

**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.  
3 2010 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  
8 for each place of business as herein provided. In case such place of  
9 business is located within the corporate limits of a city, the application for  
10 license shall be made to the governing body of such city. In all other  
11 cases, the application for license shall be made to the board of county  
12 commissioners in the county in which such place of business is to be  
13 located.

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

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

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

32 (1) The name and residence of the applicant;

33 (2) the length of time that the applicant has resided within the state  
34 of Kansas and a list of all residences outside the state of Kansas during  
35 the previous 10 years;

36 (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  
4 immediately preceding the date of making application been convicted of  
5 theft as defined in K.S.A. 21-3701, prior to its repeal, or section 87 of  
6 chapter 136 of the 2010 Session Laws of Kansas, theft of property lost,  
7 mislaid or delivered by mistake as defined in K.S.A. 21-3703, prior to its  
8 repeal, or section 88 of chapter 136 of the 2010 Session Laws of Kansas,  
9 theft of services, as defined in K.S.A. 21-3704, prior to its repeal,  
10 criminal deprivation of property as defined in K.S.A. 21-3705, prior to its  
11 repeal, or section 89 of chapter 136 of the 2010 Session Laws of Kansas,  
12 or any other crime involving possession of stolen property.

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

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

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

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

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

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

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

36 (2) A person who is not 18 or more years of age.

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

39 (4) A person who, within 10 years immediately preceding the date of  
40 application approval, has plead guilty to, been convicted of, released from  
41 incarceration for or released from probation or parole for committing,  
42 attempting to commit, or conspiring to commit a violation of article 37 of  
43 chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or

1 Sections 87 through 125 and subsection (a)(6) of section 223 of chapter  
2 136 of the 2010 Session Laws of Kansas, perjury, K.S.A. 21-3805, prior  
3 to its repeal, or section 128 of chapter 136 of the 2010 Session Laws of  
4 Kansas, compounding a crime, K.S.A. 21-3807, prior to its repeal,  
5 obstructing legal process or official duty, K.S.A. 21-3808, prior to its  
6 repeal, falsely reporting a crime, K.S.A. 21-3818, prior to its repeal,  
7 interference with law enforcement, section 129 of chapter 136 of the  
8 2010 Session Laws of Kansas, interference with judicial process, section  
9 130 of chapter 136 of the 2010 Session Laws of Kansas, or any crime  
10 involving moral turpitude.

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

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

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

26 (8) A partnership, unless all the members of the partnership are  
27 otherwise qualified to obtain a license.

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

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

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

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

41 (13) Any person who does not own the premises for which a license  
42 is sought, unless the applicant has a written lease for at least  $\frac{3}{4}$  of the  
43 period for which the license is to be issued.

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

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

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

11 (1) The licensee has violated any of the provisions of K.S.A. 50-  
12 6,109 et seq., and amendments thereto, or any ordinance, resolution, or  
13 rules or regulations made by the board or the city, as the case may be;

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

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

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

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

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

31 (3) the nonpayment of any license fees;

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

34 (5) the employment or continuation in employment of a person in  
35 connection with the receiving or purchasing of regulated scrap metal if  
36 the licensee knows such person has, within the preceding five years,  
37 plead guilty to, been convicted of, released from incarceration for or  
38 released from probation or parole for committing, attempting to commit,  
39 or conspiring to commit a violation of article 37 of chapter 21 of the  
40 Kansas Statutes Annotated, prior to their repeal, or Sections 87 through  
41 125 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  
43 section 128 of chapter 136 of the 2010 Session Laws of Kansas,

1 compounding a crime, K.S.A. 21-3807, prior to its repeal, obstructing  
2 legal process or official duty, K.S.A. 21-3808, prior to its repeal, falsely  
3 reporting a crime, K.S.A. 21-3818, prior to its repeal, interference with  
4 law enforcement, section 129 of chapter 136 of the 2010 Session Laws of  
5 Kansas, interference with judicial process, section 130 of chapter 136 of  
6 the 2010 Session Laws of Kansas, a violation of K.S.A. 2010 Supp. 21-  
7 36a03, 21-36a05, and amendments thereto, or any crime involving moral  
8 turpitude; or

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

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

19 (1) Obtaining or exerting unauthorized control over property  
20 or services;

21 (2) obtaining control over property or services, by deception;

22 (3) obtaining control over property or services, by threat;

23 (4) obtaining control over stolen property or services knowing  
24 the property or services to have been stolen by another; or

25 (5) knowingly dispensing motor fuel into a storage container  
26 or the fuel tank of a motor vehicle at an establishment in which motor  
27 fuel is offered for retail sale and leaving the premises of the establishment  
28 without making payment for the motor fuel.

