

SENATE BILL No. 239

By Committee on Assessment and Taxation

3-24

1 AN ACT concerning scrap metal; relating to regulation of scrap metal
2 dealers; making certain provisions unenforceable until January 1, 2019;
3 amending K.S.A. 2016 Supp. 50-6,109a, 50-6,109b, 50-6,109c, 50-
4 6,109d, 50-6,109e, 50-6,109f, 50-6,110, 50-6,112a and 50-6,112b and
5 repealing the existing sections.
6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2016 Supp. 50-6,109a is hereby amended to read as
9 follows: 50-6,109a. (a) The attorney general is hereby given jurisdiction
10 and authority over all matters involving the implementation,
11 administration and enforcement of the provisions of the scrap metal theft
12 reduction act including to:

13 (1) Employ or appoint agents as necessary to implement, administer
14 and enforce the act;

15 (2) contract;

16 (3) expend funds;

17 (4) license and discipline;

18 (5) investigate;

19 (6) issue subpoenas;

20 (7) keep statistics; and

21 (8) conduct education and outreach programs to promote compliance
22 with the act.

23 (b) In accordance with the rules and regulations filing act, the
24 attorney general is hereby authorized to adopt rules and regulations
25 necessary to implement the provisions of the scrap metal theft reduction
26 act.

27 (c) There is hereby established in the state treasury the scrap metal
28 theft reduction fee fund to be administered by the attorney general. All
29 moneys received by the attorney general from fees, charges or penalties
30 collected under the provisions of the scrap metal theft reduction act shall
31 be remitted to the state treasurer in accordance with the provisions of
32 K.S.A. 75-4215, and amendments thereto, who shall deposit the entire
33 amount thereof in the state treasury to the credit of the scrap metal theft
34 reduction fee fund. All expenditures from such fund shall be made in
35 accordance with appropriation acts upon warrants of the director of
36 accounts and reports issued pursuant to vouchers approved by the attorney

1 general or the attorney general's designee. All moneys credited to the scrap
2 metal theft reduction fee fund shall be expended for the administration of
3 the duties, functions and operating expenses incurred under the provisions
4 of the scrap metal theft reduction act.

5 (d) Before July 1, 2016, the attorney general shall establish and
6 maintain a database which shall be a central repository for the information
7 required to be provided under K.S.A. 2016 Supp. 50-6,110, and
8 amendments thereto. The database shall be maintained for the purpose of
9 providing information to law enforcement and for any other purpose
10 deemed necessary by the attorney general to implement and enforce the
11 provisions of the scrap metal theft reduction act.

12 (e) The information required by K.S.A. 2016 Supp. 50-6,110, and
13 amendments thereto, maintained in such database by the attorney general,
14 or by any entity contracting with the attorney general, submitted to,
15 maintained or stored as part of the system shall:

16 (1) Be confidential, shall only be used for investigatory, evidentiary
17 or analysis purposes related to criminal violations of city, state or federal
18 law and shall only be released to law enforcement in response to an
19 official investigation or as permitted in subsection (d); and

20 (2) not be a public record and shall not be subject to the Kansas open
21 records act, K.S.A. 45-215 et seq., and amendments thereto. The
22 provisions of this subsection shall expire on July 1, 2020, unless the
23 legislature reviews and reenacts this provision pursuant to K.S.A. 45-229,
24 and amendments thereto.

25 (f) *This section shall be unenforceable and shall not apply from July*
26 *1, 2017, to January 1, 2019.*

27 Sec. 2. K.S.A. 2016 Supp. 50-6,109b is hereby amended to read as
28 follows: 50-6,109b. (a) If, by the attorney general's own inquiries or as a
29 result of complaints, the attorney general has reason to believe that a
30 person has engaged in, is engaging in or is about to engage in an act or
31 practice that violates the scrap metal theft reduction act, the attorney
32 general, or any deputy attorney general or assistant attorney general may
33 administer oaths and affirmations, subpoena witnesses or matter and
34 collect evidence.

