

**As Amended by House Committee**

*Session of 2011*

**HOUSE BILL No. 2312**

By Committee on Judiciary

2-11

1 AN ACT concerning regulated scrap metal; relating to licensure for  
2 scrap metal dealers; unlawful acts; criminal penalties; amending  
3 K.S.A. 2010 Supp. 50-6,109 and 50-6,111 and repealing the existing  
4 sections.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) On or after January 1, 2012, no business shall  
8 purchase any regulated scrap metal without having first secured a  
9 license for each place of business as herein provided. In case such place  
10 of business is located within the corporate limits of a city, the  
11 application for license shall be made to the governing body of such city.  
12 In all other cases, the application for license shall be made to the board  
13 of county commissioners in the county in which such place of business  
14 is to be located.

15 (b) A board of county commissioners shall not issue or renew a  
16 scrap metal dealer license without giving the clerk of the township  
17 where the place of business is to be located written notice of the filing  
18 of the application for licensure or renewal. The township board may,  
19 within 10 days, file advisory recommendations as to the granting of  
20 such license or renewal and such advisory recommendations shall be  
21 considered by the board of county commissioners before such license is  
22 issued.

23 (c) The governing body of any city and the board of county  
24 commissioners shall not issue or renew a scrap metal dealer license  
25 without giving the sheriff, chief of police or director of all law  
26 enforcement agencies in the county written notice of the filing of the  
27 application for licensure or renewal. Each law enforcement agency  
28 may, within 10 days, file advisory recommendations as to the granting  
29 or renewal of such license and such advisory recommendations shall be  
30 considered by the governing body of the city or board of county  
31 commissioners before such license is issued.

32 (d) An application for a scrap metal dealer license shall be verified  
33 and upon a form prepared by the attorney general and shall contain:

- 1 (1) The name and residence of the applicant;
- 2 (2) the length of time that the applicant has resided within the state  
3 of Kansas and a list of all residences outside the state of Kansas during  
4 the previous 10 years;
- 5 (3) the particular place of business for which a license is desired;
- 6 (4) the name of the owner of the premises upon which the place of  
7 business is located; and
- 8 (5) a statement that the applicant has not within 10 years  
9 immediately preceding the date of making application been convicted  
10 of theft as defined in K.S.A. 21-3701, prior to its repeal, or section 87  
11 of chapter 136 of the 2010 Session Laws of Kansas, theft of property  
12 lost, mislaid or delivered by mistake as defined in K.S.A. 21-3703,  
13 prior to its repeal, or section 88 of chapter 136 of the 2010 Session  
14 Laws of Kansas, theft of services, as defined in K.S.A. 21-3704, prior  
15 to its repeal, criminal deprivation of property as defined in K.S.A. 21-  
16 3705, prior to its repeal, or section 89 of chapter 136 of the 2010  
17 Session Laws of Kansas, or any other crime involving possession of  
18 stolen property.
- 19 (e) Each application for a scrap metal dealer license to purchase  
20 regulated scrap metal shall be accompanied by a fee of not less than  
21 \$100 nor more than \$400, as prescribed by the board of county  
22 commissioners or the governing body of the city, as the case may be.
- 23 (f) The board of county commissioners or the governing body of a  
24 city shall issue a license upon application duly made as otherwise  
25 provided for herein, to any scrap metal dealer engaged in business in  
26 such county or city and qualified to receive such license, to purchase  
27 regulated scrap metals.
- 28 (g) If an original license is granted and issued, the governing body  
29 of the city or the board of county commissioners shall grant and issue  
30 renewals thereof upon application of the license holder, if the license  
31 holder is qualified to receive the same and the license has not been  
32 revoked as provided by law. The annual license fee for such license,  
33 which shall be in addition to the fee provided by subsection (e), shall be  
34 not less than \$25 nor more than \$50.
- 35 (h) No license issued under this act shall be transferable.
- 36 (i) **Violation of subsection (a) is a class A nonperson**  
37 **misdemeanor.**
- 38 New Sec. 2. (a) After examination of an application for a scrap  
39 metal dealer license, the governing body of the city or the board of

1 county commissioners shall, if they approve the same, issue a license to  
2 the applicant.

