(2) "regulated scrap metal" means the same as in K.S.A. 2010 Supp. 50-6,109, and amendments thereto; and

(3) "value" means the value of the property or, if the property is regulated scrap metal, the cost to restore the site of the theft of such regulated scrap metal to its condition at the time immediately prior to the theft of such regulated scrap metal, whichever is greater.

Sec. 5. K.S.A. 2010 Supp. 50-6,109 is hereby amended to read as follows: 50-6,109. As used in sections 1 through 3, and amendments thereto, and K.S.A. ~~2009~~ 2010 Supp. 50-6,109 through 50-6,112, and amendments thereto:

(a) "Scrap metal dealer" means any person that operates a business out of a fixed location, and that is also either:

(1) Engaged in the business of buying and dealing in regulated scrap metal;

(2) purchasing, gathering, collecting, soliciting or procuring regulated scrap metal; or

(3) operating, carrying on, conducting or maintaining a regulated scrap metal yard or place where regulated scrap metal is gathered together and stored or kept for shipment, sale or transfer.

(b) “Regulated scrap metal yard” means any yard, plot, space, enclosure, building or any other place where regulated scrap metal is collected, gathered together and stored or kept for shipment, sale or transfer.

(c) “Regulated scrap metal” shall mean wire, cable, bars, ingots, wire scraps, pieces, pellets, clamps, aircraft parts, junk vehicles, vehicle parts, pipes or connectors made from aluminum; catalytic converters containing platinum, palladium or rhodium; and copper, titanium, tungsten, stainless steel and nickel in any form; for which the purchase price described in K.S.A. 2010 Supp. 50-6,110 and 50-6,111, and amendments thereto, was primarily based on the content therein of aluminum, copper, titanium, tungsten, nickel, platinum, palladium, stainless steel or rhodium; any item composed in whole or in part of any nonferrous metal other than an item composed of tin, that is purchased or otherwise acquired for the purpose of recycling or storage for later recycling. Aluminum shall not include food or beverage containers.

(d) “Bales of regulated metal” means regulated scrap metal property processed with professional recycling equipment by compression, shearing or shredding, to a form in which it may be sold by a scrap metal dealer consistent with industry standards.

(e) “Ferrous metal” means a metal that contains iron or steel.

(f) “Junk vehicle” means a vehicle not requiring a title as provided in chapter 8 of the Kansas Statutes Annotated, and amendments thereto, aircraft, boat, farming implement, industrial equipment, trailer or any other conveyance used on the highways and roadways, which has no use or resale value except as scrap.

(g) “Nonferrous metal” means a metal that does not contain iron or steel, including but not limited to, copper, brass, aluminum, bronze, lead, zinc, nickel and their alloys.

(h) “Tin” means a metal consisting predominantly of light sheet metal ferrous scrap, including large and small household appliances, construction siding and construction roofing.

(i) “Vehicle part” means the front clip consisting of the two front fenders, hood, grill and front bumper of an automobile assembled as one unit; or the rear clip consisting of those body parts behind the rear edge of the back doors, including both rear quarter panels, the rear window, trunk lid, trunk floor panel and rear bumper, assembled as one unit; or any other vehicle part.

Sec. 6. K.S.A. 2010 Supp. 50-6,110 is hereby amended to read as follows: 50-6,110. (a) Except as provided in subsection (d), it shall be unlawful for any person to sell any item or items of regulated scrap metal to a scrap metal dealer, or employee or agent of a dealer, in this state unless such person presents to such scrap metal dealer, or employee or agent of such dealer, at or before the time of sale, the following information: The seller’s name, address, sex, date of birth and the identifying number from the seller’s driver’s license, military identification card, passport or personal identification license. The identifying number from an official governmental document for a country other than the United States may be used to meet this requirement provided that a legible fingerprint is also obtained from the seller.

(b) Every scrap metal dealer shall keep a register in which the dealer, or employee or agent of the dealer, shall at the time of purchase or receipt of any item for which such information is required to be presented, cross-reference to previously received information, or accurately and legibly record at the time of sale the following information:

(1) The time, date and place of transaction;

(2) the seller’s name, address, sex, date of birth and the identifying number from the seller’s driver’s license, military identification card, passport or personal identification license; the identifying number from an official governmental document for a country other than the United States may be used to meet this requirement provided that a legible fingerprint is also obtained from the seller;

(3) a copy of the identification card or document containing such identifying number;

(4) the license number, color and style or make of any motor vehicle in which the junk vehicle or other regulated scrap metal property is delivered in a purchase transaction;

(5) a general description, made in accordance with the custom of the trade, of the predominant types of junk vehicle or other regulated scrap metal property purchased in the transaction;

(6) the weight, quantity or volume, made in accordance with the custom of the trade, of the regulated scrap metal property purchased;

(7) if a junk vehicle or vehicle part is being bought or sold, a description of the junk vehicle or vehicle part, including the make, model, color, vehicle identification number and serial number if applicable;

(8) the amount of consideration given in a purchase transaction for the junk vehicle or other regulated scrap metal property; and

(9) the name of the individual acting on behalf of the regulated scrap metal dealer in making the purchase.

