

HOUSE BILL No. 2312

By Committee on Judiciary

2-11

1 AN ACT concerning regulated scrap metal; relating to licensure for scrap
2 metal dealers; unlawful acts; criminal penalties; amending K.S.A. 2010
3 Supp. 50-6,109 and 50-6,111 and repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

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

13 (b) A board of county commissioners shall not issue or renew a scrap
14 metal dealer license without giving the clerk of the township where the
15 place of business is to be located written notice of the filing of the application
16 for licensure or renewal. The township board may, within 10 days, file
17 advisory recommendations as to the granting of such license or renewal and
18 such advisory recommendations shall be considered by the board of county
19 commissioners before such license is issued.

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

28 (d) An application for a scrap metal dealer license shall be verified and
29 upon a form prepared by the attorney general and shall contain:

- 30 (1) The name and residence of the applicant;
31 (2) the length of time that the applicant has resided within the state of
32 Kansas and a list of all residences outside the state of Kansas during the
33 previous 10 years;
34 (3) the particular place of business for which a license is desired;

1 (4) the name of the owner of the premises upon which the place of
2 business is located; and

3 (5) a statement that the applicant has not within 10 years immediately
4 preceding the date of making application been convicted of theft as defined in
5 K.S.A. 21-3701, prior to its repeal, or section 87 of chapter 136 of the 2010
6 Session Laws of Kansas, theft of property lost, mislaid or delivered by mistake
7 as defined in K.S.A. 21-3703, prior to its repeal, or section 88 of chapter 136
8 of the 2010 Session Laws of Kansas, theft of services, as defined in K.S.A. 21-
9 3704, prior to its repeal, criminal deprivation of property as defined in K.S.A.
10 21-3705, prior to its repeal, or section 89 of chapter 136 of the 2010 Session
11 Laws of Kansas, or any other crime involving possession of stolen property.

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

16 (f) The board of county commissioners or the governing body of a city
17 shall issue a license upon application duly made as otherwise provided for
18 herein, to any scrap metal dealer engaged in business in such county or city
19 and qualified to receive such license, to purchase regulated scrap metals.

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

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

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

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

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

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

33 ~~(2) (1) A person who is not [under] 18 or more years of age [and whose~~
34 **parents or legal guardians would be ineligible to receive a scrap metal**
35 **license for any reason].**

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

38 ~~(4) (2) A person who, within 10 years immediately preceding the date of~~
39 ~~application approval, has plead pled guilty to, been convicted of, released~~
40 ~~from incarceration for or released from probation or parole for committing,~~
41 ~~attempting to commit, or conspiring to commit a violation of article 37 of~~
42 ~~chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or Sections~~
43 ~~87 through 125 and subsection (a)(6) of section 223 of chapter 136 of the 2010~~

1 Session Laws of Kansas, perjury, K.S.A. 21-3805, prior to its repeal, or section
2 128 of chapter 136 of the 2010 Session Laws of Kansas, compounding a
3 crime, K.S.A. 21-3807, prior to its repeal, obstructing legal process or official
4 duty, K.S.A. 21-3808, prior to its repeal, falsely reporting a crime, K.S.A. 21-
5 3818, prior to its repeal, interference with law enforcement, section 129 of
6 chapter 136 of the 2010 Session Laws of Kansas, interference with judicial
7 process, section 130 of chapter 136 of the 2010 Session Laws of Kansas, or
8 any crime involving moral turpitude.

9 ~~(5)~~ **(3)** A person who, within the five years immediately preceding the
10 date of application ~~approval~~, has ~~plead~~ **pled** guilty to, been found guilty of, or
11 entered a diversion agreement for violating the provisions of **section 1, and**
12 **amendments thereto**, K.S.A. 50-6,109 et seq., and amendments thereto, the
13 laws of another state comparable to such provisions or the laws of any county
14 or city regulating the sale or purchase of regulated scrap metal three or more
15 times.

16 ~~(6)~~ **(4)** A person who within the three years immediately preceding the
17 date of application held a scrap metal dealer license which was revoked, or
18 managed a facility for a scrap metal dealer whose license was revoked, or was
19 an employee whose conduct ~~lead~~ **led** to or contributed to such revocation.

20 ~~(7)~~ **(5)** A person who makes a false statement on the license application or
21 has made a false statement on a license application within the last three years.