3 (b) No scrap metal dealer license shall be issued to:

4 ~~(1) A person who is not a citizen of the United States.~~

5 ~~(2) (1) A person who is not 18 or more years of age.~~

6 ~~(3) A person who is not of good character and reputation in the  
7 community in which the person resides.~~

8 ~~(4) (2) A person who, within 10 years immediately preceding the  
9 date of application approval, has plead pled guilty to, been convicted  
10 of, released from incarceration for or released from probation or parole  
11 for committing, attempting to commit, or conspiring to commit a  
12 violation of article 37 of chapter 21 of the Kansas Statutes Annotated,  
13 prior to their repeal, or Sections 87 through 125 and subsection (a)(6)  
14 of section 223 of chapter 136 of the 2010 Session Laws of Kansas,  
15 perjury, K.S.A. 21-3805, prior to its repeal, or section 128 of chapter  
16 136 of the 2010 Session Laws of Kansas, compounding a crime, K.S.A.  
17 21-3807, prior to its repeal, obstructing legal process or official duty,  
18 K.S.A. 21-3808, prior to its repeal, falsely reporting a crime, K.S.A.  
19 21-3818, prior to its repeal, interference with law enforcement, section  
20 129 of chapter 136 of the 2010 Session Laws of Kansas, interference  
21 with judicial process, section 130 of chapter 136 of the 2010 Session  
22 Laws of Kansas, or any crime involving moral turpitude.~~

23 ~~(5) (3) A person who, within the five years immediately preceding  
24 the date of application approval, has plead pled guilty to, been found  
25 guilty of, or entered a diversion agreement for violating the provisions  
26 of section 1, and amendments thereto, K.S.A. 50-6,109 et seq., and  
27 amendments thereto, the laws of another state comparable to such  
28 provisions or the laws of any county or city regulating the sale or  
29 purchase of regulated scrap metal three or more times.~~

30 ~~(6) (4) A person who within the three years immediately preceding  
31 the date of application held a scrap metal dealer license which was  
32 revoked, or managed a facility for a scrap metal dealer whose license  
33 was revoked, or was an employee whose conduct lead led to or  
34 contributed to such revocation.~~

35 ~~(7) (5) A person who makes a false statement on the license  
36 application or has made a false statement on a license application  
37 within the last three years.~~

38 ~~(8) (6) A partnership or limited liability corporation, unless all  
39 the members of the partnership or limited liability corporation are~~

1 otherwise qualified to obtain a license.

2 ~~(9)~~ **(7)** A corporation, if any manager, officer or director thereof, or  
3 any stockholder owning in the aggregate more than 25% of the stock of  
4 such corporation, would be ineligible to receive a license hereunder for  
5 any reason.

6 ~~(10)~~ **(8)** A person whose place of business is conducted by a  
7 manager or agent unless the manager or agent possesses all the  
8 qualifications of a licensee.

9 ~~(11)~~ **(9)** A person whose spouse would be ineligible to receive a  
10 scrap metal dealer license for any reason.

11 ~~(12)~~ **(10)** A person whose spouse has been convicted of a felony or  
12 other crime which would disqualify a person from licensure under this  
13 section and such crime was committed during the time that the spouse  
14 held a license under this act.

15 ~~(13)~~ **(11)** Any person who does not own the premises for which a  
16 license is sought, unless the applicant has a written lease for at least  $\frac{3}{4}$   
17 of the period for which the license is to be issued.

18 ~~(14)~~ **(12)** Any person for a business location not in compliance  
19 with the provisions of all zoning requirements, environment codes, or  
20 other applicable business requirements.

