

SESSION OF 2019

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2248**

As Agreed to May 3, 2019

Brief*

HB 2248 would amend definitions in the Kansas Consumer Protection Act (KCPA) and amend the Scrap Metal Theft Reduction Act (Act), as follows.

KCPA Definitions

The bill would amend definitions in the Kansas Consumer Protection Act. Specifically, it would amend the definition of "supplier" by removing an exclusion for any bank, trust company, or lending institution which is subject to state or federal regulation with regard to disposition of repossessed collateral by such entity. The bill also would amend the definition of "consumer transaction" to exclude the disposition of repossessed collateral by any supplier that is subject to and compliant with any state or federal law or rules and regulations with regard to disposition of such repossessed collateral.

Scrap Metal Theft Reduction Act Amendments

The bill would create a new section in the Act setting an expiration date of July 1, 2023, for all provisions of the Act.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

The bill would delay or make unenforceable certain provisions of the Act until July 1, 2020. The following provisions would be delayed by the bill:

- A requirement that the Attorney General establish a central database for the Act and certain actions required of scrap metal dealers related to registering for and forwarding information to the database [Note: These provisions would also be substantively amended, effective July 1, 2020, as detailed below.];
- The ability for the Attorney General, upon a finding that a scrap metal dealer has violated any provision of the Act, to impose a civil penalty not less than \$100 nor more than \$5,000;
- The requirements that a scrap metal dealer obtain a copy of an identification card of a seller of scrap metal and a photograph of the item or items being sold [Note: These provisions would also be substantively amended, effective July 1, 2020, as detailed below.]; and
- A prohibition on certain actions related to purchasing and disposing of scrap metal [Note: Some of these provisions would also be substantively amended, effective July 1, 2020, as detailed below.].

Current law delays these provisions until January 1, 2020.

The following amendments to the Act would be effective July 1, 2020.

The bill would establish the Scrap Metal Data Repository Fund (Fund) in the State Treasury, to be administered by the Director of the Kansas Bureau of Investigation (KBI). Expenditures from the Fund would be made in accordance

with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the Director of the KBI or designee. Moneys credited to the Fund would be expended for the administration of the duties, functions, and operating expenses incurred under the provisions of the Act. The Attorney General could transfer moneys from the Scrap Metal Theft Reduction Fee Fund to the Fund *via* procedures specified by the bill.

The bill would replace references to the Attorney General with references to the KBI in provisions regarding the scrap metal database, making the KBI responsible for establishing and maintaining the database. Language would be added allowing information from the database to be provided to the Attorney General. The review deadline and sunset date for a Kansas Open Records Act exception for the information maintained in the database would be extended for four years, until July 1, 2024. An outdated database report requirement would be replaced with a requirement that the Attorney General submit annual reports on or before February 1, beginning in 2021, regarding the implementation, administration, and enforcement of the Act. The report would be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Senate and House Committees on Judiciary.

The bill would add language prohibiting any entity contracting with the Attorney General or the KBI to provide or maintain the database from requiring a scrap metal dealer (dealer) to contract with the entity for the authority to release proprietary or confidential data, including customer information. Such entities would be prohibited from charging any fee to the dealer as a condition of providing information to the database required by the Act, including an electronic submission fee.

The bill would state that a dealer providing information to the database as required by the Act shall not be subject to civil liability for any claim arising from the negligence or omission by the State of Kansas or any contracting entity in

the collection, storing, or release of information provided by the dealer to the database.

Requirements in a statute related to information a seller of regulated scrap metal must provide and the dealer's register of such information would be amended to remove a requirement that a legible fingerprint be obtained from a seller if the seller uses an official governmental document for a country other than the United States to meet certain requirements; allow a copy of a card or document already in a dealer's register to suffice for subsequent transactions; remove civil penalties for failure to comply with these specific requirements that will become redundant once the general civil penalties for failure to comply with the Act become effective on July 1, 2020; amend a current photograph requirement of the item or lot of items to specify one such photograph is required and to also require one photograph of the vehicle in which the junk vehicle or other regulated scrap metal property is delivered; and remove a provision making the requirement that the dealer forward the information to the database unenforceable from June 1, 2017, to July 1, 2020. The provision requiring the dealer forward the information required by this statute to the database would be amended to require such forwarding occur for each transaction within 72 hours of the transaction and to require the information be provided in a manner prescribed by the KBI. The KBI would be given rule and regulation authority to provide which information and photographs required by this statute would be entered into the database and the manner for submitting the information and photographs to the KBI.

