

Approved: August 25, 2011
(Date)

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:30 A.M. on March 14, 2011, in Room 548-S of the Capitol.

All members were present, except Senators Bruce, Donovan and Haley, who were excused

Committee staff present:

Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Jason Thompson, Office of Revisor of Statutes
Tamera Lawrence, Office of Revisor of Statutes
Theresa Kiernan, Committee Assistant

Conferees appearing before the committee:

Whitney Damron, City of Topeka and others
Ed Klumpp, Ks Assn of Chiefs of Police, Ks Sheriffs Assn, Ks Peace Officers Assn
Victor Elazegui, Jr., Westar
Kyle Smith, Office of the Attorney General
Ron Miller, Chief of Police, City of Topeka
Raynard Brown, President, Advantage Metals
Bud Burke, Issues Management Group, Advantage Metals

Others attending:

See attached list.

The Chairman opened the hearings on **HB 2312 -- Regulated scrap metal; licensing scrap metal dealers; unlawful acts; criminal penalties.**

Jason Thompson, Staff Revisor, reviewed the bill.

Whitney Damron submitted testimony in support of **HB 2312** (Attachment 1). He stated that metal theft continues to be a significant statewide problem and it requires a statewide approach to deal with it. The bill would establish a regulatory framework with enhanced penalties; it would not limit the power of a city or county to adopt ordinances or resolutions that contain provisions that are more restrictive than the state law or provisions which address local issues. He stated that the key to any regulatory framework is the enforcement mechanism. Attached to Mr. Damron's testimony are amendments suggested by Advantage Metal (Attachment 2).

Ed Klumpp testified in support of **HB 2312** (Attachment 3). He stated there are gaps in current law. If convicted of a violation, the offender is held accountable for the value they receive for the scrap metal. This does not cover the costs attributable to the damage caused to property when the scrap metal is stolen. Undocumented cash payments for scrap metal make it difficult to develop leads and evidence in metal thefts.

Victor Elazegui, Jr. testified in support of **HB 2312** (Attachment 4). He stated that metal thieves cause extensive and costly damage to property during the theft. Thieves often compromise the safety of equipment putting employees at risk of harm.

Kyle Smith testified in support of **HB 2312** (Attachment 5). He stated that as long as large profits could be made without substantial risk, the problem will continue.

Ron Miller testified in support of **HB 2312** (Attachment 6). He stated some kind of regulation is necessary and that scrap metal dealers "have to know" the metal has been stolen.

Written testimony in support of HB 2312 was submitted by: Kent Cornish, Kansas Association of Broadcasters (Attachment 7); Chris Carroll, AT&T (Attachment 8); Patrick Vogelsberg,

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on March 14, 2011, in Room 548-S of the Capitol.

Kansas County and District Attorneys Association (Attachment 9); and Charlie Sedlock, Hamm, Inc. (Attachment 10).

Raynard Brown testified in opposition to **HB 2312** (Attachment 11). He stated that the current Kansas law is sufficient to address any problem and licensing of metal dealers will not reduce metal theft. The problem could be reduced with a proactive and cooperative approach from all interested parties. The bill is over-reaching and unnecessary, but with some modification of the language he could support some of the concepts in the bill.

Bud Burke testified in opposition to **HB 2312** (Attachment 12). He stated that the bill would be a deterrent to future investment in Kansas. He would support some of the provisions of the bill with some modifications.

Written testimony in opposition to **HB 2312** was submitted by John Fauvergue, CMC Recycling, Independence, KS (Attachment 13); and Jorge L. Conforme, Government Affairs, LKQ Corporation (Attachment 14).

Senator Vratil asked, "What is an acceptable length of term for a license?"

Bud Burke replied, "Ten years."

Mr. Damron stated that he would not oppose a ten-year term.

Senator Vratil asked, "Why does licensing work in Wichita, but not in Topeka?"

Mr. Damron stated that licensing works in Wichita because most of the scrap dealers are located within the Wichita city limits, most of the Topeka-area scrap dealers are located outside the Topeka city limits. Statewide licensure would provide consistency.

Senator Kelly asked, "What criteria is used in renewal of licenses in Wichita and Kansas City?"