21 (d) Scrap metal dealer licenses shall be issued either on an annual  
22 basis or for the calendar year as determined by the board of county  
23 commissioners or the governing body of the city.

24 New Sec. 3. (a) The board of county commissioners or the  
25 governing body of any city, upon five days' notice to the persons  
26 holding a license, may revoke or suspend the license for any one of the  
27 following reasons:

28 (1) The licensee has violated any of the provisions of K.S.A. 50-  
29 6,109 et seq., and amendments thereto, or any ordinance, resolution, or  
30 rules or regulations made by the board or the city, as the case may be;

31 (2) the employment or continuation in employment of a person if  
32 the licensee knows such person has violated, within the 18 months prior  
33 to the notice of suspension or revocation action, any of the provisions  
34 of K.S.A. 50-6,109 et seq., and amendments thereto, or the laws of  
35 another state comparable to such provisions, or any city or county  
36 ordinance, resolution, or regulation controlling scrap metal sale or  
37 purchase in Kansas or any other state; or

38 (3) there has been a violation of any laws of the state of Kansas,  
39 county resolution, or city ordinance regulating scrap metal which

1 ~~occurred~~ **occurred** on the premises or related to the conduct of the  
2 business.

3 (b) The board of county commissioners or the governing body of  
4 any city, upon five days' notice to the persons holding a license, shall  
5 revoke or suspend the license for any one of the following reasons:

6 (1) The licensee has fraudulently obtained the license by giving  
7 false information in the application therefore;

8 (2) the licensee has become ineligible to obtain a license under this  
9 act;

10 (3) the nonpayment of any license fees;

11 (4) permitting any criminal activity in or upon the licensee's place  
12 of business;

13 (5) the employment or continuation in employment of a person in  
14 connection with the receiving or purchasing of regulated scrap metal if  
15 the licensee knows such person has, within the preceding five years,  
16 plead guilty to, been convicted of, released from incarceration for or  
17 released from probation or parole for committing, attempting to  
18 commit, or conspiring to commit a violation of **section 1, and**  
19 **amendments thereto**, article 37 of chapter 21 of the Kansas Statutes  
20 Annotated, prior to their repeal, or sections 87 through 125 and  
21 subsection (a)(6) of section 223 of chapter 136 of the 2010 Session  
22 Laws of Kansas, perjury, K.S.A. 21-3805, prior to its repeal, or section  
23 128 of chapter 136 of the 2010 Session Laws of Kansas, compounding  
24 a crime, K.S.A. 21-3807, prior to its repeal, obstructing legal process or  
25 official duty, K.S.A. 21-3808, prior to its repeal, falsely reporting a  
26 crime, K.S.A. 21-3818, prior to its repeal, interference with law  
27 enforcement, section 129 of chapter 136 of the 2010 Session Laws of  
28 Kansas, interference with judicial process, section 130 of chapter 136  
29 of the 2010 Session Laws of Kansas, a violation of K.S.A. 2010 Supp.  
30 21-36a03, 21-36a05, and amendments thereto, or any crime involving  
31 moral turpitude; or

32 (c) Within 20 days after the order of the board **denying**, revoking  
33 or suspending any license, the licensee may appeal to the district court  
34 and the district court shall proceed to hear such appeal as though such  
35 court had original jurisdiction of the matter. ~~Any appeal taken from an~~  
36 ~~order revoking or suspending the license shall not suspend the order of~~  
37 ~~revocation or suspension during the pendency of any such appeal.~~

38 Sec. 4. Section 87 of chapter 136 of the 2010 Session Laws is  
39 hereby amended to read as follows: Sec. 87. (a) Theft is any of the

1 following acts done with intent to permanently deprive the owner of the  
2 possession, use or benefit of the owner's property or services:

3 (1) Obtaining or exerting unauthorized control over property or  
4 services;

5 (2) obtaining control over property or services, by deception;

6 (3) obtaining control over property or services, by threat;

7 (4) obtaining control over stolen property or services knowing the  
8 property or services to have been stolen by another; or

9 (5) knowingly dispensing motor fuel into a storage container or  
10 the fuel tank of a motor vehicle at an establishment in which motor fuel  
11 is offered for retail sale and leaving the premises of the establishment  
12 without making payment for the motor fuel.