35 (b) If the matter that the attorney general subpoenas is located outside
36 this state, the person subpoenaed may either make it available to the
37 attorney general at a convenient location within the state or pay the
38 reasonable and necessary expenses for the attorney general or the attorney
39 general's designee to examine the matter at the place where it is located.
40 The attorney general may designate representatives, including officials of
41 the state in which the matter is located, to inspect the matter on the
42 attorney general's behalf, and the attorney general may respond to similar
43 requests from officials of other states.

1 (c) Service by the attorney general of any notice requiring a person to
2 file a statement or report, or of a subpoena upon any person, shall be made
3 by:

4 (1) The mailing thereof by certified mail to the last known place of
5 business, residence or abode within or without this state; or

6 (2) in the manner provided in the code of civil procedure as if a
7 petition had been filed.

8 (d) The attorney general may request that an individual who refuses
9 to comply with a subpoena, on the ground that the testimony or matter
10 may incriminate the individual, be ordered by the court to provide the
11 testimony or matter. Except in a prosecution for perjury, an individual who
12 complies with a court order to provide testimony or matter after asserting a
13 privilege against self-incrimination to which the individual is entitled by
14 law, may not be subjected to a criminal proceeding or to a civil penalty to
15 the transaction concerning which the individual is required to testify or
16 produce relevant matter.

17 (e) If any person willfully fails or refuses to file any statement or
18 report required by the scrap metal theft reduction act, or obey any
19 subpoena issued by the attorney general, the attorney general may, after
20 notice, apply to the district court and, after a hearing thereon, the district
21 court may issue an order:

22 (1) Granting injunctive relief restraining the sale or advertisement of
23 any services or merchandise by such persons;

24 (2) vacating, annulling or suspending the corporate charter of a
25 corporation created by or under the laws of this state or revoking or
26 suspending the certificate of authority to do business in this state of a
27 foreign corporation or revoking or suspending any other licenses, permits
28 or certificates issued pursuant to law to the person, which are used to
29 further the allegedly unlawful practice; or

30 (3) granting such other relief as may be required, until the person files
31 the statement or report, or obeys the subpoena.

32 (f) *This section shall be unenforceable and shall not apply from July*
33 *1, 2017, to January 1, 2019.*

34 Sec. 3. K.S.A. 2016 Supp. 50-6,109c is hereby amended to read as
35 follows: 50-6,109c. (a) Any scrap metal dealer who violates any of the
36 provisions of the scrap metal theft reduction act, in addition to any other
37 penalty provided by law, may incur a civil penalty imposed pursuant to
38 subsection (b) in an amount not less than \$100 nor more than \$5,000 for
39 each violation.

40 (b) The attorney general, upon a finding that a scrap metal dealer or
41 any employee or agent thereof or any person or entity required to be
42 registered as a scrap metal dealer has violated any of the provisions of the
43 scrap metal theft reduction act may impose a civil penalty as provided in

1 this subsection upon such scrap metal dealer.

2 (c) A civil penalty shall not be imposed pursuant to this section
3 except upon the written order of the attorney general to the scrap metal
4 dealer who is responsible for the violation. Such order is a final order for
5 purposes of judicial review and shall state the violation, the penalty to be
6 imposed and the right of such dealer to appeal as provided in the Kansas
7 judicial review act.

8 ~~(d) This section shall take effect on and after January 1, 2016. This~~
9 ~~section shall be unenforceable and shall not apply from July 1, 2017, to~~
10 ~~January 1, 2019.~~

11 Sec. 4. K.S.A. 2016 Supp. 50-6,109d is hereby amended to read as
12 follows: 50-6,109d. (a) The attorney general may bring a civil action to:

13 (1) Obtain a declaratory judgment that an act or practice violates the
14 scrap metal theft reduction act;

15 (2) enjoin, or to obtain a restraining order against any person who has
16 violated, is violating, or is otherwise likely to violate the scrap metal theft
17 reduction act;

18 (3) recover reasonable expenses and investigation fees; or

19 (4) impose any civil penalty authorized by the scrap metal theft
20 reduction act.

21 (b) In lieu of investigating or continuing an action or proceeding, the
22 attorney general may accept a consent judgment with respect to any act or
23 practice declared to be a violation of the scrap metal theft reduction act.
24 Before any consent judgment entered into pursuant to this section shall be
25 effective, it must be approved by the district court and an entry made
26 thereof in the manner required for making an entry of judgment. Once
27 such approval is received, any breach of the conditions of such consent
28 judgment shall be treated as a violation of a court order, and shall be
29 subject to all the penalties provided by law.