(c) The scrap metal dealer's register, including copies of identification cards, may be kept in electronic format.

(d) Notwithstanding the foregoing, this section shall not apply to:

(1) Transactions involving regulated scrap metal, except for catalytic converters, for which the total sale price for all regulated scrap metal is \$50.00 or less;

(2) transactions involving only catalytic converters for which the total sale price is \$30.00 or less;

(3) transactions in which the seller is also a scrap metal dealer; or

(4) transactions for which the seller is known to the purchasing scrap metal dealer to be an established business that operates out of a fixed business location and that can reasonably be expected to generate regulated scrap metal.

(e) The exceptions contained in subsections (d)(1) and (d)(2) shall not apply to any purchase from any seller of the following materials:

(1) Catalytic converters purchased separate from a vehicle;

(2) coated or insulated wire or stripped wire or burnt wire;

(3) refrigeration condensing units or air conditioning coils of any type;
or

(4) copper tubing, bars, plate, buss bar and sheet copper.

(f) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to pay for any of the items described in subsections (e)(1) through (4) by any means other than:

(1) A prenumbered check drawn on a regular bank account in the name of the scrap metal dealer and with such check made payable to the person documented as the seller in accordance with subsection (b); or

(2) a system for automated cash or electronic payment distribution which photographs or videotapes the payment recipient and identifies the payment with a distinct transaction in the register maintained in accordance with subsection (b).

Sec. 7. K.S.A. 2010 Supp. 50-6,111 is hereby amended to read as follows: 50-6,111. (a) It shall be unlawful for any such scrap metal dealer, or employee or agent of the dealer, to purchase any item or items of regulated scrap metal in a transaction for which K.S.A. 2010 Supp. 50-6,110, and amendments thereto, requires information to be presented by the seller, without demanding and receiving from the seller that information. Every scrap metal dealer shall file and maintain a record of information obtained in compliance with the requirements in K.S.A. 2010 Supp. 50-6,110, and amendments thereto. All records kept in accordance with the provisions of this act shall be open at all times to peace or law enforcement officers and shall be kept for two years. If the required information is maintained in electronic format, the scrap metal dealer shall provide a printout of the information to peace or law enforcement officers upon request.

(b) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase any item or items of regulated scrap metal in a transaction for which K.S.A. 2010 Supp. 50-6,110, and amendments thereto, requires information to be presented by the seller, without obtaining from the seller a signed statement that: (1) Each item is the seller's own personal property, is free of encumbrances and is not stolen; or (2) that the seller is acting for the owner and has permission to sell each item.

(c) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase any junk vehicle in a transaction for which K.S.A. 2010 Supp. 50-6,110, and amendments thereto, requires information to be presented by the seller, without: (1) Inspecting the vehicle offered for sale and recording the vehicle identification number; and (2) obtaining an appropriate vehicle title or bill of sale issued by a governmentally operated vehicle impound facility if the vehicle purchased has been impounded by such facility or agency.

(d) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase or receive any regulated scrap metal from a minor unless such minor is accompanied by a parent or guardian or such minor is a licensed scrap metal dealer.

(e) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase any of the following items of regulated scrap metal property without obtaining proof that the seller is an employee, agent or person who is authorized to sell the item of regulated scrap metal property on behalf of the governmental entity, utility provider, railroad, cemetery, civic organization or scrap metal dealer:

- (1) Utility access cover;
- (2) street light poles or fixtures;
- (3) road or bridge guard rails;
- (4) highway or street sign;
- (5) water meter cover;
- (6) traffic directional or traffic control signs;
- (7) traffic light signals;
- (8) any metal marked with any form of the name or initials of a governmental entity;
- (9) property owned and marked by a telephone, cable, electric, water or other utility provider *or any such wire or cable that has had the sheathing removed, making ownership identification impossible;*
- (10) property owned and marked by a railroad;
- (11) funeral markers or vases;
- (12) historical markers;
- (13) bales of regulated metal;
- (14) beer kegs;
- (15) manhole covers;
- (16) fire hydrants or fire hydrant caps;
- (17) junk vehicles with missing or altered vehicle identification numbers;
- (18) real estate signs; ~~and~~
- (19) bleachers or risers, in whole or in part; *and*
- (20) *twisted pair copper telecommunications wiring of 25 pair or greater existing in 19, 22, 24 or 26 gauge.*

(f) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to sell, trade, melt or crush, or in any way dispose of, alter or destroy any regulated scrap metal, junk vehicle or vehicle part upon notice from any law enforcement agency, or any of their agents or employees, that they have cause to believe an item has been stolen. A scrap metal dealer shall hold any of the items that are designated by or on behalf of the law enforcement agency for 30 days, exclusive of weekends and holidays.

Sec. 8. K.S.A. 2010 Supp. 50-6,109, 50-6,110, 50-6,111 and section 87 of chapter 136 of the 2010 Session Laws of Kansas are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.