

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2011

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;
- 35 (4) the name of the owner of the premises upon which the place of  
36 business is located; and

HB 2312 - Balloon Amendments  
WBD / March 5, 2011

Senate Judiciary  
3-14-11  
Attachment

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1 ~~(5) a statement that the applicant has not within 10 years immediately~~  
2 preceding the date of making application been convicted of theft as defined in  
3 K.S.A. 21-3701, prior to its repeal, or section 87 of chapter 136 of the 2010  
4 Session Laws of Kansas, theft of property lost, mislaid or delivered by mistake  
5 as defined in K.S.A. 21-3703, prior to its repeal, or section 88 of chapter 136  
6 of the 2010 Session Laws of Kansas, theft of services, as defined in K.S.A. 21-  
7 3704, prior to its repeal, criminal deprivation of property as defined in K.S.A. 21-  
8 3705, prior to its repeal, or section 89 of chapter 136 of the 2010 Session  
9 Laws of Kansas, or any other crime involving possession of stolen property.  
10 (e) Each application for a scrap metal dealer license to purchase regulated  
11 scrap metal shall be accompanied by a fee of not less than \$100 nor  
12 more than \$400, as prescribed by the board of county commissioners or the  
13 governing body of the city, as the case may be.  
14 (f) The board of county commissioners or the governing body of a city  
15 shall issue a license upon application duly made as otherwise provided for  
16 herein, to any scrap metal dealer engaged in business in such county or city  
17 and qualified to receive such license, to purchase regulated scrap metals.  
18 (g) If an original license is granted and issued, the governing body of the  
19 city or the board of county commissioners shall grant and issue renewals  
20 thereof upon application of the license holder, if the license holder is qualified  
21 to receive the same and the license has not been revoked as provided by law.  
22 The annual license fee for such license, which shall be in addition to the fee  
23 provided by subsection (e), shall be not less than \$25 nor more than \$50.  
24 (h) No license issued under this act shall be transferable.

The applicant shall disclose any prior convictions  
for  
Such license may be issued on a calendar or annual basis  
and may be issued for a period not to exceed five years.

25 (i) Violation of subsection (a) is a class A nonperson misdemeanor.  
26 New Sec. 2. (a) After examination of an application for a scrap metal  
27 dealer license, the governing body of the city or the board of county  
28 commissioners shall, if they approve the same, issue a license to the applicant.  
29 (b) No scrap metal dealer license shall be issued to:  
30 (1) ~~A person who is not a citizen of the United States.~~  
31 (2) (1) A person who is not [under] 18 or more years of age [and whose  
32 parents or legal guardians would be ineligible to receive a scrap metal  
33 license for any reason].  
34 (3) ~~A person who is not of good character and reputation in the  
35 community in which the person resides.~~

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

36 (4) (2) A person who, within 10 years immediately preceding the date of  
37 application ~~approval~~, has pled guilty to, been convicted of, released  
38 from incarceration for or released from probation or parole for committing,  
39 attempting to commit, or conspiring to commit a violation of article 37 of  
40 chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or Sections  
41 87 through 125 and subsection (a)(6) of section 223 of chapter 136 of the 2010  
42 Session Laws of Kansas, perjury, K.S.A. 21-3805, prior to its repeal, or section  
43 128 of chapter 136 of the 2010 Session Laws of Kansas, compounding a  
44 crime, K.S.A. 21-3807, prior to its repeal, obstructing legal process or official  
45 duty, K.S.A. 21-3808, prior to its repeal, falsely reporting a crime, K.S.A. 21-  
46 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) (3) A person who, within the five years immediately preceding the date of application ~~approved~~, has pleaded 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) (4) 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) (5) 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) (6) 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) (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.

(10) (8) 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) (9) A person whose spouse would be ineligible to receive a scrap metal dealer license for any reason.

(12) (10) 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) (11) Any person who does not own the premises for which a license is sought, unless the applicant has a written lease for at least 7/8 of the period for which the license is to be issued.~~

~~(14) (12) Any person for a business location not in compliance with the provisions of zoning requirements, environmental 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

→ This provision shall not apply to the spouse or a manager, officer or director of a publicly-traded company or its subsidiaries.

(11) The governing body of the city or the board of county commissioners may also consider:

- (a) Ownership and control or the property involved; or
- (b) Compliance with zoning, environmental codes and other applicable business requirements.

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

or should have known  
been convicted

(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.

(4) permitting any criminal activity in or upon the licensee's place of business contained in chapter 21 of the Kansas Statutes Annotated or similar ordinance.

(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;

knowingly  
materially

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

(3) the nonpayment of any license fees;

after receiving notice that such license fees are more than 30 days past due.

(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.~~

Upon request by the licensee, the district court may enjoin the revocation or suspension of a license until final disposition of any action brought under this act.

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;

1 (7) traffic light signals;  
2 (8) any metal marked with any form of the name or initials of a  
3 governmental entity;

4 (9) property owned and marked by a telephone, cable, electric, water or  
5 other utility provider ~~or any such wire or cable that has had the sheathing~~  
6 ~~removed, making ownership identification impossible;~~

7 (10) property owned and marked by a railroad;

8 (11) funeral markers or vases;

9 (12) historical markers;

10 (13) bales of regulated metal;

11 (14) beer kegs;

12 (15) manhole covers;

13 (16) fire hydrants or fire hydrant caps;

14 (17) junk vehicles with missing or altered vehicle identification numbers;

15 (18) real estate signs; and

16 (19) bleachers or risers, in whole or in part.

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

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

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

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

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

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

39 Sec. 7. K.S.A. 2010 Supp. 50-6, 109, 50-6, 111 and section 87 of chapter  
40 136 of the 2010 Session Laws of Kansas are hereby repealed.

41 Sec. 8. This act shall take effect and be in force from and after its  
42 publication in the statute book.  
43  
44

(20) twisted pair copper wiring existing in 19, 22, 24 or 26 gauge.

photographs or  
retains all records for a period of not less than two years.