13 (b) *Except as provided in subsection (c)*, theft of:

14 (1) Property or services of the value of \$100,000 or more is a  
15 severity level 5, nonperson felony;

16 (2) property or services of the value of at least \$25,000 but less  
17 than \$100,000 is a severity level 7, nonperson felony;

18 (3) property or services of the value of at least \$1,000 but less than  
19 \$25,000 is a severity level 9, nonperson felony;

20 (4) property or services of the value of less than \$1,000 is a class  
21 A nonperson misdemeanor, except as provided in subsection (b)(5) or  
22 (b)(6);

23 (5) property regardless of the value from three separate mercantile  
24 establishments within a period of 72 hours as part of the same act or  
25 transaction or in two or more acts or transactions connected together or  
26 constituting parts of a common scheme or course of conduct is a  
27 severity level 9, nonperson felony; and

28 (6) property of the value of less than \$1,000 is a severity level 9,  
29 nonperson felony if committed by a person who has been convicted of  
30 theft two or more times.

31 ~~(e) Theft of property that is regulated scrap metal of the value of:~~

32 ~~(1) \$100,000 or more is a severity level 4, nonperson felony;~~

33 ~~(2) at least \$25,000 but less than \$100,000 is a severity level 6,~~  
34 ~~nonperson felony;~~

35 ~~(3) at least \$1,000 but less than \$25,000 is a severity level 8,~~  
36 ~~nonperson felony;~~

37 ~~(4) less than \$1,000 is a class A misdemeanor and the offender~~  
38 ~~shall be fined not less than twice the value of the regulated scrap metal~~  
39 ~~taken, except as provided in subsection (e)(5); and~~

1 ~~(5) of less than \$1,000 is a severity level 9, nonperson felony if~~  
2 ~~committed by a person who has been convicted of theft two or more~~  
3 ~~times.~~

4 ~~(d)~~ (c) As used in this section:

5 (1) "Conviction" or "convicted" includes being convicted of a  
6 violation of K.S.A. 21-3701, prior to its repeal, this section or a  
7 municipal ordinance which prohibits the acts that this section prohibits;

8 (2) "regulated scrap metal" means the same as in K.S.A. 2010  
9 Supp. 50-6,109, and amendments thereto; and

10 (3) "value" means the value of the property or, **if the property is**  
11 **regulated scrap metal**, the cost to restore the site of the theft of  
12 ~~property that is such regulated scrap metal to its condition at the time~~  
13 **immediately prior to the theft of property that is such regulated scrap**  
14 ~~metal occurred, whichever is greater.~~

15 Sec. 5. K.S.A. 2010 Supp. 50-6,109 is hereby amended to read as  
16 follows: 50-6,109. As used in *sections 1 through 3, and amendments*  
17 *thereto, and K.S.A. 20092010 Supp. 50-6,109 through 50-6,112, and*  
18 *amendments thereto:*

19 (a) "Scrap metal dealer" means any person that operates a business  
20 out of a fixed location, and that is also either:

21 (1) Engaged in the business of buying and dealing in regulated  
22 scrap metal;

23 (2) purchasing, gathering, collecting, soliciting or procuring  
24 regulated scrap metal; or

25 (3) operating, carrying on, conducting or maintaining a regulated  
26 scrap metal yard or place where regulated scrap metal is gathered  
27 together and stored or kept for shipment, sale or transfer.

28 (b) "Regulated scrap metal yard" means any yard, plot, space,  
29 enclosure, building or any other place where regulated scrap metal is  
30 collected, gathered together and stored or kept for shipment, sale or  
31 transfer.

