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**Neutral Testimony on Substitute for Senate Bill 219
Making Amendments to the Scrap Metal Theft Reduction Act**

**Presented to the House Committee on the Judiciary
By Kansas Attorney General Derek Schmidt**

May 2, 2019

Chairman Patton and Members of the Committee:

Thank you for the opportunity to share this testimony on Senate Bill 219.

In 2015, the Kansas Legislature enacted House Bill 2048. That bill was based on the results of a Judicial Council Scrap Metal Theft Advisory Committee report. In addition to amending some of the criminal provisions of the scrap metal statutes, the bill placed a number of new obligations on scrap metal dealers, and required the attorney general's office to administer several new portions of the Act. Chief among those provisions was a requirement that all scrap metal dealers register with the Office of the Attorney General, rather than with their local unit of government, which had been the case since 2012. The bill also required that the attorney general establish a transaction database. Scrap metal dealers were required by the Act to report certain information about scrap metal transactions to that database, which would be accessible to law enforcement.

In the four years since that law was enacted, we have hit several roadblocks in the efforts to implement the Act as it was intended by the Legislature.

The most formidable roadblock is that the revenues from registration fees paid by scrap metal dealers have proven to be wholly insufficient to operate the program. The original statute required that the attorney general have the transactional database operational by July 1, 2016. We were unable to fulfill that obligation for two reasons: (1) the fund that was created for the purpose of administering this Act was not appropriated until March 31, 2016; and (2) the registration fees at that time had only generated \$60,000, from the registration of 45 scrap metal dealers at 55 locations. I detailed this information in full in a letter to then-Director of Legislative Research Raney Gilliland and Revisor of Statutes Gordon Self on July 1, 2016. A copy of that letter is attached to my testimony.

The issues with insufficient funds for the program continued in the next year, with only 87 scrap metal locations completing the registration process at the time the registration requirement was suspended in 2017. The funds from registration were insufficient to pay for the salary, benefits and expenses for our single employee who was working on this program, let alone begin to establish the transactional database called for by the Act.

In 2017 and 2018 legislative sessions, the Legislature delayed implementation and suspended enforcement of certain provisions of the Act, including the scrap metal dealer registration and the transactional database.

The original Senate Bill 219 was the product of conversations between our office and proponents of the Act, who believe the State should have a role in stricter regulation of the scrap metal industry in an effort to combat theft.

The bill transfers the responsibility for management of the transactional database from the attorney general's office to the Kansas Bureau of Investigation. We have reached the conclusion that the KBI is better equipped to establish and manage this database, including making it accessible to law enforcement agencies throughout the state.

The Senate Judiciary Committee removed from the bill a provision which would have created a new funding stream in the form of a "tonnage tax" assessed on scrap metal transactions. I do not take a position on what is the appropriate means for financing the operations contemplated by the bill – I only feel strongly that the bill must be reliably and sufficiently funded if it ever is to operate as intended. It is my understanding that the proponents of this bill have had conversations with the chairs of the House Appropriations Committee and Senate Ways and Means Committee about an appropriation from the State General Fund for this program; however, as this bill is now written, no funding mechanism exists aside from the Scrap Metal Dealer Registration Fee, which has proven inadequate to fund the program, and which this bill proposes to further cut.

The Senate Judiciary Committee also removed from the bill the provision which allows the Kansas Bureau of Investigation to perform fingerprint-based background checks. However, the statute still contains a list of crimes which, by law, prohibit a person from registering as a scrap metal dealer. Without the ability to perform fingerprint-based background checks to verify that a person has not committed any of these crimes, we will have two options: (1) we can perform a name-based background check, which is not as thorough and would only report crimes that were committed in Kansas; or (2) take the scrap metal dealer's word for it that they have not committed any of these crimes. We would urge the committee to take a closer look at this provision of the law and determine whether this is the appropriate policy. Another option the committee may wish to consider is the approach taken by the Kansas Roofing Registration Act, which does not disqualify a person from registering as a roofer based on criminal history, but does require the person to disclose on their application all felony convictions. *See K.S.A. 50-6,126.*

We are also aware that there are several other proposals to amend the law, including House Bill 2226, which would return regulation to local authorities as it was between 2012 and 2015.

