

UPDATED
SESSION OF 2015

SUPPLEMENTAL NOTE ON SENATE BILL NO. 11

As Amended by House Committee on Judiciary

Brief*

SB 11, as amended, would establish the “Scrap Metal Theft Reduction Act” by adding law and amending existing law related to scrap metal dealer registration and scrap metal sales. Additionally, the bill would amend certain criminal provisions related to scrap metal theft.

Scrap Metal Theft Reduction Act

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

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

By July 1, 2016, the Attorney General would be required to establish and maintain a database of scrap metal sales regulated elsewhere in the Act. Information from this database would be used for law enforcement and other purposes necessary to implement and enforce the Act.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Information in the database would be confidential and released only to law enforcement for authorized uses. The information would not be a public record or subject to the Kansas Open Records Act.

The bill would give 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 would specify how service may be made for these purposes. The Attorney General could request a court to order an individual to comply with a subpoena, and the bill would provide 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 could apply for, and the district court could 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 would establish civil penalties of \$100 to \$5,000 for each violation of the Act by a scrap metal dealer, which could be imposed by the Attorney General and subject to appeal under the Kansas Judicial Review Act.

On and after January 1, 2016, the bill would allow 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 would be allowed to take these actions without requiring bond of the Attorney General. The Attorney General would be allowed to accept a consent judgment, which must be approved by the district court. Violation of such consent judgment would be subject to penalties for violation of a court order. Civil penalties of up to \$5,000 for each violation would be imposed, and willful violation of a

court order under the Act would incur a civil penalty of up to \$10,000 per violation.

The bill would establish 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 provide for venue in Shawnee County District Court or in any other district otherwise authorized by law.

The bill would prohibit municipalities from enacting or enforcing any ordinance, resolution, or regulation relating to the implementation, administration, and enforcement of the Act, and declare 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 could be taken for any violation on or after July 1, 2014.

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

Within the scrap metal definitions statute, the bill would amend the definitions of “scrap metal dealer,” “regulated scrap metal,” “junk vehicle,” “nonferrous metal,” and “vehicle part.” The bill would remove definitions of “regulated scrap metal yard,” “ferrous metal,” and “tin,” and add definitions of “person” and “attorney general.”

In the statute setting forth transaction requirements for scrap metal sellers, the bill would make clarifying amendments to several requirements. It would move 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 would also amend this section to require a dealer to photograph the seller and any regulated items being sold and keep the photographs with the transaction record and dealer’s register of information. Dealers would be required to forward the information required by this section to the database established by the Act. The bill

would further amend 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 would be clarified and an exception for sellers who are licensed vehicle dealers would be added.

In the statute setting forth transaction requirements for scrap metal buyers, the bill would remove 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 would add certain vendors to the list of entities for whom sellers must be authorized in order to sell restricted scrap metal items, and add "burnt wire" to the list of restricted scrap metal items.

In the statute governing scrap metal dealer registration, the bill would remove or transfer to the Attorney General registration requirements involving the board of county commissioners or the governing body of a city. The bill would require the Attorney General to establish a system for the public to confirm scrap metal dealer registration certificates, but disclosure of information from the system would not constitute an endorsement of any scrap metal dealer. The bill would require 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 would be 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 would allow the Attorney General to set registration fees of \$500 to \$1,500 per place of business, and the registration period would be 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 would be removed.

Effective January 1, 2016, the list of disqualifications for registration would be 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 would also be amended with the following provisions, effective January 1, 2016:

- The look-back period for current disqualifications involving revocation or false statements on applications would be extended from three to ten years. The look-back period for the disqualifying crimes would be extended from five to ten years, and the bill would clarify 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 would be removed; and
- The bill would allow a criminal history records check for applicants for registration, including fingerprinting provisions. An applicant disqualified due to criminal history record information would be informed in writing of the decision.

The statute governing registration suspension would be 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 would be added as a reason for revocation or suspension. A provision for appeal to the district court would be removed and replaced with a provision for appeal in accordance with rules and regulations promulgated by the Attorney General.