32 (c) "Regulated scrap metal" shall mean wire, cable, bars, ingots,  
33 wire scraps, pieces, pellets, clamps, aircraft parts, junk vehicles, vehicle  
34 parts, pipes or connectors made from aluminum; catalytic converters  
35 containing platinum, palladium or rhodium; and copper, titanium,  
36 tungsten, stainless steel and nickel in any form; for which the purchase  
37 price described in K.S.A. 2010 Supp. 50-6,110 and 50-6,111, and  
38 amendments thereto, was primarily based on the content therein of  
39 aluminum, copper, titanium, tungsten, nickel, platinum, palladium,

1 stainless steel or rhodium; any item composed in whole or in part of  
2 any nonferrous metal other than an item composed of tin, that is  
3 purchased or otherwise acquired for the purpose of recycling or storage  
4 for later recycling. Aluminum shall not include food or beverage  
5 containers.

6 (d) "Bales of regulated metal" means regulated scrap metal  
7 property processed with professional recycling equipment by  
8 compression, shearing or shredding, to a form in which it may be sold  
9 by a scrap metal dealer consistent with industry standards.

10 (e) "Ferrous metal" means a metal that contains iron or steel.

11 (f) "Junk vehicle" means a vehicle not requiring a title as provided  
12 in chapter 8 of the Kansas Statutes Annotated, and amendments thereto,  
13 aircraft, boat, farming implement, industrial equipment, trailer or any  
14 other conveyance used on the highways and roadways, which has no  
15 use or resale value except as scrap.

16 (g) "Nonferrous metal" means a metal that does not contain iron or  
17 steel, including but not limited to, copper, brass, aluminum, bronze,  
18 lead, zinc, nickel and their alloys.

19 (h) "Tin" means a metal consisting predominantly of light sheet  
20 metal ferrous scrap, including large and small household appliances,  
21 construction siding and construction roofing.

22 (i) "Vehicle part" means the front clip consisting of the two front  
23 fenders, hood, grill and front bumper of an automobile assembled as  
24 one unit; or the rear clip consisting of those body parts behind the rear  
25 edge of the back doors, including both rear quarter panels, the rear  
26 window, trunk lid, trunk floor panel and rear bumper, assembled as one  
27 unit; or any other vehicle part.

28 Sec. 6. K.S.A. 2010 Supp. 50-6,111 is hereby amended to read as  
29 follows: 50-6,111. (a) It shall be unlawful for any such scrap metal  
30 dealer, or employee or agent of the dealer, to purchase any item or  
31 items of regulated scrap metal in a transaction for which K.S.A. 2010  
32 Supp. 50-6,110, and amendments thereto, requires information to be  
33 presented by the seller, without demanding and receiving from the  
34 seller that information. Every scrap metal dealer shall file and maintain  
35 a record of information obtained in compliance with the requirements  
36 in K.S.A. 2010 Supp. 50-6,110, and amendments thereto. All records  
37 kept in accordance with the provisions of this act shall be open at all  
38 times to peace or law enforcement officers and shall be kept for two  
39 years. If the required information is maintained in electronic format, the



1 scrap metal dealer shall provide a printout of the information to peace  
2 or law enforcement officers upon request.

3 (b) It shall be unlawful for any scrap metal dealer, or employee or  
4 agent of the dealer, to purchase any item or items of regulated scrap  
5 metal in a transaction for which K.S.A. 2010 Supp. 50-6,110, and  
6 amendments thereto, requires information to be presented by the seller,  
7 without obtaining from the seller a signed statement that: (1) Each item  
8 is the seller's own personal property, is free of encumbrances and is not  
9 stolen; or (2) that the seller is acting for the owner and has permission  
10 to sell each item.