I take no position on which of these paths forward the Legislature should take. However, I would urge action during this legislative session. Absent any legislative action in this session, the existing law will come back into force on January 1, and we will still be in the same position we were two years ago – with an insufficiently funded regulatory system and no clear path forward for the establishment of a workable solution. I would also urge the committee not to simply recommend yet another yearlong delay. It is time for the Legislature to decide whether to implement a workable state-level solution or to return control to local authorities.

If the Legislature chooses to move forward with a state-level program, it must contain a funding stream sufficient to cover the responsibilities delegated to those charged with its implementation –

whether that funding stream comes from a “tonnage tax” as proposed by the original bill, a graduated registration fee as others have advocated, or from other sources of state funds.

In general, I believe that the issue of scrap metal theft is a sufficient one to justify action by the state. The problems caused by metal theft and the unique market that exists for the disposition of that stolen property make it one where having information accessible to law enforcement officers across jurisdictions can make a significant difference in enforcement. The state has been fortunate in recent years that the depressed price for most scrap metals has caused the serious problem of metal theft to decline, but when prices again rise – and they will – it is certain the problem will return in full force. However, it is ultimately the Legislature’s responsibility to weigh the various interests involved in this discussion and come to a decision on the best course forward.

Thank you again for the time and attention you are giving to this issue.

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July 1, 2016

Mr. Raney Gilliland
Director, Kansas Legislative Research Department
State Capitol, Room 68-W
Topeka, Kansas 66612

Mr. Gordon Self
Revisor of Statutes
State Capitol, Room 24-E
Topeka, Kansas 66612

Dear Mr. Gilliland and Mr. Self:

The Scrap Metal Theft Reduction Act, enacted in 2015 House Bill 2048 requires, *inter alia*, that the Office of the Attorney General have in operation a transactional database for scrap metal transactions on July 1, 2016. That database is not operational, and I write to explain why and to keep you informed of the situation so you may advise interested legislators as appropriate.

The attorney general's office has met all prior deadlines established by the statute. But the July 1, 2016, deadline for having a transactional database operational could not be met for two principal reasons:

First, the Scrap Metal Theft Reduction Fund, which contains the money that would be used to pay a vendor to operate the transactional database, was created in 2015 but was not appropriated until March 31, 2016. I thought it inadvisable to enter into a contract for services for which payment was not authorized by law, and therefore I made the determination to delay issuing a Request for Proposals (RFP) for the transactional database until it was clear the funding would indeed be appropriated. That RFP was opened for bidding on June 2, 2016.

Second, and of greater concern, the revenue provisions in the statute are generating significantly fewer funds than anticipated at the time the Legislature enacted it. To date only 45 scrap metal dealers, encompassing 55 locations, have completed the registration process with the Office of the Attorney General, generating a total of \$60,000.00. That funding is insufficient to fully support the salary and benefits of the single employee who has been hired and dedicated to operating this program, much less funding the creation and ongoing operation of the transactional database.

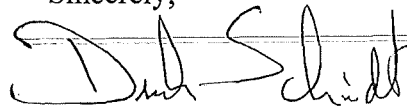
Raney Gilliland
Gordon Self
July 1, 2016
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Thus, the overall current status is this: An RFP for creating and operating the statutorily required transactional database is currently issued, and proposals are currently due July 15, 2016. However, a number of questions have been submitted regarding the RFP which may necessitate an extension of the deadline. After closing, we will evaluate the proposals received, including their cost, and determine what options are available to proceed as the statute contemplates. However, at this time, there are no funds available to enter into any contract with any vendor to operate a transactional database, so it is unclear how we can proceed.

After the proposals are received, I will further advise you of the situation. At that time, it may be appropriate to engage in more substantive discussions with interested parties about the next steps in implementing the statute so that our office can, as nearly as possibly, comply with the requirements of the statute and the intent of the legislature in enacting it.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Derek Schmidt", is written over a horizontal line.

Derek Schmidt
Kansas Attorney General

cc: Jeff King, Chairman, Senate Judiciary Committee
John Barker, Chairman, House Judiciary Committee
Marc Bennett, Sedgwick County District Attorney