



TESTIMONY

TO: The Honorable Tim Owens, Chair
And Members of the Senate Committee on Judiciary

FROM: Whitney Damron
On behalf of the City of Topeka

SUPPORT: Associated General Contractors of Kansas
Black Hills Energy
ITC Great Plains
Kansas Cable Telecommunications Association
Kansas Electric Cooperatives, Inc.
Kansas Electric Power Cooperative, Inc.
Kansas Railroads
KCP&L
Kansas Municipal Utilities
Midwest Energy, Inc.
The Empire District Electric Company
Westar Energy

RE: HB 2312 - An Act concerning regulated scrap metal; relating to licensure for scrap metal dealers; unlawful acts; criminal penalties.

DATE: March 14, 2011

Good morning Chairman Owens and Members of the Committee. I am Whitney Damron and I appear before you today on behalf of the City of Topeka and the twelve entities listed on my testimony in support of HB 2312, which would create a licensure structure for scrap metal dealers, require certain transactions to be paid for with a check and increase the penalties relating to certain metal thefts.

HB 2312 is the third time in the past five years the Legislature has been asked to consider either adopting or revising criminal penalties specifically for metal theft. Metal theft, in both small and large quantities, continues to be a significant problem in our state and we appear before you today asking for your assistance in enacting a regulatory framework combined with enhanced penalties that we believe will significantly reduce this area of criminal activity.

By way of information, the City of Topeka included enhancement of metal theft penalties and enforcement in its 2011 legislative agenda due in large part to a number of recent thefts involving both public and private property worth hundreds of thousands of dollars. We sought out the assistance and support of other interested parties, including Ed Klumpp and the three law enforcement associations he works with in order to draft the bill that is before you today (Chiefs of Police, Kansas Sheriff's Association and Kansas Peace Officers Association). We also circulated bill drafts and queries to the office of the Kansas Attorney General, several district attorneys, the League of Kansas Municipalities, Kansas Association of Counties, utilities, business interests and others.

919 South Kansas Avenue ■ Topeka, Kansas 66612-1210

(785) 354-1354 (O) ■ (785) 354-8092 (F) ■ (785) 224-6666 (M)

www.wbdpa.com ■ wbdamron@aol.com

Senate Judiciary

3-14-11
Attachment 1

Our initial proposal modeled after an ordinance the City of Wichita adopted in 2010, which requires licensure of scrap metal dealers and also imposes certain restrictions on scrap metal transactions. HB 2312 would not impact Wichita's ordinance or one adopted by the Unified Government of Wyandotte County and Kansas City, Kansas, as more restrictive provisions would be allowed by cities and counties under the bill.

The City of Topeka contemplated a metal theft ordinance several years ago. However, since several scrap metal dealers are located outside the city limits, a decision was made not to pursue that course of action, since there would be different standards for transactions with metal dealers located within the city limits and those located outside the city limits. Similar problems exist throughout Kansas, which is why we believe it makes more sense to adopt standards applicable statewide with flexibility retained for local units of government to tailor local ordinances to address any specific areas of concern.

Our proposal attacks the metal theft problem on three fronts: First of all, we have developed a simple licensure scheme modeled after the cereal malt beverage (CMB) statutes; second, we require certain transactions to be paid for by check; and third, we have increased penalties on those who choose to violate these laws.

HB 2312 was formally introduced on February 11 and hearings were held before the House Corrections and Juvenile Justice Committee on February 18. Immediately prior to the hearings in the House, the proponents became aware of concerns and proposed amendments to the bill to be offered by Advantage Metals of Kansas City. We were able to review those suggestions and indicated to the Committee that most, if not all were acceptable and we were willing to work with Advantage Metals to incorporate them into the bill before the Committee acted the following week.

Advantage Metal's amendments were incorporated into the bill and it was advanced out of Committee on February 21. The bill was passed on Final Action by the House on February 25, after which Advantage Metals requested a meeting to discuss further changes to the bill.