30 (c) In any action brought by the attorney general, the court may,
31 without requiring bond of the attorney general:

32 (1) Make such orders or judgments as may be necessary to prevent
33 the use or employment by a person of any practice declared to be a
34 violation of the scrap metal theft reduction act;

35 (2) issue a temporary restraining order or enjoin any person from
36 violating the scrap metal theft reduction act;

37 (3) award reasonable expenses and investigation fees, civil penalties
38 and costs; and

39 (4) grant other appropriate relief.

40 (d) The commission of any act or practice declared to be a violation
41 of the scrap metal theft reduction act shall render the violator liable to the
42 state for the payment of a civil penalty, recoverable in an action brought by
43 the attorney general, in a sum of not more than \$5,000 for each violation.

1 (e) Any person who willfully violates the terms of any court order
2 issued pursuant to the scrap metal theft reduction act shall forfeit and pay a
3 civil penalty of not more than \$10,000 per violation, in addition to other
4 penalties that may be imposed by the court, as the court shall deem
5 necessary and proper. For the purposes of this section, the district court
6 issuing an order shall retain jurisdiction, and in such cases, the attorney
7 general, acting in the name of the state may petition for recovery of civil
8 penalties.

9 (f) Any act or practice declared to be a violation of the scrap metal
10 theft reduction act which is continuing in nature shall be deemed a
11 separate violation each day such act or practice exists.

12 (g) ~~This section shall take effect on and after January 1, 2016~~ *This*
13 *section shall be unenforceable and shall not apply from July 1, 2017, to*
14 *January 1, 2019.*

15 Sec. 5. K.S.A. 2016 Supp. 50-6,109e is hereby amended to read as
16 follows: 50-6,109e. (a) Any person, whether or not a resident or citizen of
17 this state, who in person or through an agent or an instrumentality, engages
18 in business as a scrap metal dealer as defined in the scrap metal theft
19 reduction act, thereby submits the person to the jurisdiction of the courts of
20 this state as to any cause of action arising from such business.

21 (b) Every administrative or civil action pursuant to the scrap metal
22 theft reduction act shall be brought in the district court of Shawnee county
23 or in any other district where venue is otherwise authorized by law.

24 (c) *This section shall be unenforceable and shall not apply from July*
25 *1, 2017, to January 1, 2019.*

26 Sec. 6. K.S.A. 2016 Supp. 50-6,109f is hereby amended to read as
27 follows: 50-6,109f. (a) A municipality shall not enact or enforce any
28 ordinance, resolution or regulation relating to the implementation,
29 administration and enforcement of the provisions of the scrap metal theft
30 reduction act.

31 (b) Any ordinance, resolution or regulation prohibited by subsection
32 (a) that was adopted prior to July 1, 2015, shall be null and void.

33 (c) No action shall be commenced or prosecuted against any
34 individual for a violation of any ordinance, resolution or regulation that is
35 prohibited by subsection (a) and which was adopted prior to July 1, 2015,
36 if such violation occurred on or after July 1, 2014.

37 (d) As used in this section, "municipality" has the same meaning as
38 defined in K.S.A. 75-6102, and amendments thereto.

39 (e) *This section shall be unenforceable and shall not apply from July*
40 *1, 2017, to January 1, 2019.*

41 Sec. 7. K.S.A. 2016 Supp. 50-6,110 is hereby amended to read as
42 follows: 50-6,110. (a) It shall be unlawful for any person to sell any item
43 or items of regulated scrap metal to a scrap metal dealer, or employee or

1 agent of a dealer, in this state unless such person meets the requirements of
2 this subsection.

3 (1) Such person shall present to such scrap metal dealer, or employee
4 or agent of such dealer, at or before the time of sale, the following: The
5 seller's name, address, sex, date of birth and the seller's driver's license,
6 military identification card, passport or personal identification license. An
7 official governmental document for a country other than the United States
8 may be used to meet this requirement provided that a legible fingerprint is
9 also obtained from the seller.