Ed Klumpp responded, "The criteria is similar to the criteria stated in **HB 2312**."

Senator Schodorf asked, "What is happening in other states?"

Ed Klumpp stated, "He does not know for sure, but believes there are issues in the border areas of the states of Missouri and Oklahoma. He added that Arkansas has the most comprehensive scrap metal laws."

Senator King asked, "Would the language in subsection (g) (2) of K.S.A. 50-6,109 allow for cash payments?"

Mr. Damron responded, "Yes."

Senator King asked, "If a license is revoked, is it site specific or for the entire system of facilities?"

Mr. Damron responded, "It is site-specific."

Senator Umbarger asked, "Is there a way to address the issues other than by licensure?"

Mr. Brown responded, "Require better documentation of the transaction, and capture the transaction by photograph or video recording."

The Chairman encouraged the interested parties to get together, resolve the differences and return to the committee with a bill that all the parties could support.

The Chairman closed the hearings on **HB 2312**.

Meeting adjourned at 10:29 A.M. The next meeting is scheduled for March 15, 2011.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Mon. March 14, 2011

NAME	REPRESENTING
SEAN MILLER	CAPITOL STRATEGIES
Missy Word	Hein Law Firm
Dan Hattaus	KCC
Whitby James	City of Topeka
SCOTT JONES	KCPIL
LARRY BERG	MIDWEST ENERGY
Mark Schreiber	Westar
Victor Elazegui	Westar
Raynard Brown	Advantage Metals Recycling LLC
Bill Burke	" "
Ed Kump	KACF/KSA/KPOD
Kevin Berore	The Cap Lobby Grp. LLC
Roni MILLER	TOPEKA Police Dept.
Kyle Smith	KSAG
Kent Cornish	KAB
MEGAN PINEGAR	KSAG
Sarah Fertig	KSC
Claire Crawford	Intern - Sen. Kelly



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

[As Amended by House Committee of the Whole]

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 scrap
2 metal dealers; unlawful acts; criminal penalties; amending K.S.A. 2010
3 Supp. 50-6,109 and 50-6,111 and repealing the existing sections.
4

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

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

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

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

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

30 (1) The name and residence of the applicant;

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

34 (3) the particular place of business for which a license is desired;

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

HB 2312 - Balloon Amendments
WBD / March 5, 2011

Senate Judiciary
3-4-11
Attachment 2

Whitney B. Damron, P.A.
919 SOUTH KANSAS AVENUE
TOPEKA, KANSAS 66612-1210
(785) 354-1354 • (785) 354-8092 (Fax)
E-Mail: wbdamron@aol.com

1 ~~(5) a statement that the applicant has not~~ within 10 years immediately
 2 preceding the date of making application ~~been convicted of theft as defined in~~
 3 K.S.A. 21-3701, prior to its repeal, or section 87 of chapter 136 of the 2010
 4 Session Laws of Kansas, theft of property lost, mislaid or delivered by mistake
 5 as defined in K.S.A. 21-3703, prior to its repeal, or section 88 of chapter 136
 6 of the 2010 Session Laws of Kansas, theft of services, as defined in K.S.A. 21-
 7 3704, prior to its repeal, criminal deprivation of property as defined in K.S.A.
 8 21-3705, prior to its repeal, or section 89 of chapter 136 of the 2010 Session
 9 Laws of Kansas, or any other crime involving possession of stolen property.

10 (e) Each application for a scrap metal dealer license to purchase regulated
 11 scrap metal shall be accompanied by a fee of not less than \$100 nor
 12 more than \$400, as prescribed by the board of county commissioners or the
 13 governing body of the city, as the case may be.

14 (f) The board of county commissioners or the governing body of a city
 15 shall issue a license upon application duly made as otherwise provided for
 16 herein, to any scrap metal dealer engaged in business in such county or city
 17 and qualified to receive such license, to purchase regulated scrap metals.

18 (g) If an original license is granted and issued, the governing body of the
 19 city or the board of county commissioners shall grant and issue renewals
 20 thereof upon application of the license holder, if the license holder is qualified
 21 to receive the same and the license has not been revoked as provided by law.
 22 The annual license fee for such license, which shall be in addition to the fee
 23 provided by subsection (e), shall be not less than \$25 nor more than \$50.

