

Kansas Consumer Protection Act; Scrap Metal Theft Reduction Act; HB 2248

HB 2248 amends definitions in the Kansas Consumer Protection Act (KCPA) and amends the Scrap Metal Theft Reduction Act (Act), as follows.

Kansas Consumer Protection Act Definitions

The bill amends definitions in the KCPA. Specifically, it amends the definition of “supplier” by removing an exclusion for any bank, trust company, or lending institution that is subject to state or federal regulation with regard to disposition of repossessed collateral by such entity. The bill also amends the definition of “consumer transaction” to exclude the disposition of repossessed collateral by any supplier that is subject to and compliant with any state or federal law or rules and regulations with regard to disposition of such repossessed collateral.

Scrap Metal Theft Reduction Act Amendments

The bill creates a new section in the Act setting an expiration date of July 1, 2023, for all provisions of the Act.

The bill delays or makes unenforceable certain provisions of the Act until July 1, 2020 (prior law delayed these provisions until January 1, 2020). The following provisions are delayed by the bill:

- A requirement that the Attorney General establish a central database for the Act and certain actions required of scrap metal dealers related to registering for and forwarding information to the database [*Note:* These provisions are also substantively amended, effective July 1, 2020, as detailed below.];
- The ability of the Attorney General, upon a finding a scrap metal dealer has violated any provision of the Act, to impose a civil penalty not less than \$100 nor more than \$5,000;
- The requirements that a scrap metal dealer obtain a copy of an identification card of a seller of scrap metal and a photograph of the item or items being sold [*Note:* These provisions are also substantively amended, effective July 1, 2020, as detailed below.]; and
- A prohibition on certain actions related to purchasing and disposing of scrap metal [*Note:* Some of these provisions are also substantively amended, effective July 1, 2020, as detailed below.].

The amendments to the Act described below will be effective July 1, 2020.

The bill establishes the Scrap Metal Data Repository Fund (Fund) in the State Treasury, to be administered by the Director of the Kansas Bureau of Investigation (KBI). Expenditures from the Fund shall be made in accordance with appropriation acts upon warrants of the

Director of Accounts and Reports issued pursuant to vouchers approved by the Director of the KBI or the Director of the KBI's designee. Moneys credited to the Fund may be expended for the administration of the duties, functions, and operating expenses incurred under the provisions of the Act. The Attorney General may transfer moneys from the Scrap Metal Theft Reduction Fee Fund to the Fund *via* procedures specified by the bill.

The bill replaces references to the Attorney General with references to the KBI in provisions regarding the scrap metal database, making the KBI responsible for establishing and maintaining the database. Language is added allowing information from the database to be provided to the Attorney General. The review deadline and sunset date for a Kansas Open Records Act exception for the information maintained in the database is extended for four years, until July 1, 2024. An outdated database report requirement is replaced with a requirement that the Attorney General submit annual reports on or before February 1, beginning in 2021, regarding the implementation, administration, and enforcement of the Act. The report must be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Senate and House Committees on Judiciary.

The bill adds language prohibiting any entity contracting with the Attorney General or the KBI to provide or maintain the database from requiring a scrap metal dealer (dealer) to contract with the entity for the authority to release proprietary or confidential data, including customer information. Such entities are prohibited from charging any fee to the dealer as a condition of providing information to the database required by the Act, including an electronic submission fee.

The bill states a dealer providing information to the database as required by the Act shall not be subject to civil liability for any claim arising from the negligence or omission by the State of Kansas or any contracting entity in the collection, storing, or release of information provided by the dealer to the database.

Requirements in a statute related to information a seller of regulated scrap metal must provide and the dealer's register of such information are amended to:

- Remove a requirement that a legible fingerprint be obtained from a seller if the seller uses an official governmental document for a country other than the United States to meet certain requirements;
- Allow a copy of a card or document already in a dealer's register to suffice for subsequent transactions;
- Remove civil penalties for failure to comply with these specific requirements that will become redundant once the general civil penalties for failure to comply with the Act take effect on July 1, 2020;
- Amend a photograph requirement of the item or lot of items to specify one such photograph is required and to also require one photograph of the vehicle in which the junk vehicle or other regulated scrap metal property is delivered; and

- Remove a provision making the requirement that the dealer forward the information to the database unenforceable from June 1, 2017, to July 1, 2020.

The provision requiring the dealer forward the information required by this statute to the database is amended to require such forwarding occur for each transaction within 72 hours of the transaction and require the information be provided in a manner prescribed by the KBI. The bill directs the KBI to promulgate rules and regulations to provide which information and photographs required by this statute will be entered into the database and the manner for submitting the information and photographs to the KBI.

In statutes regarding scrap metal dealer registration, the bill removes criminal history records check and fingerprinting requirements for persons filing for registration. Effective July 1, 2020, the bill sets the registration and registration renewal fees at “not more than \$500.” Under prior law, the registration fee was set at “not less than \$500 nor more than \$1,500” and the renewal fee was set at “not more than \$1,500.” The bill also removes language making some provisions of these statutes unenforceable from June 1, 2017, to July 1, 2020.