

March 5, 2014

The Honorable Lance Kinzer, Chairperson
House Committee on Judiciary
Statehouse, Room 165-W
Topeka, Kansas 66612

Dear Representative Kinzer:

SUBJECT: Fiscal Note for HB 2736 by House Committee on Appropriations

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2736 is respectfully submitted to your committee.

HB 2736 would require the Kansas Bureau of Investigation (KBI) to establish a central database containing information received by scrap metal dealers from sellers of regulated scrap metals at the time of the sale or transfer of regulated scrap metal. The database would be maintained for providing information to law enforcement. Also, the information in the database would remain confidential and would not be subject to the Kansas Open Records Act. When a preliminary examination is conducted, the information in the database would be admissible in the same manner as if the individuals who made the record testified in person.

The bill would modify certain provisions of the Kansas Criminal Code related to crimes involving property. Under current law, the giving of a fictitious name, address, or place of employment at the time of obtaining control over property is considered *prima facie* evidence of intent to permanently deprive the owner of the property. HB 2736 would expand this provision to cover buying, selling, leasing, trading, collecting, soliciting, procuring, receiving, dealing, or otherwise obtaining or exerting control over the property. The bill would also add a new provision regarding *prima facie* evidence of intent to permanently deprive the owner of the use, benefit, or possession of regulated scrap metal. The following acts would constitute the intent: failure to give information or giving of false information to a scrap metal dealer; the transportation of regulated scrap metal outside the county from where it was obtained; the transportation of regulated scrap metal across state lines; or the alteration of any regulated scrap metal prior to any transaction with a scrap metal dealer.

HB 2736 would add a new provision to the revised sentencing guidelines in the Kansas Criminal Code applicable to crimes involving regulated scrap metal. If the trier of fact determines that the items, property, or materials that are the subject of the crime of conviction

are or were a regulated scrap metal, in addition to the sentence imposed under the Kansas Sentencing Guidelines Act, the offender must be sentenced to an additional 36 months imprisonment. The sentence imposed would be presumptive of imprisonment and would be served consecutively to any other term or terms of imprisonment imposed. The sentence would not be considered a departure and would not be subject to appeal. HB 2736 would modify the definition of “scrap metal dealer” and would expand the definition of “regulated scrap metal” as specified in the bill. The bill would establish definitions of “cutting by-products,” automotive catalytic converter,” “person,” and “property” as they pertain to this act.

The bill would require every scrap metal dealer to keep a register in which the dealer, employee, or agent of the dealer, which at the time of purchase or receipt of any item for which information is required to be presented, accurately, and legibly record at the time of the sale identifying the information prescribed in current law. HB 2736 would make a number of modifications to the information which must be recorded and makes it the scrap metal dealer’s responsibility to forward this information to the KBI database. Under current law, a person who violates certain provisions specified in the bill regarding the selling and purchasing of scrap metal is guilty of a class C misdemeanor, which carries a minimum fine of \$200. The bill would change that language so that it applies to every transaction or sale wherein any person is found to be intentionally violating the provisions in current law. Additionally, the board of county commissioners or governing body of a city where a scrap metal dealer is registered, or any state scrap metal dealer regulatory authority, would be entitled to suspend the dealer’s registration for up to five days and issue a fine of up to \$1,000 for violations that are specified in the bill.

When a person is convicted of violating the bill’s provisions for the second time within a 12-month period the individual would be guilty of a class B misdemeanor with a minimum fine of \$500. Under current law, the timeframe for this penalty is two years instead of 12 months. The same provisions regarding registration suspension identified above would apply, but the suspension would be for up to 30 days and the related fine would be up to \$2,500. If a person is convicted of violating provisions specified in the bill for a third time within a 12-month period, for every illicit transaction or sale the person would be guilty of a class A misdemeanor with a minimum fine of \$1,000. Under current law, the timeframe for this penalty is two years instead of 12 months. Also, the relevant registration authority would be entitled to entirely revoke the scrap metal dealer’s registration and impose a fine of up to \$5,000 for violations specified in the bill. The bill would also create a new list of circumstances which would trigger revocation of a scrap metal dealer’s license by a registration authority. The bill would give the scrap metal dealer right to appeal a denial, revocation or suspension of a registration in the district court. The district court would hear the appeal as though it had original jurisdiction of the matter and would have the authority to enjoin revocation or suspension of a registration until the final disposition of the action. The bill would also make technical changes.