10 (2) Such person shall complete and sign the statement provided for in
11 subsection (b)(10).

12 (b) Every scrap metal dealer shall keep a register in which the dealer,
13 or employee or agent of the dealer, shall at the time of purchase or receipt
14 of any item for which such information is required to be presented, cross-
15 reference to previously received information, or accurately and legibly
16 record at the time of sale the following information:

17 (1) The time, date and place of transaction;

18 (2) the seller's name, address, sex, date of birth and the identifying
19 number from the seller's driver's license, military identification card,
20 passport or personal identification license; the identifying number from an
21 official governmental document for a country other than the United States
22 may be used to meet this requirement provided that a legible fingerprint is
23 also obtained from the seller;

24 (3) a copy of the identification card or document containing such
25 identifying number;

26 (4) the license number, color and style or make of any motor vehicle
27 in which the junk vehicle or other regulated scrap metal property is
28 delivered in a purchase transaction;

29 (5) a general description, made in accordance with the custom of the
30 trade, of the predominant types of junk vehicle or other regulated scrap
31 metal property purchased in the transaction;

32 (6) the weight, quantity or volume, made in accordance with the
33 custom of the trade, of the regulated scrap metal property purchased;

34 (7) if a junk vehicle or vehicle part is being bought or sold, a
35 description of the junk vehicle or vehicle part, including the make, model,
36 color, vehicle identification number and serial number if applicable;

37 (8) the price paid for, traded for or dealt for in a transaction for the
38 junk vehicle or other regulated scrap metal property;

39 (9) the full name of the individual acting on behalf of the regulated
40 scrap metal dealer in making the purchase; and

41 (10) a signed statement from the seller indicating from where the
42 property was obtained and that: (A) Each item is the seller's own personal
43 property, is free of encumbrances and is not stolen; or (B) the seller is

1 acting for the owner and has permission to sell each item. If the seller is
2 not the owner, such statement shall include the name and address of the
3 owner of the property.

4 (c) Every scrap metal dealer shall photograph both the seller and the
5 item or lot of items being sold at the time of purchase or receipt of any
6 item for which such information is required to be presented. Such
7 photographs shall be kept with the record of the transaction and the scrap
8 metal dealer's register of information required by subsection (b).

9 (d) The scrap metal dealer's register of information required by
10 subsection (b), including copies of identification cards and signed
11 statements by sellers, and photographs required by subsection (c) may be
12 kept in electronic format.

13 (e) Every scrap metal dealer shall forward the information required
14 by this section to the database described in K.S.A. 2016 Supp. 50-6,109a,
15 and amendments thereto.

16 (f) Notwithstanding any other provision to the contrary, this section
17 shall not apply to transactions in which the seller is a:

18 (1) Registered scrap metal dealer;

19 (2) vehicle dealer licensed under chapter 8 of the Kansas Statutes
20 Annotated, and amendments thereto; or

21 (3) scrap metal dealer or vehicle dealer registered or licensed in
22 another state.

23 (g) (1) Except as provided in subsection (g)(2), this section shall not
24 apply to transactions in which the seller is known to the purchasing scrap
25 metal dealer to be a licensed business that operates out of a fixed business
26 location and that can reasonably be expected to generate regulated scrap
27 metal.

28 (2) The attorney general may determine, by rules and regulations,
29 which of the requirements of this section shall apply to transactions
30 described in subsection (g)(1).

31 (h) *The amendments made to subsections (a) through (e) by section*
32 *13 of chapter 96 of the 2015 Session Laws of Kansas shall be*
33 *unenforceable and shall not apply from July 1, 2017, to January 1, 2019.*

34 Sec. 8. K.S.A. 2016 Supp. 50-6,112a is hereby amended to read as
35 follows: 50-6,112a. (a) A scrap metal dealer shall not purchase any
36 regulated scrap metal without having first registered each place of business
37 with the attorney general as herein provided.

38 (b) The attorney general shall establish a system for the public to
39 confirm scrap metal dealer registration certificates. Such system shall
40 include a listing of valid registration certificates and such other
41 information collected pursuant to the scrap metal theft reduction act, as the
42 attorney general may determine is appropriate. Disclosure of any
43 information through use of the system established by the attorney general

1 shall not be deemed to be an endorsement of any scrap metal dealer or
2 determination of any facts, qualifications, information or reputation of any
3 scrap metal dealer by the attorney general, the state, or any of their
4 respective agents, officers, employees or assigns.