Criminal Provisions

The bill would amend 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 would amend the statute governing the crime of criminal damage to property to create the crime of aggravated criminal damage to property, which would be 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 would fall within these categories, and provides definitions for “infrastructure” and “site.” The new crime would be a severity level 6, nonperson felony, and a special sentencing rule would be 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 would

set 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 would enact 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.

Background

The bill was introduced by Senators Petersen, King, McGinn, and O'Donnell.

In the Senate Committee on Judiciary, conferees appearing in support of the bill included Senator Petersen; the Sedgwick County District Attorney; the Director of the Kansas Bureau of Investigation (KBI); an Assistant Attorney General; representatives of Advantage Metals Recycling, Kansas Cable Telecommunications Association, Kansas Electric Cooperatives, and Kansas Farm Bureau; and a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association.

The Senate Committee received written proponent testimony from representatives of the City of Topeka, the City of Wichita, Kansas Agribusiness Retailers Association, Kansas Association of Counties, Kansas Association of Ethanol Processors, Kansas Cooperative Council, Kansas Grain and Feed Association, and the Kansas Judicial Council. There was no neutral or opponent testimony.

The Senate Committee amended the bill to make aggravated criminal damage to property a severity level 6, nonperson felony (it was a severity level 5, nonperson felony in the bill as introduced) and to add the special sentencing rule for aggravated criminal damage to property. The Committee further amended the bill to include cable and video service-related facilities as specified property in the aggravated criminal damage to property provision. Finally, the Committee made technical amendments for clarity and consistency.

In the House Committee on Judiciary, Senator King testified in support of the bill. Also appearing as proponents were an Assistant Attorney General, an Assistant Sedgwick County District Attorney, and representatives of the Kansas Association of Chiefs of Police, Kansas Sheriffs Association, Kansas Peace Officers Association, Kansas Electric Cooperatives, Kansas Farm Bureau, Advantage Metals Recycling, Allmetal Recycling, and the Kansas Cable Telecommunications Association. The Director of the KBI and representatives of the Kansas Judicial Council, Kansas Grain and Feed Association, Kansas Cooperative Council, Kansas Agribusiness Retailers Association, Kansas Association of Ethanol Processors, Kansas Association of Counties, Kansas Roofing Association, and City of Wichita submitted written proponent testimony. There was no neutral or opponent testimony.

On March 19, 2015, the House Committee amended the bill to require damage exceeding \$5,000 for the new crime of aggravated criminal damage to property to apply.

On March 25, 2015, the bill was withdrawn from the House Calendar and referred to the House Committee on Taxation. It was subsequently re-referred to the House Committee on Judiciary. On May 4, 2015, the House Committee on Judiciary recommended the bill be passed with the amendment previously made and reported by that Committee.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of the Attorney General estimates the costs of creating and maintaining the database required by the bill would be at least \$150,000 annually. The Attorney General also estimates 2.00 FTE positions would be required to direct the unit, manage registrations, and investigate violations of the Act. In addition to salaries, annual costs would include rent, travel expenses, and supplies. One-time setup costs would include purchase of a vehicle, computers, phones, and office furnishings. The Attorney General estimates total expenditures for FY 2016 of \$314,724.

The Attorney General would set an annual registration fee for scrap metal dealers of between \$500 and \$1,500, and anticipates setting the fee at a point where program operation would be revenue neutral. Thus, the Attorney General anticipates setting the fee at an amount to generate \$314,725 in revenues for FY 2016.

While local governments would no longer receive fees for scrap metal registration under the provisions of the bill, they also would be relieved of the administrative burdens of creating and maintaining registrations.

Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor's Budget Report*.

According to the bed impact assessment prepared by the Kansas Sentencing Commission on the bill, as introduced, the bill would result in 7, 15, or 22 additional prison beds needed in FY 2016 and 28, 57, or 87 additional prison beds needed in FY 2025, depending on various scenarios. The bill would add 68 to 77 additional journal entries to the Commission's annual workload. The Commission prepared an updated bed impact assessment for the bill as amended by the Senate Committee. The updated assessment indicates the same workload impact and that the bill would result in 8, 17, or 25 additional beds needed in FY 2016 and 20, 38, or 57 additional beds needed in FY 2025, depending on various scenarios.