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

30 (1) Property or services of the value of \$100,000 or more is a  
31 severity level 5, nonperson felony;

1           (2) property or services of the value of at least \$25,000 but less  
2 than \$100,000 is a severity level 7, nonperson felony;

3           (3) property or services of the value of at least \$1,000 but less  
4 than \$25,000 is a severity level 9, nonperson felony;

5           (4) property or services of the value of less than \$1,000 is a  
6 class A nonperson misdemeanor, except as provided in subsection (b)(5)  
7 or (b)(6);

8           (5) property regardless of the value from three separate  
9 mercantile establishments within a period of 72 hours as part of the same  
10 act or transaction or in two or more acts or transactions connected  
11 together or constituting parts of a common scheme or course of conduct  
12 is a severity level 9, nonperson felony; and

13           (6) property of the value of less than \$1,000 is a severity level  
14 9, nonperson felony if committed by a person who has been convicted of  
15 theft two or more times.

16           (c) *Theft of property that is regulated scrap metal of the value*  
17 *of:*

18           (1) *\$100,000 or more is a severity level 4, nonperson felony;*

19           (2) *at least \$25,000 but less than \$100,000 is a severity level*  
20 *6, nonperson felony;*

21           (3) *at least \$1,000 but less than \$25,000 is a severity level 8,*  
22 *nonperson felony;*

1           (4) *less than \$1,000 is a class A misdemeanor and the offender*  
2 *shall be fined not less than twice the value of the regulated scrap metal*  
3 *taken, except as provided in subsection (c)(5); and*

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

7           (d) *As used in this section;:*

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

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

13           (3) *"value" means the value of the property or the cost to*  
14 *restore the site of the theft of property that is regulated scrap metal to its*  
15 *condition at the time the theft of property that is regulated scrap metal*  
16 *occurred, whichever is greater.*

17           Sec. 5. K.S.A. 2010 Supp. 50-6,109 is hereby amended to read  
18 as follows: 50-6,109. As used in *sections 1 through 3, and amendments*  
19 *thereto, and K.S.A. ~~2009~~2010 Supp. 50-6,109 through 50-6,112, and*  
20 *amendments thereto:*

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

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

3 (2) purchasing, gathering, collecting, soliciting or procuring  
4 regulated scrap metal; or

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

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

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

24 (d) "Bales of regulated metal" means regulated scrap metal property  
25 processed with professional recycling equipment by compression,  
26 shearing or shredding, to a form in which it may be sold by a scrap metal  
27 dealer consistent with industry standards.

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

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

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

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

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

10 Sec. 6. K.S.A. 2010 Supp. 50-6,111 is hereby amended to read as  
11 follows: 50-6,111. (a) It shall be unlawful for any such scrap metal dealer,  
12 or employee or agent of the dealer, to purchase any item or items of  
13 regulated scrap metal in a transaction for which K.S.A. 2010 Supp. 50-  
14 6,110, and amendments thereto, requires information to be presented by  
15 the seller, without demanding and receiving from the seller that  
16 information. Every scrap metal dealer shall file and maintain a record of  
17 information obtained in compliance with the requirements in K.S.A. 2010  
18 Supp. 50-6,110, and amendments thereto. All records kept in accordance  
19 with the provisions of this act shall be open at all times to peace or law  
20 enforcement officers and shall be kept for two years. If the required  
21 information is maintained in electronic format, the scrap metal dealer  
22 shall provide a printout of the information to peace or law enforcement  
23 officers upon request.

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

32 (c) It shall be unlawful for any scrap metal dealer, or employee or  
33 agent of the dealer, to purchase any junk vehicle in a transaction for  
34 which K.S.A. 2010 Supp. 50-6,110, and amendments thereto, requires  
35 information to be presented by the seller, without: (1) Inspecting the  
36 vehicle offered for sale and recording the vehicle identification number;  
37 and (2) obtaining an appropriate vehicle title or bill of sale issued by a  
38 governmentally operated vehicle impound facility if the vehicle  
39 purchased has been impounded by such facility or agency.

40 (d) It shall be unlawful for any scrap metal dealer, or employee or  
41 agent of the dealer, to purchase or receive any regulated scrap metal from  
42 a minor.

43 (e) It shall be unlawful for any scrap metal dealer, or employee or

1 agent of the dealer, to purchase any of the following items of regulated  
2 scrap metal property without obtaining proof that the seller is an  
3 employee, agent or person who is authorized to sell the item of regulated  
4 scrap metal property on behalf of the governmental entity, utility  
5 provider, railroad, cemetery, civic organization or scrap metal dealer:

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

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

36 (g) *It shall be unlawful for any scrap metal dealer, or employee or*  
37 *agent of the dealer, to pay for the following purchases by any means*  
38 *other than a prenumbered check drawn on a regular bank account in the*  
39 *name of the scrap metal dealer and with such check made payable to the*  
40 *person selling such property:*

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

43 (2) *all purchases of copper in any form for any amount, catalytic*

1 *converters, and refrigeration condensing units or related parts.*

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

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

6