24 (h) No license issued under this act shall be transferable.

25 ~~(i) Violation of subsection (a) is a class A nonperson misdemeanor.~~

26 New Sec. 2. (a) After examination of an application for a scrap metal
 27 dealer license, the governing body of the city or the board of county
 28 commissioners shall, if they approve the same, issue a license to the applicant.

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

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

31 ~~(2) (1) A person who is not [under] 18 or more years of age [and whose~~
 32 ~~parents or legal guardians would be ineligible to receive a scrap metal~~
 33 ~~license for any reason].~~

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

36 ~~(4) (2) A person who, within 10 years immediately preceding the date of~~
 37 ~~application approval, has plead pled guilty to, been convicted of, released~~
 38 ~~from incarceration for or released from probation or parole for committing,~~
 39 ~~attempting to commit, or conspiring to commit a violation of article 37 of~~
 40 ~~chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or Sections~~
 41 ~~87 through 125 and subsection (a)(6) of section 223 of chapter 136 of the 2010~~
 42 ~~Session Laws of Kansas, perjury, K.S.A. 21-3805, prior to its repeal, or section~~
 43 ~~128 of chapter 136 of the 2010 Session Laws of Kansas, compounding a~~
 44 ~~crime, K.S.A. 21-3807, prior to its repeal, obstructing legal process or official~~
 45 ~~duty, K.S.A. 21-3808, prior to its repeal, falsely reporting a crime, K.S.A. 21-~~
 46 ~~3818, prior to its repeal, interference with law enforcement, section 129 of~~

The applicant shall disclose any prior convictions

for

Such license may be issued on a calendar or annual basis
and may be issued for a period not to exceed five years.

(j) This section shall not apply to a business licensed under
the provisions of K.S.A. 8-2404 unless such business buys
or recycles regulated scrap metal that are not motor vehicle
components.

chapter 136 of the 2010 Session Laws of Kansas, interference with judicial process, section 130 of chapter 136 of the 2010 Session Laws of Kansas, or any crime involving moral turpitude.

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

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

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

(8) (6) A partnership or limited liability corporation [company], unless all the members of the partnership or limited liability corporation [company] are otherwise qualified to obtain a license.

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

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

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

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

~~(13) (11) Any person who does not own the premises for which a license is sought, unless the applicant has a written lease for at least 7/8 of the period for which the license is to be issued.~~

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

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

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

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

(2) the employment or continuation in employment of a person if the

This provision shall not apply to the spouse or a manager, officer or director of a publicly-traded company or its subsidiaries.

(11) The governing body of the city or the board of county commissioners may also consider:

- (a) Ownership and control of the property involved; or
- (b) Compliance with zoning, environmental codes and other applicable business requirements.

1 licensee knows such person has ~~violated~~, within the 18 months prior to the
 2 notice of suspension or revocation action, any of the provisions of K.S.A. 50-
 3 6,109 et seq., and amendments thereto, or the laws of another state comparable
 4 to such provisions, or any city or county ordinance, resolution, or regulation
 5 controlling scrap metal sale or purchase in Kansas or any other state; or

or should have known

been convicted

6 (3) there has been a violation of any laws of the state of Kansas, county
 7 resolution, or city ordinance regulating scrap metal which ~~occurred~~ occurred
 8 on the premises or related to the conduct of the business.

(4) permitting any criminal activity in or upon the licensee's
 place of business contained in chapter 21 of the Kansas
 Statutes Annotated or similar ordinance.

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

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

knowingly

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

materially

15 (3) the nonpayment of any license fees;

16 (4) ~~permitting any criminal activity in or upon the licensee's place of~~
 17 ~~business;~~

after receiving notice that such license
 fees are more than 30 days past due.

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

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

Upon request by the licensee, the district court may
 enjoin the revocation or suspension of a license until
 final disposition of any action brought under this act.