In statutes regarding scrap metal dealer registration, the bill would remove criminal history records check and fingerprinting requirements for persons filing for registration. Effective July 1, 2020, the bill would set the registration and registration renewal fees at "not more than \$500." Under current law, the registration fee is set at "not less than \$500 nor more than \$1,500" and the renewal fee is set at "not more than \$1,500." The bill also would remove language making

some provisions of these statutes unenforceable from June 1, 2017, to July 1, 2020.

Conference Committee Action

The Conference Committee agreed to remove the contents of HB 2248, as it entered conference, regarding operation of all-terrain vehicles and work-site utility vehicles to cross a highway, and to insert the contents of:

- HB 2162, as recommended by House Committee, regarding KCPA definitions [*Note: This language also was added to SB 78 by the House Committee on Judiciary and was passed by the House in SB 78, but was removed by the Conference Committee on SB 78 from SB 78 as part of that conference agreement*]; and
- Sub. for SB 219, as passed by the Senate, regarding the Scrap Metal Theft Reduction Act, with the following modifications:
 - Add a sunset for the Act of July 1, 2023;
 - Extend the current effective date of certain provisions of the Act not otherwise amended by the bill to July 1, 2020;
 - Make all other amendments to the Act by the bill effective July 1, 2020;
 - Remove the seller's telephone number from the information required to be collected;
 - Specify the number of photographs required and require a photograph of the delivery vehicle; and
 - Give the KBI rule and regulation authority regarding the information to be included in the database and the submission form.

Background

As it entered conference, HB 2248 would have amended law regarding operation of all-terrain vehicles and work-site utility vehicles to cross a highway. The Conference Committee on SB 63 included these provisions in the conference report on SB 63, which was adopted by the House on April 5 and by the Senate on May 1.

The Conference Committee on HB 2248 removed its contents and added the contents of HB 2162, as recommended by House Committee, regarding KCPA definitions [Note: This language was passed by the House as part of SB 78.], and the contents of Sub. for SB 219, as passed by the Senate, regarding the Scrap Metal Theft Reduction Act, with further modifications.

HB 2162 (KCPA Definitions)

HB 2162 was introduced by the House Committee on Judiciary at the request of Representative Ellis. In the House Committee hearing, an attorney testified in support of the bill, stating some judges are interpreting the current exclusion in the definition of “supplier” as a blanket exclusion for the specified entities, rather than as an exclusion for such entities with regard to disposition of collateral. Five private citizens also testified in support of the bill. A representative of the Kansas Bankers Association provided neutral testimony, stating the current exclusion was added in 2005 and was intended to be a narrow exception for occasional instances where such entities needed to sell repossessed property. No opponent testimony was provided.

The House Committee on Judiciary subsequently amended SB 78 to include the language of HB 2162, and this version of SB 78 passed the House. The Conference

Committee on SB 78 removed the language of HB 2162 from SB 78 as part of its conference agreement.

According to the fiscal note prepared by the Division of the Budget on HB 2162, the Office of the State Bank Commissioner and the Office of the Attorney General indicate enactment of the bill would have no fiscal effect.

Sub. for SB 219 (Scrap Metal Theft Reduction Act Amendments)

SB 219 was introduced by the Senate Committee on Ways and Means. As introduced, the bill would have created an excise tax upon scrap metal dealers on the purchase of scrap metal, transferred database responsibility from the Attorney General to the KBI, and changed the registration and renewal fees to not more than \$750.

In the Senate Committee on Judiciary hearing, representatives of the City of Wichita, Wichita Police Department, Wichita Park and Recreation Department, and Cox; a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association; and a representative of Kansas Electric Cooperatives, also on behalf of Kansas Electric Power Cooperative, Kansas Municipal Utilities, Liberty Utilities, Midwest Energy, Sunflower Electric Power Corp., and Westar/Kansas City Power and Light (Evergy), testified in support of the bill. Representatives of Kansas Association of Broadcasters; Kansas Cable Telecommunications Association; Kansas Cooperative Council; Kansas Farm Bureau; and a representative of Kansas Agribusiness Retailers Association, Kansas Grain and Feed Association, and Renew Kansas Biofuels Association provided written-only testimony supporting the bill.

Representative Frownfelter, the Attorney General, the Director of the KBI, and a representative of the Sedgwick County District Attorney testified as neutral conferees.

Senator Tyson and representatives of scrap metal dealers testified in opposition to the bill. Representatives of scrap metal dealers provided written-only testimony opposing the bill.