5 (c) A registration for a scrap metal dealer shall be verified and upon a
6 form approved by the attorney general and contain:

7 (1) (A) The name and residence of the applicant, including all
8 previous names and aliases; or

9 (B) if the applicant is a: Corporation, the name and address of each
10 manager, officer or director thereof, and each stockholder owning in the
11 aggregate more than 25% of the stock of such corporation; or partnership
12 or limited liability company, the name and address of each partner or
13 member;

14 (2) the length of time that the applicant has resided within the state of
15 Kansas and a list of all residences outside the state of Kansas during the
16 previous 10 years;

17 (3) the particular place of business for which a registration is desired,
18 the name of the business, the address where the business is to be
19 conducted, the hours of operation and the days of the week during which
20 the applicant proposes to engage in business;

21 (4) the name of the owner of the premises upon which the place of
22 business is located; and

23 (5) the applicant shall disclose any prior convictions within 10 years
24 immediately preceding the date of making the registration for: A violation
25 of article 37 of chapter 21 of the Kansas Statutes Annotated, prior to their
26 repeal, or K.S.A. 2016 Supp. 21-5801 through 21-5839 or K.S.A. 2016
27 Supp. 21-6412(a)(6), and amendments thereto; perjury, K.S.A. 21-3805,
28 prior to its repeal, or K.S.A. 2016 Supp. 21-5903, and amendments
29 thereto; compounding a crime, K.S.A. 21-3807, prior to its repeal;
30 obstructing legal process or official duty, K.S.A. 21-3808, prior to its
31 repeal; falsely reporting a crime, K.S.A. 21-3818, prior to its repeal;
32 interference with law enforcement, K.S.A. 2016 Supp. 21-5904, and
33 amendments thereto; interference with judicial process, K.S.A. 2016 Supp.
34 21-5905, and amendments thereto; or any crime involving dishonesty or
35 false statement or any substantially similar offense pursuant to the laws of
36 any city, state or of the United States.

37 (d) Each registration for a scrap metal dealer to purchase regulated
38 scrap metal shall be accompanied by a fee of not less than \$500 nor more
39 than \$1,500, as prescribed by the attorney general for each particular place
40 of business for which a registration is desired.

41 (e) The attorney general shall accept a registration for a scrap metal
42 dealer as otherwise provided for herein, from any scrap metal dealer
43 qualified to file such registration, to purchase regulated scrap metals. Such

1 registration shall be issued for a period of one year.

2 (f) If an original registration is accepted, the attorney general shall
3 grant and issue renewals thereof upon application of the registration
4 holder, if the registration holder is qualified to receive the same and the
5 registration has not been revoked as provided by law. The renewal fee
6 shall be not more than \$1,500, as prescribed by the attorney general.

7 (g) Any registration issued under the scrap metal theft reduction act
8 shall not be transferable.

9 (h) This section shall not apply to a business licensed under the
10 provisions of K.S.A. 8-2404, and amendments thereto, unless such
11 business buys or recycles regulated scrap metal that are not motor vehicle
12 components.

13 *(i) The amendments made to subsections (b), (d) and (f) by section 15*
14 *of chapter 96 of the 2015 Session Laws of Kansas shall be unenforceable*
15 *and shall not apply from July 1, 2017, to January 1, 2019.*

16 Sec. 9. K.S.A. 2016 Supp. 50-6,112b is hereby amended to read as
17 follows: 50-6,112b. (a) After examining the information contained in a
18 filing for a scrap metal dealer registration and determining the registration
19 meets the statutory requirements for such registration, the attorney general
20 shall accept such filing and the scrap metal dealer shall be deemed to be
21 properly registered.

22 (b) No scrap metal registration shall be accepted for:

23 (1) A person who is not a citizen or legal permanent resident of the
24 United States.

25 (2) A person who is under 18 years of age and whose parents or legal
26 guardians have been convicted of a felony or other crime which would
27 disqualify a person from registration under this section and such crime was
28 committed during the time that such parents or legal guardians held a
29 registration under the scrap metal theft reduction act.