We met on February 29 and reviewed HB 2312 as passed by the House page by page, line by line. Advantage Metals requested a number of additional changes, all of which were generally agreed to by the proponents, ballooned and circulated to interested parties. We have also provided a balloon draft to the Committee's Revisor and will walk through HB 2312 as ballooned and proposed for your consideration.

New Section 1. *Begins on P. 1, Line 6*

A scrap metal dealer is required to obtain a license from either the city or county in which they are located on a form prepared by the Kansas Attorney General. The original license fee is set by the licensing city or county of not less than \$100.00 or more than \$400.00, with renewals of not less than \$25.00 or more than \$50.00.

Section 1 Balloon Amendments.

P. 2, Line 2: Applicant must disclose certain convictions during preceding 10 years of license application (vs. original draft of statement that they have not had any such convictions).

P. 2, Line 17: Licenses may be issued for a calendar year or annually and for not more than five years.

P. 2, Line 25: Scrap metal recyclers licensed under K.S.A. 8-2404 are exempted from the act, unless they are accepting regulated scrap metal that are not motor vehicle components.

P. 2, Lines 31-33: House floor amendment to allow a minor to be licensed as a scrap metal dealer if their parents or legal guardians would not otherwise be prohibited under the act from licensure.

P. 2, Line 36: Look back provision prohibiting licensure shortened from 10 years to 5 years.

New Section 2. *Begins on P. 2, Line 26*

Sets out who can and who cannot obtain a scrap metal dealer license with restrictions and/or prohibitions on those who have committed certain property crimes within the past ten years, among other restrictions.

Section 2 Balloon Amendments:

P. 3, Line 26: Amend prohibition for licensure ineligibility due to spouse conduct for the manager, officer or director of publicly-traded companies of its subsidiaries.

P. 3, Lines 31-36: Delete sections 11 and 12, which prohibited licensure in instances related to non-compliance with property control or zoning, environment or other business requirements to a more general provision that allows such non-compliance to be considered, rather than be controlling.

New Section 3. *Begins on P. 3, Line 40*

Sets out enforcement mechanisms for cities and counties for suspension or revocation of a license.

Section 3 Balloon Amendments:

P. 4, Line 1: Clarify that licensee must have either have knowledge that an employee is ineligible for a license or is willfully ignorant.

P. 4, Line 8: Language moved up from a mandatory city or county action (deleted language on P. 4, Lines 16-17) for violation to the section where action is discretionary and limited criminal activity to chapter 21 of K.S.A.

P. 4, Line 38: Allow the licensee to request their license remain in effect (and open for business) during an enforcement action and appeals.

Section 4. *Begins on P. 4, Line 41*

Outlines increased penalties for the crime of metal theft and includes the cost to restore the site of the theft of property to its condition immediately prior to the theft in determining the level of crime.

An unfortunate byproduct of metal theft oftentimes is the extensive damage the thief does during the commission of the crime, which costs far and away much more than whatever they might receive from selling stolen copper pipe, catalytic converters, HVAC units or other metals.

Section 5. *Begins on P. 6, Line 1*

Definitions.

Section 6. *Begins on P. 7, Line 3*

Requires a scrap metal dealer to purchase scrap metal with a check for all transactions in excess of \$35.00. In addition, all purchases of catalytic converters, copper and refrigeration condensing units must be made by check.

Section 6 Balloon Amendments:

Clarification of House Committee amendment allowing a recycler to utilize an automated payment distribution system which takes photographs or videotapes transactions and which are retained for a period of not less than two years.

Current law requires the collection of certain information from the seller of more than \$50.00 in scrap metal (or \$30.00 if a catalytic converter). Modeled after the City of Wichita ordinance, Section 6 requires these transactions to also be paid by check, rather than cash.

Section 7. *Begins on P. 8, Line 39*

Statutory repealers.

Why is licensure of scrap metal dealers proposed in HB 2312?