The Senate Committee amended the bill to remove the excise tax provisions, adjust the seller information requirements and effective date under current law, remove the dealer fingerprinting and criminal history records check requirements under current law, and change the dealer registration and renewal fees to not more than \$500. The Senate Committee also recommended the amended contents be placed into a substitute bill. [Note: The Conference Committee further modified some of these amendments.]

The Senate Committee of the Whole amended the bill to restore and adjust the Attorney General's reporting requirement; remove "email address" from the additions to the information a seller must provide; restore use of official governmental documents from countries other than the United States to meet some requirements; specify dealers must forward the required information within 72 hours of each transaction; extend the sunset date for the Kansas Open Records Act exception; and add language prohibiting contracting entities from requiring certain contracts or fees from dealers and providing immunity to dealers for certain civil liability related to database information. [Note: The Conference Committee retained these amendments.]

The House Committee on Judiciary held a hearing on Sub. for SB 219 on May 2. At this hearing, representatives of the City of Wichita; Cox; the League of Kansas Municipalities; and a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association testified in support of the bill. A representative of Kansas Electric Cooperatives, also on behalf of Kansas Electric Power Cooperative, Kansas Municipal Utilities, Liberty Utilities, Midwest Energy, Sunflower Electric Power Corp., and Westar/Kansas City Power and Light (Evergy), provided written-only proponent testimony. Also providing written-only proponent testimony

were representatives of AT&T Kansas; Blue Dot Services of Kansas; Kansas Association of Broadcasters; Kansas Cable Telecommunications Association; Kansas Cooperative Council; Kansas Farm Bureau; and a representative of Kansas Agribusiness Retailers Association, Kansas Grain and Feed Association, and Renew Kansas Biofuels Association.

The Attorney General, the Director of the KBI, and a representative of a scrap dealer testified as neutral conferees.

Representatives of two scrap dealers testified in opposition to the bill. Representative Frownfelter and a scrap dealer representative provided written-only opponent testimony.

[*Note:* The following fiscal note information does not reflect the Senate Committee or Senate Committee of the Whole amendments to the bill, including the removal of the excise tax provisions and the change in the registration and renewal fee amounts, or the Conference Committee modifications to the language. An updated fiscal note was not available at the time of conference.]

According to the revised fiscal note prepared by the Division of the Budget on Sub. for 219, as introduced, the Department of Revenue indicates enactment of the bill would require a total of \$1,547,565 from the State General Fund in FY 2020 to implement the excise tax provisions in the bill and to modify the automated tax system.

The Office of the Attorney General (Office) indicates the enactment of the bill would result in additional expenditures of \$99,293 from the State General Fund in FY 2020 for 1.00 Special Agent FTE position. The Office also states enactment of the bill would result in at least \$65,220 in revenue from scrap metal dealer registration fees, based on the estimated 87 scrap metal dealers in the state (\$750 x 87 scrap metal dealers). Enactment of the bill would also result in additional revenue from the excise tax on scrap metal. Additionally, the

Office would make transfers from the Scrap Metal Theft Reduction Fund to the Scrap Metal Data Repository Fund under the KBI to support the cost of administrating the repository. However, the additional revenue from the excise tax and the amount of the subsequent transfers to the KBI that would offset the costs of the repository cannot be estimated.

The KBI indicates enactment of the bill would result in additional expenditures of between \$65,950 and \$180,950 from the State General Fund in FY 2019 and between \$91,823 and \$236,823 from the State General Fund in FY 2020. Of the FY 2019 amounts, \$5,950 would be for one-time costs for office supplies and computer equipment to prepare an office for 1.00 Program Consultant FTE position, which would be filled in FY 2020. The agency states it would need to contract with a third party to build the database and it has contacted two contracting providers for estimates. One contracting provider indicated that initial costs in FY 2019 would be \$60,000. The KBI states there may be private grant funding available through this provider. A second contracting provider indicated it could provide a database in FY 2019 for between \$150,000 and \$175,000 depending on the number of scrap metal dealers in the database. Of the FY 2020 amounts, \$61,823 would be for salaries and wages to hire the program consultant and costs to support the database would range between \$30,000 and \$175,000 depending on which contracting provider is used. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2020 Governor's Budget Report*.

Kansas Consumer Protection Act; supplier; consumer transaction; Scrap Metal Theft Reduction Act; Scrap Metal Data Repository Fund; database; reporting; required information; dealer registration; sunset

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