30 (3) A person who, within 10 years immediately preceding the date of
31 filing, has pled guilty to, entered into a diversion agreement for, been
32 convicted of, released from incarceration for or released from probation or
33 parole for committing, attempting to commit, or conspiring to commit a
34 violation of: Article 37 of chapter 21 of the Kansas Statutes Annotated,
35 prior to their repeal, or K.S.A. 2016 Supp. 21-5801 through 21-5839 or
36 K.S.A. 2016 Supp. 21-6412(a)(6), and amendments thereto; perjury,
37 K.S.A. 21-3805, prior to its repeal, or K.S.A. 2016 Supp. 21-5903 and
38 amendments thereto; compounding a crime, K.S.A. 21-3807, prior to its
39 repeal; obstructing legal process or official duty, K.S.A. 21-3808, prior to
40 its repeal; falsely reporting a crime, K.S.A. 21-3818, prior to its repeal;
41 interference with law enforcement, K.S.A. 2016 Supp. 21-5904 and
42 amendments thereto; interference with judicial process, K.S.A. 2016 Supp.
43 21-5905 and amendments thereto; or any crime involving dishonesty or

1 false statement or any substantially similar offense pursuant to the laws of
2 any city, state or of the United States.

3 (4) A person who within the 10 years immediately preceding the date
4 of registration held a scrap metal dealer registration which was revoked, or
5 managed a facility for a scrap metal dealer whose registration was
6 revoked, or was an employee whose conduct led to or contributed to the
7 revocation of such registration.

8 (5) A person who makes a materially false statement on the
9 registration application or has made a materially false statement on a
10 registration or similar filing within the last 10 years.

11 (6) A partnership or limited liability company, unless all partners or
12 members of the partnership or limited liability company are otherwise
13 qualified to file a registration.

14 (7) A corporation, if any manager, officer or director thereof, or any
15 stockholder owning in the aggregate more than 25% of the stock of such
16 corporation, would be ineligible to receive a license hereunder for any
17 reason.

18 (8) A person whose place of business is conducted by a manager or
19 agent unless the manager or agent possesses all of the qualifications for
20 registration.

21 (9) A person whose spouse has been convicted of a felony or other
22 crime which would disqualify a person from registration under this section
23 and such crime was committed during the time that the spouse held a
24 registration under the scrap metal theft reduction act.

25 (10) A person who does not own the premises upon which the place
26 of business is located for which a license is sought, unless the person has a
27 written lease for at least $\frac{3}{4}$ of the period for which the license is to be
28 issued.

29 (c) Any person filing a scrap metal dealer registration may be subject
30 to a criminal history records check and may be given a written notice that
31 a criminal history records check is required. The attorney general may
32 require such applicant to be fingerprinted and submit to a state and
33 national criminal history record check. If required, such fingerprints shall
34 be used to identify the applicant and to determine whether the applicant
35 has a record of criminal history in this state or another jurisdiction. The
36 attorney general shall submit any fingerprints provided to the Kansas
37 bureau of investigation and the federal bureau of investigation for a state
38 and national criminal history record check. Local and state law
39 enforcement officers and agencies shall assist the attorney general in the
40 taking and processing of fingerprints of applicants. The attorney general
41 may use the information obtained from fingerprinting and the criminal
42 history for purposes of verifying the identification of the applicant and in
43 the official determination of whether the scrap metal dealer registration

1 shall be accepted. If the criminal history record information is used to
2 disqualify an applicant, the applicant shall be informed in writing of that
3 decision.

4 *(d) The amendments made to subsections (b)(1), (b)(10) and (c) by*
5 *section 16 of chapter 96 of the 2015 Session Laws of Kansas shall be*
6 *unenforceable and shall not apply from July 1, 2017, to January 1, 2019.*

7 Sec. 10. K.S.A. 2016 Supp. 50-6,109a, 50-6,109b, 50-6,109c, 50-
8 6,109d, 50-6,109e, 50-6,109f, 50-6,110, 50-6,112a and 50-6,112b are
9 hereby repealed.

10 Sec. 11. This act shall take effect and be in force from and after its
11 publication in the statute book.