Most scrap metal dealers operate within the confines of the law, but there needs to be some kind of enforcement tool to use against those who do not. With the ever-increasing numbers of reported metal thefts in our state and across the country, it is obvious the thieves are finding recyclers willing to buy stolen metal or turning a blind eye to the likely source of such regulated scrap metals. Without the statutory ability to prevent bad actors from entering the business or putting those who choose to become co-conspirators with the metal thieves out of business, the problem will continue.

Concluding Remarks.

The record from the House Committee and our balloon amendments clearly reflect we have tried to work with the metal industry to mitigate the impact of HB 2312 and take into consideration their many requests for amendment. We appreciate the insight and assistance Advantage Metals has provided and believe we have a good work product for you to consider.

Following the development of the second set of balloon amendments, which were incorporated into HB 2312 and presented to you today, Advantage Metals again sought changes to the bill and specifically indicates they cannot accept a licensure provision for metal recyclers in any form. They have indicated to us that if such language remains in the bill, they will cease to invest or expand in Kansas in anyway whatsoever, or words to that effect. They also indicate they are not licensed in any other state in which they operate.

We find their position untenable and unfortunate and if anything, not a practical solution to the problem of metal theft, given the current problem in Kansas and beyond. And furthermore, not consistent with the regulatory framework in which either Advantage Metals or their sister companies operate in other states today.

First of all, Advantage Metals is licensed both in Kansas City, Kansas and Kansas City, Missouri under local ordinances that are far more restrictive than what we have proposed in HB 2312.

While not an exhaustive review of all 50 states, through the power of the GOOGLE search engine, we have that found a number of states have adopted similar regulatory acts or are considering such this year. Other states have chosen to utilize the term "registration" in place of licensure, but in reviewing those statutes and their registration requirements, they are very similar to what is proposed in HB 2312.

Florida requires a Secondary Metals Recycler to register with the Department of Revenue.

Minnesota requires scrap metal dealers to register with the Commissioner of Public Safety.

Mississippi requires scrap metal dealers to register with the Secretary of State's Agent for Registration and Recordkeeping.

Texas requires Metal Recycling Entities to register with the Department of Public Safety.

Tennessee requires a scrap metal dealer to register with the Department of Commerce and Insurance.

Iowa's Senate has also adopted a licensure bill for scrap metal recyclers (2011).

New Mexico's Senate has passed a scrap metal licensure bill and state regulators indicate they expect SB 325 to receive final approval before the end of the 2011 legislative session (March 19, 2011).

South Carolina has introduced legislation to require a Secondary Metals Recycler to register with the Department of Labor, Licensing and Regulation (H. 3660).

Advantage Metals is a subsidiary of David J. Joseph, LLC, which operates subsidiary metal and metal recycling companies in more than 20 states, including Florida, New Mexico, South Carolina, Texas and Tennessee, all of which either have statutory registration requirements for scrap metal dealers or are considering one.

I find Advantage Metal's position on HB 2312 inconsistent with both current law and legislative initiatives well underway in other states that are likely to be enacted into law this year. Furthermore, one can only speculate that even more states I have not identified have, are considering or will consider such restrictions in the months and years ahead. Clearly this is where states are moving in an effort to control the theft and sale of stolen metals.

In closing, I would note for the City of Topeka, we really do not have a position one way or the other as to whether the state should license scrap metal dealers or require their registration, as long as either regulatory system provides a mechanism to screen out those who should not be in the scrap metal business and allows for an opportunity to prohibit dealers from staying in business once they have been determined to have violated the act to the extent where public policy demands they no longer be allowed to continue as a scrap metal dealer.

Scrap metal theft is a statewide problem and requires a statewide approach to dealing with it.

On behalf of the City of Topeka and the twelve supporting companies and associations listed on the first page of my remarks, we thank you for your consideration of this legislation and respectfully request your favorable consideration.

I would be pleased to stand for questions at the appropriate time.

WBD

Attachments