

Scrap Metal Theft Reduction Act; HB 2048

HB 2048 establishes the “Scrap Metal Theft Reduction Act” (Act) by adding and amending law related to scrap metal dealer registration and scrap metal sales. Additionally, the bill amends certain criminal provisions related to scrap metal theft.

Scrap Metal Theft Reduction Act

The bill gives the Attorney General jurisdiction and authority over the implementation, administration, and enforcement of the Act, including certain specified powers, and authorizes the Attorney General to adopt rules and regulations to implement the Act.

The bill establishes the Scrap Metal Theft Reduction Fee Fund to be administered by the Attorney General, which will be credited with all fees, charges, or penalties collected by the Attorney General under the Act. Expenditures from the Fund will be used for the administration of the duties, functions, and operating expenses incurred under the Act.

By July 1, 2016, the Attorney General is required to establish and maintain a database of scrap metal sales regulated elsewhere in the Act. Information from this database will be used for law enforcement and other purposes necessary to implement and enforce the Act. Information in the database will be confidential and released only to law enforcement for authorized uses. The information is not a public record or subject to the Kansas Open Records Act.

The bill gives the Attorney General power to administer oaths and affirmations, subpoena witnesses or matter (in-state or out-of-state), and collect evidence to investigate possible violations of the Act. The bill specifies how service may be made for these purposes. The Attorney General may request a court to order an individual to comply with a subpoena, and the bill provides immunity for a person who complies with a court order to provide testimony or matter after asserting a privilege against self-incrimination. The Attorney General may apply for, and the district court can order injunctive relief action against, the corporate charter or other licenses, permits, or certificates of any entity failing or refusing to file any statement or report required by the Act, or other relief as may be required against such entities.

On and after January 1, 2016, the bill establishes civil penalties of \$100 to \$5,000 for each violation of the Act by a scrap metal dealer, which can be imposed by the Attorney General and will be subject to appeal under the Kansas Judicial Review Act.

On and after January 1, 2016, the bill allows the Attorney General to bring a civil action to obtain a declaratory judgment that an act or practice violates the Act; enjoin or restrain any person who has violated, is violating, or is likely to violate the Act; recover reasonable expenses and investigation fees; or impose any civil penalty authorized by the Act. The court is allowed to take these actions without requiring bond of the Attorney General. The Attorney General is allowed to accept a consent judgment, which must be approved by the district court. Violation of such consent judgment will be subject to penalties for violation of a court order. Civil penalties of up to \$5,000 for each violation will be imposed, and willful violation of a court order under the Act will incur a civil penalty of up to \$10,000 per violation.

The bill establishes jurisdiction for Kansas courts over any person who, in-person or through an agent or instrumentality, engages in business as a scrap metal dealer as defined in the Act, and provides for venue in Shawnee County District Court or in any other district otherwise authorized by law.

The bill prohibits municipalities from enacting or enforcing any ordinance, resolution, or regulation relating to the implementation, administration, and enforcement of the Act, and declares any such ordinance, resolution, or regulation adopted prior to July 1, 2015, null and void. No action or prosecution based upon such ordinance, resolution, or regulation may be taken for any violation on or after July 1, 2014.

The bill amends existing statutes related to scrap metal to incorporate them within the Act.

Within the scrap metal definitions statute, the bill amends the definitions of “scrap metal dealer,” “regulated scrap metal,” “junk vehicle,” “nonferrous metal,” and “vehicle part.” The bill removes definitions of “regulated scrap metal yard,” “ferrous metal,” and “tin,” and adds definitions of “person” and “attorney general.”

In the statute setting forth transaction requirements for scrap metal sellers, the bill makes clarifying amendments to several requirements. It moves a requirement for a signed statement by the seller to this statute from the statute setting forth transaction requirements for scrap metal buyers. The bill also amends this section to require a dealer to photograph the seller and any regulated items being sold and to keep the photographs with the transaction record and dealer’s register of information. Dealers are required to forward the information required by this section to the database established by the Act. The bill further amends this section to remove exceptions related to transactions involving catalytic converters and prohibitions on payment methods other than prenumbered checks or automated cash or electronic payment distribution. Exceptions for sellers who are scrap metal dealers are clarified and an exception for sellers who are licensed vehicle dealers is added.