41 Sec. 4. Section 87 of chapter 136 of the 2010 Session Laws is hereby
 42 amended to read as follows: Sec. 87. (a) Theft is any of the following acts
 43 done with intent to permanently deprive the owner of the possession, use or
 44 benefit of the owner's property or services:

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

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

2-4

- 1 (7) traffic light signals;
 2 (8) any metal marked with any form of the name or initials of a
 3 governmental entity;
 4 (9) property owned and marked by a telephone, cable, electric, water or
 5 other utility provider ~~or any such wire or cable that has had the sheathing~~
 6 ~~removed, making ownership identification impossible;~~
 7 (10) property owned and marked by a railroad;
 8 (11) funeral markers or vases;
 9 (12) historical markers;
 10 (13) bales of regulated metal;
 11 (14) beer kegs;
 12 (15) manhole covers;
 13 (16) fire hydrants or fire hydrant caps;
 14 (17) junk vehicles with missing or altered vehicle identification numbers;
 15 (18) real estate signs; and
 16 (19) bleachers or risers, in whole or in part. (20) twisted pair copper wiring existing in 19, 22, 24 or 26 gauge.
- 17 (f) It shall be unlawful for any scrap metal dealer, or employee or agent
 18 of the dealer, to sell, trade, melt or crush, or in any way dispose of, alter or
 19 destroy any regulated scrap metal, junk vehicle or vehicle part upon notice
 20 from any law enforcement agency, or any of their agents or employees, that
 21 they have cause to believe an item has been stolen. A scrap metal dealer shall
 22 hold any of the items that are designated by or on behalf of the law
 23 enforcement agency for 30 days, exclusive of weekends and holidays.
- 24 (g) *It shall be unlawful for any scrap metal dealer, or employee or agent*
 25 *of the dealer, to pay for the following purchases all purchases of property*
 26 *from any person in excess of \$35, copper in any form for any amount,*
 27 *catalytic converters and refrigeration condensing units and related parts,*
 28 *by any means other than a:*
- 29 (1) *A prenumbered check drawn on a regular bank account in the name*
 30 *of the scrap metal dealer and with such check made payable to the person*
 31 *selling such property; or*
- 32 (1) ~~All purchases of property from any person within a 24-hour period~~
 33 ~~which exceeds \$50; and;~~
- 34 (2) ~~all purchases of copper in any form for any amount, catalytic~~
 35 ~~converters, and refrigeration condensing units or related parts.~~
- 36 (2) a similar system for automated payment distribution which photographs or
 37 videotapes and identifies all transactions and participants and ~~is approved~~
 38 ~~by the board of county commissioners or city governing board.~~ retains all records for a period of not less than two years.
- 39 Sec. 7. K.S.A. 2010 Supp. 50-6,109, 50-6,111 and section 87 of chapter
 40 136 of the 2010 Session Laws of Kansas are hereby repealed.
- 41 Sec. 8. This act shall take effect and be in force from and after its
 42 publication in the statute book.
 43
 44

2-5



**Kansas Association of
Chiefs of Police**
PO Box 780603
Wichita, KS 67278
(316)733-7301



**Kansas Sheriffs
Association**
PO Box 1853
Salina, KS 67402
(785)827-2222



**Kansas Peace Officers
Association**
PO Box 2592
Wichita, KS 67201
(316)722-8433

**Testimony to the Senate Judiciary Committee
In Support of HB2312
March 14, 2011**

Senator Owens and committee members,

The scrap metal theft problem in Kansas continues. Central air conditioning units have become a target. I recently heard an ad for a monitored residential alarm service on a Topeka radio station claiming they can even protect your outdoor air conditioning unit from theft. Copper remains the predominant target. Brass and even cutting catalytic convertors off of cars are also targeted metals. Here are some examples:

- In February 2010 thieves stole the copper and brass components from a public pool in Topeka. The damage resulted in \$10,000-\$15,000 of repairs required to reopen the pool. Due to other factors the pool was not open for use last summer.
- In October 2010 thieves stole the copper pipe and fittings from a storm water pump station in Topeka. The cost to repair was estimated to be \$200,000 to \$300,000.
- In January 2011 thieves stole \$200,000 of copper and brass from a Topeka custom metal fabricating company.
- In December 2010 and again in January 2011 thieves stole copper wiring from Hamm's Quarry in Jefferson County. The first time disabling their conveyor system.
- In January 2011 thieves stole \$30,000 worth of copper and brass from a Topeka Fire Station construction site. The thieves were apprehended due to information supplied by a scrap metal dealer.
- In January 2011 thieves stole \$7000 worth of stainless steel and copper pipe from a business in Lawrence.
- In May 2010 thieves struck a KU construction site three times stealing over \$3000 of copper wire.
- In June 2010 thieves stole the underground electrical wiring from a park in Tonganoxie rendering the lights on a soccer field and walking trail inoperative.
- In August 2010 thieves stripped copper from a closed industrial site in Douglas County. News reports also indicated Douglas County has had recent cases of copper wiring being stripped from farm field equipment.

Although the laws passed in 2007 and 2009 have proven beneficial we have found some dealers are not following those statutes. Some do not record all of the transactions as the statutes require. The current law requires the scrap metal dealers to keep a register of who they buy certain metals from when the purchase exceeds a minimum purchase price. This has produced good results in

some investigations. According to the Topeka Capital Journal, one Topeka scrap metal dealer declared in 2009 a drop in their company's scrap metal purchases was attributed, ". . . to a new law requiring sellers to show a driver's license." The Topeka Police Department was reporting a 44% drop in metal thefts at the same time. Late last year, a significant theft of metal from a commercial radio transmission tower site near Pittsburg was solved, and the stolen items were recovered, in large part to information supplied by a scrap metal dealer's actions and records.

However, we have some of the scrap metal dealers who fail to follow these rules. To combat this lack of compliance, some local governments have added additional scrap metal controls. Wichita and Kansas City have been the leaders in this area. Wichita instituted a licensing program for all scrap metal dealers in their city several years ago and they modified the licensing process in early 2010. Licensing has proven to be the tool needed in Wichita to gain scrap metal dealer compliance with the other provisions of the scrap metal laws. This has resulted in information being available to police to initiate investigations aimed at particular persons of interest. Licensing is one of the provisions proposed in HB2312.

The other side of the equation to addressing this problem is to strengthen the sentencing provisions for these types of theft. It is important to understand these cases are not easy to investigate and bring to prosecution. There are many obstacles including matching the scrap metal to a particular crime and matching the person selling the material to the actual theft. We will only address these crimes through regulation making it more difficult to sell the stolen metal without being identified. Even if we fail to connect the person selling the material to a particular crime, the mere fact of "almost" getting caught and facing police questioning will deter some of these criminals. But we also have to send a message that these thefts will not be tolerated. Our proposal also includes enhancements to the theft statutes.

So what exactly does this bill do?

First, and most importantly it establishes a statewide licensing program for all scrap metal dealers in the state. You can find this in Sections 1-3 of the bill. Our proposal follows the existing cereal malt beverage licensing process. We chose this method because there is not a state agency with a particular interest in the scrap metal businesses. This process establishes consistent statewide licensing criteria and sanctions. This avoids creating an entirely new process to apply to this licensing. The licenses are obtained from the cities or counties. The teeth this puts into the law is the possibility of having the license suspended or revoked if the business does not follow the scrap metal statutes. The provisions of this licensing proposal is very similar to what is being used in Kansas City and Wichita. They have been working in both of those cities without causing any undue hardship on the dealers.

Second, the theft statute is modified to do the following when the theft is of regulated scrap metal. (Starting on page 5, line 6) These amendments:

- Defines "value" as used in cases of regulated scrap metal as the higher of either the value of the stolen items or the cost to restore the site of the theft to its pre-theft condition. (Page 6 lines 8-14)
 - This is designed to address the much greater cost of replacing the stolen pipes, wiring, and equipment as compared to the value of the metal as scrap. An excellent example is found in a news article in the Lawrence Journal World in

2008, "A thief walked out of a North Lawrence home with less than \$10 worth of copper water pipes and left behind thousands of dollars in damage."

- Another news report in the Lawrence Journal World said of the theft of copper wire from irrigation equipment, "The thefts have cost farmers between \$4,000 and \$11,000 per incident."
- Another news report about the theft of copper wire from street lights said, "Thieves may get only \$50 to \$100 worth of copper, but repairing a streetlight can cost the city \$2,000 or more."