11 (c) It shall be unlawful for any scrap metal dealer, or employee or  
12 agent of the dealer, to purchase any junk vehicle in a transaction for  
13 which K.S.A. 2010 Supp. 50-6,110, and amendments thereto, requires  
14 information to be presented by the seller, without: (1) Inspecting the  
15 vehicle offered for sale and recording the vehicle identification number;  
16 and (2) obtaining an appropriate vehicle title or bill of sale issued by a  
17 governmentally operated vehicle impound facility if the vehicle  
18 purchased has been impounded by such facility or agency.

19 (d) It shall be unlawful for any scrap metal dealer, or employee or  
20 agent of the dealer, to purchase or receive any regulated scrap metal  
21 from a minor.

22 (e) It shall be unlawful for any scrap metal dealer, or employee or  
23 agent of the dealer, to purchase any of the following items of regulated  
24 scrap metal property without obtaining proof that the seller is an  
25 employee, agent or person who is authorized to sell the item of  
26 regulated scrap metal property on behalf of the governmental entity,  
27 utility provider, railroad, cemetery, civic organization or scrap metal  
28 dealer:

- 29 (1) Utility access cover;
- 30 (2) street light poles or fixtures;
- 31 (3) road or bridge guard rails;
- 32 (4) highway or street sign;
- 33 (5) water meter cover;
- 34 (6) traffic directional or traffic control signs;
- 35 (7) traffic light signals;
- 36 (8) any metal marked with any form of the name or initials of a  
37 governmental entity;

38 (9) property owned and marked by a telephone, cable, electric,  
39 water or other utility provider **or any such wire or cable that has had**

1 **the sheathing removed, making ownership identification**  
2 **impossible;**

- 3 (10) property owned and marked by a railroad;
- 4 (11) funeral markers or vases;
- 5 (12) historical markers;
- 6 (13) bales of regulated metal;
- 7 (14) beer kegs;
- 8 (15) manhole covers;
- 9 (16) fire hydrants or fire hydrant caps;
- 10 (17) junk vehicles with missing or altered vehicle identification
- 11 numbers;
- 12 (18) real estate signs; and
- 13 (19) bleachers or risers, in whole or in part.

14 (f) It shall be unlawful for any scrap metal dealer, or employee or  
15 agent of the dealer, to sell, trade, melt or crush, or in any way dispose  
16 of, alter or destroy any regulated scrap metal, junk vehicle or vehicle  
17 part upon notice from any law enforcement agency, or any of their  
18 agents or employees, that they have cause to believe an item has been  
19 stolen. A scrap metal dealer shall hold any of the items that are  
20 designated by or on behalf of the law enforcement agency for 30 days,  
21 exclusive of weekends and holidays.

22 (g) *It shall be unlawful for any scrap metal dealer, or employee or*  
23 *agent of the dealer, to pay for the following purchases* **all purchases of**  
24 **property from any person in excess of \$35, copper in any form for**  
25 **any amount, catalytic converters and refrigeration condensing**  
26 **units and related parts, by any means other than a:**

27 **(1) A prenumbered check drawn on a regular bank account in the**  
28 **name of the scrap metal dealer and with such check made payable to**  
29 **the person selling such property: or**

30 ~~(1) All purchases of property from any person within a 24-hour~~  
31 ~~period which exceeds \$50; and,~~

32 ~~(2) all purchases of copper in any form for any amount, catalytic~~  
33 ~~converters, and refrigeration condensing units or related parts.~~

34 **(2) a similar system for automated payment distribution which**  
35 **videotapes and identifies all transactions and participants and is**  
36 **approved by the board of county commissioners or city governing**  
37 **board.**

38 Sec. 7. K.S.A. 2010 Supp. 50-6,109, 50-6,111 and section 87 of  
39 chapter 136 of the 2010 Session Laws of Kansas are hereby repealed.

1       Sec. 8. This act shall take effect and be in force from and after its  
2 publication in the statute book.  
3