The KBI states an existing third party has already established systems similar to that described in the bill. The agency estimates that if a contract could be agreed to between the KBI and the third party that would satisfy the data requirements of the database required in the bill, there would be no initial cost for system setup if the third party were utilized. Annual

expenditures to the third party for the implementation, maintenance, and on-going support of the database are estimated at \$150,000 from the State General Fund in FY 2015. Since there is no requirement in HB 2736 that the database be the method used by dealers to report information, and dealers would still be allowed to submit paper forms to the KBI, expenditures of \$39,217 from the State General Fund in FY 2015 would be needed for an additional 1.00 FTE position. The FTE position would handle all paper submissions and enter them into the database. The agency indicates if it were to build the system itself it would require a much larger investment but has not developed estimates for this option.

The Office of Judicial Administration states the bill would create new causes of action in the district courts by giving scrap metal dealers the right to appeal a denial, revocation, or suspension of a registration. The district court would hear the appeal as though it had original jurisdiction on the matter and would have the authority to enjoin revocation or suspension of a registration until final disposition of action. The Office states that no cause of action exists under current law. Enactment of the bill could result in additional cases being filed for the new crimes created by the bill. The enactment of HB 2736 could result in the collection of additional docket fees and fines in those cases filed under the bill's provisions. Until the courts have had an opportunity to operate under the provisions of HB 2736, an accurate fiscal effect upon the Judicial Branch cannot be given.

The League of Kansas Municipalities states that the bill would require cities to amend existing ordinances regulating scrap metal dealers. This would involve staff time and publication expenses. The bill could also affect cities through additional criminal charges because of enhanced criminal penalties specified in the bill. However, the League states that additional costs could be offset by the change from a ten-year registration to a one-year registration. The League is unable to provide a fiscal effect upon Kansas cities.

The Kansas Sentencing Commission estimates that passage of the bill would result in an increase of 15, 29, or 44 adult prison beds needed by FY 2015 based on three different scenarios that reflect increasing percentages of offenders who may be convicted under the new penalties. As of January 13, 2014, the available bed capacity is 9,636. Based upon the commission's most recent ten-year projection contained in its *FY 2014 Adult Inmate Prison Population Projections* report, by the end of FY 2014 and FY 2015 it is estimated that the number of inmates will be below available capacity by 103 beds and 196 beds, respectively. However, starting in FY 2017 it is expected that the adult correctional facilities will again be over capacity. While the bed space requirements of HB 2736 could be handled within existing capacity in the short term, the bill will add to capacity challenges occurring in the near future. Enactment of the bill would result in no additional journal entry workload for the Commission.

Continued population increases eventually will require construction of new cell houses at the El Dorado Correctional Facility. This project would include building two new medium security housing units, which would provide a total of 512 beds. It is estimated that the new units would have a construction cost of approximately \$24.4 million and operating costs of approximately \$8.4 million (or about \$45.00 per inmate per day). If bonds are used to finance

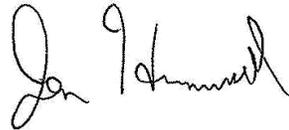
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the construction of the units, bonding authority would be required in FY 2016 so that operations at the new cell houses could begin in FY 2017. Any fiscal effect associated with HB 2736 is not reflected in *The FY 2015 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Hummell". The signature is written in a cursive style with a large initial "J" and a distinct "H".

Jon Hummell,
Interim Director of the Budget

cc: Linda Durand, KBI
Larry Baer, LKM
Scott Schultz, Sentencing Commission
Mary Rinehart, Judiciary
Jeremy Barclay, KDOC
Aaron Dunkel, KDHE