Third, the statute uses the Wichita model of requiring payment by check for the purchase of scrap metal in excess of \$35 and other specific scrap metals which has proven effective in providing leads and evidence in metal thefts. (Page 9 lines 1-15)

We believe we have incorporated into this bill the key elements proven effective in Wichita. We did not incorporate other concepts that they have found helpful. These include:

- A requirement certain metal must be retained for 72 hours in all cases.
- A requirement that any air conditioning condenser must have a tag showing the refrigerant has been removed by a person licensed to do so.
- Mandatory daily reporting to law enforcement of the purchase log.

It is important that the state law allow cities or counties to be more restrictive or to have broader ordinances or resolutions to regulate scrap metal sales. For example, Wichita has created a class of "special regulated scrap metal" that addresses local issues relating to the aircraft and other industry in their city. We believe this is more appropriate than trying to regulate those things statewide that do not have a statewide application.

We are not asking anything of the scrap metal dealers that has not been in use in Wichita and proven workable with their scrap metal dealers. The use of these standards statewide will stop the thieves from merely dealer shopping for one that is not licensed or not following the existing statutory requirements. Our proposal also addresses the sanctions against the thieves.

During the bill process in the House we worked diligently with representatives of the scrap metal industry. We made many concessions and amendments to the bill to accommodate their concerns. Many of these were in the licensing area. Unfortunately, after many hours of work and agreeing to many changes still in this bill, we failed to totally satisfy their desires. We feel we have given a great deal of ground already on the licensing and other issues.

We strongly urge your support of HB2312 to help us address this continuing theft problem costing victims across our state hundreds of thousands of dollars in losses each year. Help us keep our businesses in business, our utilities to hold down costs, and your constituents from suffering huge expenses to repair damage from a theft which is often time many times the money the thief will gain.

Please recommend this bill favorably for passage.

Ed Klumpp
E-mail: eklumpp@cox.net



**Testimony of Victor Elazegui, Jr.
Westar Energy
Before the Senate Judiciary Committee
On HB 2312
March 14, 2011**

Chairman Owens and members of the committee, my name is Victor Elazegui Jr., Physical Security Analyst for Westar Energy. On behalf of Westar Energy, I would like to thank you for giving me the opportunity to express Westar's views on House Bill 2312.

It was December of 2007, and if you remember we had one of the worst ice storms that Northeast Kansas has experienced in several years. As a result of the ice, there were many downed power lines which meant that thousands of Kansans were without power. Help came from many other states' utility companies to support Westar's efforts to get the power back on. Many of the utility trucks were equipped with tools and copper wire, and were parked at hotel parking lots. The thefts from the trucks got so out of hand, that third party security companies had to be employed and stationed at numerous sites wherever these utility trucks were parked at night just to keep the trucks from being vandalized. These events would be my introduction to the increasing problem of metal thefts.

In February of 2010, Westar was victim to a single copper theft which totaled more than \$140,000 in damages and loss. Over a period of two nights, copper thieves hit Westar's material distribution center. The thieves broke into the equipment yard and attached a tow cable to a full spool (5 foot wooden reel weighing approximately 5,000 lbs) of expensive utility-grade copper wire. The tow cable is thought to have been connected to a wench on a truck as video showed the reel zipping across the corner of the yard and up over the fence. We found the broken wooden spool empty behind our property. The thieves had done this with two full spools of copper wire. Not only was the copper stolen, but in the process, as the spool was being jerked around being unwound, it had damaged some substation equipment being stored there as well. This is an example of the extreme lengths that these thieves are going through to get their hands on copper materials. The particular wire stolen in this incident is wire that only a utility company should possess.

At Westar Energy, safety is not only one of the company's core values, it is practiced and advocated by each individual employee. During a recent conversation with a Westar employee, she shared her concerns about the metal thefts and how in her new position as a substation apprentice, it had impacted her. Many of the thefts utility companies are witnessing are at substations where the copper is used to ground equipment. This employee shared how she had to be very cautious as she approached the entry to a substation and be vigilant about looking for signs of a break-in before she would touch the entry gate. If any of the equipment has been compromised because of someone stealing the grounds, it can be very hazardous for the employees working in that location. If the ground protection is compromised, a person working at the substation could be electrocuted because of someone wanting to make a few bucks stealing and selling our materials.

