

REVISED
SESSION OF 2019

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE
BILL NO. 219**

As Amended by Senate Committee of the Whole

Brief*

Sub. for SB 219, as amended, would amend the Scrap Metal Theft Reduction Act (Act), as follows.

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 An outdated database report requirement would be replaced with a requirement that the Attorney General submit annual reports on or before

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

February 1, beginning in 2020, 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 require the seller's telephone number be provided and included in the register; 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 requirements; and remove a provision making these requirements unenforceable from June 1, 2017, to January 1, 2020. A provision that 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.

In statutes regarding scrap metal dealer registration, the bill would remove criminal history records check and fingerprinting requirements for persons filing for registration. Effective January 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 January 1, 2020.

Background

The bill 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.

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 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. An updated fiscal note was not available at the time of Senate Committee of the Whole action.]

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department of

Revenue indicates that enactment of the bill would require a total of \$2,477,322 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 Attorney General's Office (Office) indicates that 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 that 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 that 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*.