In the statute setting forth transaction requirements for scrap metal buyers, the bill removes vehicle titles as acceptable documents to be provided by the seller of a vehicle purchased from an impounding facility or agency (leaving a bill of sale as the only option). The bill adds certain vendors to the list of entities for whom sellers must be authorized in order to sell restricted scrap metal items and adds “burnt wire” to the list of restricted scrap metal items.

A statute setting forth misdemeanor penalties for the violation of the existing statutes described above is repealed.

In the statute governing scrap metal dealer registration, the bill removes or transfers to the Attorney General registration requirements involving the board of county commissioners or the governing body of a city. The bill requires the Attorney General to establish a system for the public to confirm scrap metal dealer registration certificates, but disclosure of information from the system shall not constitute an endorsement of any scrap metal dealer. The bill requires applicants to provide additional information regarding their names, corporate structure, and location and hours. The list of prior convictions within ten years an applicant must disclose is expanded to include all crimes involving property, poisoning a domestic animal, perjury, compounding a crime, obstructing legal process or official duty, falsely reporting a crime, interference with law enforcement, interference with judicial process, or any crime involving

dishonesty or false statement, including similar convictions in other jurisdictions. The bill allows the Attorney General to set registration fees of \$500 to \$1,500 per place of business, and the registration period is lowered from ten years to one year, with renewal fees of not more than \$1,500. A provision making violation of the registration provisions a class A nonperson misdemeanor is removed.

Effective January 1, 2016, the list of disqualifications for registration is expanded to include:

- A person who is not a U.S. citizen or legal permanent resident;
- A person who has entered into a diversion agreement for certain crimes; and
- A person who does not own the premises for which a license is sought, unless the person has a written lease for at least three-fourths of the period of the license.

The disqualifications statute is also amended with the following provisions, effective January 1, 2016:

- The look-back period for current disqualifications involving revocation or false statements on applications is extended from three to ten years. The look-back period for the disqualifying crimes is extended from five to ten years, and the bill clarifies that disqualifying crimes include those involving dishonesty or false statement, or similar convictions in other jurisdictions;
- A disqualifying provision for convictions within the preceding five years of violating the existing scrap metal statutes is removed; and
- The bill allows a criminal history records check for applicants for registration, including fingerprinting provisions. An applicant disqualified due to criminal history record information shall be informed in writing of the decision.

The statute governing registration suspension is amended, effective January 1, 2016, to reflect the transfer of jurisdiction from local authorities to the Attorney General and the restructuring of the Act. Nonpayment of a civil penalty after notice that the penalty is more than 30 days past due is added as a reason for revocation or suspension. A provision for appeal to the district court is removed and replaced with a provision for appeal in accordance with rules and regulations promulgated by the Attorney General.

Criminal Provisions

The bill amends the statute providing for *prima facie* evidence of intent to permanently deprive an owner or lessor of possession, use, or benefit of property to clarify the methods by which someone giving false identification may obtain control over property and to establish that various actions involving the failure to give information or giving of false information required by

the Act or transportation or alteration of scrap metal shall be such *prima facie* evidence under the statute in a prosecution for theft involving regulated scrap metal.

The bill amends the statute governing the crime of criminal damage to property to create the crime of aggravated criminal damage to property, which is defined as criminal damage to property, if the value or amount of damage exceeds \$5,000, committed with the intent to obtain regulated scrap metal or related items, where the crime is committed on any building, structure, residence, facility, site, place, property, vehicle, or infrastructure. The bill sets forth a number of specific locations or properties that fall within these categories, and it provides definitions for “infrastructure” and “site.” The new crime is a severity level 6, nonperson felony, and a special sentencing rule is added to the sentencing grid statute imposing a sentence of presumptive imprisonment where an offender has a prior conviction for any nonperson felony.

In amendments to the criminal damage to property statute and the authorized dispositions statute, the bill sets forth various costs to be included in determining the amount of damage to property, including cost of repair or replacement; loss of production, crops, and livestock; labor and material costs; and costs of equipment used to abate or repair the damage. The bill also makes a reconciling amendment to the authorized dispositions statute and repeals a conflicting version of the statute.

The bill enacts new law in the Kansas Code of Criminal Procedure establishing that, at a preliminary examination, the business records containing the details of the sales or transactions maintained by scrap metal dealers pursuant to the Act may be admitted into evidence as if the individuals who made the record and the records custodian had testified in person.