22 ~~(8)~~ **(6)** A partnership ~~or limited liability corporation [company]~~, unless
23 all the members of the partnership ~~or limited liability corporation~~
24 **[company]** are otherwise qualified to obtain a license.

25 ~~(9)~~ **(7)** A corporation, if any manager, officer or director thereof, or any
26 stockholder owning in the aggregate more than 25% of the stock of such
27 corporation, would be ineligible to receive a license hereunder for any reason.

28 ~~(10)~~ **(8)** A person whose place of business is conducted by a manager or
29 agent unless the manager or agent possesses all the qualifications of a licensee.

30 ~~(11)~~ **(9)** A person whose spouse would be ineligible to receive a scrap
31 metal dealer license for any reason.

32 ~~(12)~~ **(10)** A person whose spouse has been convicted of a felony or other
33 crime which would disqualify a person from licensure under this section and
34 such crime was committed during the time that the spouse held a license under
35 this act.

36 ~~(13)~~ **(11)** Any person who does not own the premises for which a license
37 is sought, unless the applicant has a written lease for at least ¾ of the period
38 for which the license is to be issued.

39 ~~(14)~~ **(12)** Any person for a business location not in compliance with the
40 provisions of all zoning requirements, environment codes, or other applicable
41 business requirements.

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

1 the governing body of the city.

2 New Sec. 3. (a) The board of county commissioners or the governing
3 body of any city, upon five days' notice to the persons holding a license, may
4 revoke or suspend the license for any one of the following reasons:

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

8 (2) the employment or continuation in employment of a person if the
9 licensee knows such person has violated, within the 18 months prior to the
10 notice of suspension or revocation action, any of the provisions of K.S.A. 50-
11 6,109 et seq., and amendments thereto, or the laws of another state comparable
12 to such provisions, or any city or county ordinance, resolution, or regulation
13 controlling scrap metal sale or purchase in Kansas or any other state; or

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

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

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

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

23 (3) the nonpayment of any license fees;

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

26 (5) the employment or continuation in employment of a person in
27 connection with the receiving or purchasing of regulated scrap metal if the
28 licensee knows such person has, within the preceding five years, plead guilty
29 to, been convicted of, released from incarceration for or released from
30 probation or parole for committing, attempting to commit, or conspiring to
31 commit a violation of **section 1, and amendments thereto**, article 37 of
32 chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or sections
33 87 through 125 and subsection (a)(6) of section 223 of chapter 136 of the 2010
34 Session Laws of Kansas, perjury, K.S.A. 21-3805, prior to its repeal, or section
35 128 of chapter 136 of the 2010 Session Laws of Kansas, compounding a
36 crime, K.S.A. 21-3807, prior to its repeal, obstructing legal process or official
37 duty, K.S.A. 21-3808, prior to its repeal, falsely reporting a crime, K.S.A. 21-
38 3818, prior to its repeal, interference with law enforcement, section 129 of
39 chapter 136 of the 2010 Session Laws of Kansas, interference with judicial
40 process, section 130 of chapter 136 of the 2010 Session Laws of Kansas, a
41 violation of K.S.A. 2010 Supp. 21-36a03, 21-36a05, and amendments thereto,
42 or any crime involving moral turpitude; or

43 (c) Within 20 days after the order of the board **denying**, revoking or

1 suspending any license, the licensee may appeal to the district court and the
2 district court shall proceed to hear such appeal as though such court had
3 original jurisdiction of the matter. ~~Any appeal taken from an order revoking or~~
4 ~~suspending the license shall not suspend the order of revocation or suspension~~
5 ~~during the pendency of any such appeal.~~

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

- 10 (1) Obtaining or exerting unauthorized control over property or services;
- 11 (2) obtaining control over property or services, by deception;
- 12 (3) obtaining control over property or services, by threat;
- 13 (4) obtaining control over stolen property or services knowing the
14 property or services to have been stolen by another; or
- 15 (5) knowingly dispensing motor fuel into a storage container or the fuel
16 tank of a motor vehicle at an establishment in which motor fuel is offered for
17 retail sale and leaving the premises of the establishment without making
18 payment for the motor fuel.

