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 and 50-6,111 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 secured a license for each place of business as herein provided. In case such place of business is located within the corporate limits of a city, the application for license shall be made to the governing body of such city. In all other cases, the application for license 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 not issue or renew a scrap metal dealer license without giving the clerk of the township where the place of business is to be located written notice of the filing of the application for licensure or renewal. The township board may, within 10 days, file advisory recommendations as to the granting of such license or renewal and such advisory recommendations shall be considered by the board of county commissioners before such license is issued.

(c) The governing body of any city and the board of county commissioners shall not issue or renew a scrap metal dealer license without giving the sheriff, chief of police or director of all law enforcement agencies in the county written notice of the filing of the application for licensure or renewal. Each law enforcement agency may, within 10 days, file advisory recommendations as to the granting or renewal of such license and such advisory recommendations shall be considered by the governing body of the city or board of county commissioners before such license is issued.

(d) An application for a scrap metal dealer license shall be verified and upon a form prepared by the attorney general and shall 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 license is desired;
(4) the name of the owner of the premises upon which the place of business is located; and
(5) a statement that the applicant has not within 10 years immediately preceding the date of making application been convicted of 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 application for a scrap metal dealer license 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 issue a license upon application duly made as otherwise provided for herein, to any scrap metal dealer engaged in business in such county or city and qualified to receive such license, to purchase regulated scrap metals.

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

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

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

New Sec. 2. (a) After examination of an application for a scrap metal dealer license, the governing body of the city or the board of county commissioners shall, if they approve the same, issue a license to the applicant.

(b) No scrap metal dealer license shall be issued to:

(1) A person who is not a citizen of the United States.

(2) (1) A person who is not under 18 or more years of age [and whose parents or legal guardians would be ineligible to receive a scrap metal license for any reason].

(3) A person who is not of good character and reputation in the community in which the person resides.

(4) (2) A person who, within 10 years immediately preceding the date of application approval, 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
HB 2312—Am. by HCW

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.

(5) A person who, within the five years immediately preceding the date of application approval, 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 the laws of any county or city regulating the sale or purchase of regulated scrap metal three or more times.

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

(7) A person who makes a false statement on the license application or has made a false statement on a license application within the last three years.

(8) A partnership or limited liability corporation [company], unless all the members of the partnership or limited liability corporation [company] are otherwise qualified to obtain a license.

(9) 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.

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

(11) A person whose spouse would be ineligible to receive a scrap metal dealer license for any reason.

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

(13) Any person who does not own the premises for which a license is sought, unless the applicant has a written lease for at least ¾ of the period for which the license is to be issued.

(14) Any person for a business location not in compliance with the provisions of all zoning requirements, environment codes, or other applicable business requirements.

(d) Scrap metal dealer licenses shall be issued either on an annual basis or for the calendar year as determined by the board of county commissioners or
the governing body of the city.

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 license, may revoke or suspend the license for any one of the following reasons:

(1) The licensee has violated any of the provisions of K.S.A. 50-6,109 et seq., and amendments thereto, or any 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 licensee knows such person has violated, within the 18 months prior to the notice of suspension or revocation action, 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, resolution, or regulation controlling scrap metal sale or purchase in Kansas or any other state; or

(3) there has been a violation of any laws of the state of Kansas, county resolution, or city ordinance regulating scrap metal which occurred on the premises or related to the conduct of the business.

(b) The board of county commissioners or the governing body of any city, upon five days' notice to the persons holding a license, shall revoke or suspend the license for any one of the following reasons:

(1) The licensee has fraudulently obtained the license by giving false information in the application therefore;

(2) the licensee has become ineligible to obtain a license under this act;

(3) the nonpayment of any license fees;

(4) permitting any criminal activity in or upon the licensee's place of business;

(5) the employment or continuation in employment of a person in connection with the receiving or purchasing of regulated scrap metal if the licensee knows such person has, within the preceding five years, plead 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 section 1, and amendments thereto, 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, a violation of K.S.A. 2010 Supp. 21-36a03, 21-36a05, and amendments thereto, or any crime involving moral turpitude; or

(c) Within 20 days after the order of the board denying, revoking or
suspending any license, the licensee may appeal to the district court and the
district court shall proceed to hear such appeal as though such court had
original jurisdiction of the matter. Any appeal taken from an order revoking or
suspending the license shall not suspend the order of revocation or suspension
during the pendency of any such appeal.

Sec. 4. Section 87 of chapter 136 of the 2010 Session Laws 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) Theft of property that is regulated scrap metal of the value of:
      (1) $100,000 or more is a severity level 4, nonperson felony;
      (2) at least $25,000 but less than $100,000 is a severity level 6, nonperson
      felony;
      (3) at least $1,000 but less than $25,000 is a severity level 8, nonperson
      felony;
      (4) less than $1,000 is a class A misdemeanor and the offender shall be
      fined not less than twice the value of the regulated scrap metal taken, except as
provided in subsection (c)(5); and

(5) 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.

(d) (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 property that is such regulated scrap metal to its condition at the time immediately prior to the theft of property that is such regulated scrap metal occurred, 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. 50-6,111 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.

(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.
(g) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to pay for the following purchases all purchases of property from any person in excess of $35, copper in any form for any amount, catalytic converters and refrigeration condensing units and related parts, by any means other than a:

(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 selling such property; or

(1) All purchases of property from any person within a 24 hour period which exceeds $50; and,

(2) a similar system for automated payment distribution which videotapes and identifies all transactions and participants and is approved by the board of county commissioners or city governing board.

Sec. 7. K.S.A. 2010 Supp. 50-6,109, 50-6,111 and section 87 of chapter 136 of the 2010 Session Laws of Kansas are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.