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

- 20 (1) Property or services of the value of \$100,000 or more is a severity
21 level 5, nonperson felony;
- 22 (2) property or services of the value of at least \$25,000 but less than
23 \$100,000 is a severity level 7, nonperson felony;
- 24 (3) property or services of the value of at least \$1,000 but less than
25 \$25,000 is a severity level 9, nonperson felony;
- 26 (4) property or services of the value of less than \$1,000 is a class A
27 nonperson misdemeanor, except as provided in subsection (b)(5) or (b)(6);
- 28 (5) property regardless of the value from three separate mercantile
29 establishments within a period of 72 hours as part of the same act or
30 transaction or in two or more acts or transactions connected together or
31 constituting parts of a common scheme or course of conduct is a severity level
32 9, nonperson felony; and
- 33 (6) property of the value of less than \$1,000 is a severity level 9,
34 nonperson felony if committed by a person who has been convicted of theft
35 two or more times.

36 ~~(e) Theft of property that is regulated scrap metal of the value of:~~

- 37 ~~(1) \$100,000 or more is a severity level 4, nonperson felony;~~
- 38 ~~(2) at least \$25,000 but less than \$100,000 is a severity level 6, nonperson~~
39 ~~felony;~~
- 40 ~~(3) at least \$1,000 but less than \$25,000 is a severity level 8, nonperson~~
41 ~~felony;~~
- 42 ~~(4) less than \$1,000 is a class A misdemeanor and the offender shall be~~
43 ~~fined not less than twice the value of the regulated scrap metal taken, except as~~

1 provided in subsection (e)(5); and

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

4 (d) (c) As used in this section:

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

8 (2) "regulated scrap metal" means the same as in K.S.A. 2010 Supp. 50-
9 6,109, and amendments thereto; and

10 (3) "value" means the value of the property or, **if the property is**
11 **regulated scrap metal**, the cost to restore the site of the theft of property that
12 **is such regulated scrap metal to its condition at the time immediately prior to**
13 **the theft of property that is such regulated scrap metal occurred**, whichever is
14 greater.

15 Sec. 5. K.S.A. 2010 Supp. 50-6,109 is hereby amended to read as
16 follows: 50-6,109. As used in sections 1 through 3, and amendments thereto,
17 and K.S.A. 20092010 Supp. 50-6,109 through 50-6,112, and amendments
18 thereto:

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

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

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

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

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

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

42 (d) "Bales of regulated metal" means regulated scrap metal property
43 processed with professional recycling equipment by compression, shearing or

1 shredding, to a form in which it may be sold by a scrap metal dealer consistent
2 with industry standards.

3 (e) "Ferrous metal" means a metal that contains iron or steel.

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

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

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

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

20 Sec. 6. K.S.A. 2010 Supp. 50-6,111 is hereby amended to read as follows:
21 50-6,111. (a) It shall be unlawful for any such scrap metal dealer, or employee
22 or agent of the dealer, to purchase any item or items of regulated scrap metal in
23 a transaction for which K.S.A. 2010 Supp. 50-6,110, and amendments thereto,
24 requires information to be presented by the seller, without demanding and
25 receiving from the seller that information. Every scrap metal dealer shall file
26 and maintain a record of information obtained in compliance with the
27 requirements in K.S.A. 2010 Supp. 50-6,110, and amendments thereto. All
28 records kept in accordance with the provisions of this act shall be open at all
29 times to peace or law enforcement officers and shall be kept for two years. If
30 the required information is maintained in electronic format, the scrap metal
31 dealer shall provide a printout of the information to peace or law enforcement
32 officers upon request.

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

40 (c) It shall be unlawful for any scrap metal dealer, or employee or agent
41 of the dealer, to purchase any junk vehicle in a transaction for which K.S.A.
42 2010 Supp. 50-6,110, and amendments thereto, requires information to be
43 presented by the seller, without: (1) Inspecting the vehicle offered for sale and

1 recording the vehicle identification number; and (2) obtaining an appropriate
2 vehicle title or bill of sale issued by a governmentally operated vehicle
3 impound facility if the vehicle purchased has been impounded by such facility
4 or agency.

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

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

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

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

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

6 **(1) A prenumbered check drawn on a regular bank account in the name**
7 **of the scrap metal dealer and with such check made payable to the person**
8 **selling such property; or**

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

11 ~~(2) all purchases of copper in any form for any amount, catalytic~~
12 ~~converters, and refrigeration condensing units or related parts.~~

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

16 Sec. 7. K.S.A. 2010 Supp. 50-6,109, 50-6,111 and section 87 of chapter
17 136 of the 2010 Session Laws of Kansas are hereby repealed.

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

20