Westar Energy asks for your support of House Bill 2312. We know the theft of metals is an increasing problem nationwide. These metals (including utility-grade conductor) are getting salvaged and their theft must be curtailed. Criminal activity will be easier to deter with the measures outlined in this bill.

Curtailling much of the metal thefts is important for the safety of the public, our employees and the reliability of the electrical system. Thank you for your consideration, and I would be pleased to stand for questions at the appropriate time.



**STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL**

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.KSAG.ORG

Senate Judiciary Committee
In support of HB 2312
Assistant Attorney General Kyle Smith
March 14, 2011

Chairman Owens and members of the committee, thank you for allowing me to provide testimony on behalf of Attorney General Derek Schmidt in support of HB 2312. The explosive growth in theft of scrap metal, and the concurrent massive criminal damage to property that is often involved, has created a criminal nightmare and economic straight jacket throughout Kansas.

HB 2312 is a smart and effective way of addressing all aspects of the problem. For the first time, the cost to return make the victim whole will be considered in setting the level of the offense. If there is criminal damage to property done, that can be charged as a separate offense. But in many of these cases, there are substantial expenses involved in rewiring or reconnecting the stolen property, outside of actual damage done to the property. The defendant should be punished base, not just on the few dollars of copper stolen, but the tens of thousands of dollars, sometimes hundreds of thousands of dollars that are needed to make the victim whole.

However the real solutions to the problem are new sections 1-3, creating licensing provisions for scrap metal businesses. The problem, and the solution, is as simple as supply and demand. As long as companies can make larger and larger profits without any substantial risk, there are some who will buy stolen metal. If caught, it is a class c misdemeanor and they simply blame and fire the employee. By empowering the local county and cities to license and regulate these businesses, we will for the first time have an effective deterrent that will make the dealers enthusiastic partners in fighting metal theft. Temporary profits will have to be weighed against the potential of losing a license and thus all profits. And this approach will have a large impact on the crimes while having little impact on prison bed space.

One issue that might need additional tweaking is dealing with burned wire. In almost all instances, utility and telephone cable will not show up at the scrap yard in its original marked and identifiable condition. The sheathing on these types of wire clearly indicate the utility that owns it so scrappers bring wire and cable with sheathing removed and the rubber insulation burned off the copper

Senate Judiciary
3-14-11
Attachment 5

wiring. But some wire is so unique, that even without the sheathing, ownership is apparent, for instance, telephone cable is immediately recognizable as it is the only cable a scrap yard sees that has 24 or 26 gauge twisted pairs of copper wire. The bill currently would make purchase of:

(9) property owned and marked by a telephone, cable, electric, water or other utility provider, ***or where any such wire or cable has had the sheathing removed, making ownership identification impossible.***"

- Page 8, line 4-6

The problem is the new language which would allow the state to prosecute when the cable has been removed. Obviously bare wire, commonly sold as ground at hardware stores, would not fall under this as it would be impossible for the state to prove that identifying sheathing had been removed. But there are a lot of cables sold with plain commercial sheathing, and there is a price difference so someone might want to get a higher price by stripping off that sheathing. To resolve this issue, the committee might consider the following modification to make proving ownership of the wire an element of the crime that has to be proven by replacing 'or' with 'and' and limiting it to where the entire sheathing has been removed – thus allowing a legitimate seller to remove all but a foot or two of the sheathing, to prove that it was not privately owned cable or wire.

(9) property owned and marked by a telephone, cable, electric, water or other utility provider, ***or and where any such wire or cable has had the sheathing entirely removed, making ownership identification impossible.***"

On behalf of Attorney General Schmidt, I thank you for your consideration and efforts to address this pervasive, serious and growing problem. I would be happy to try and answer any questions.



CITY OF TOPEKA

DEPARTMENT OF POLICE
320 S. Kansas Ave., Suite 100
Topeka, KS 66603-3640
Tel: (785) 368-9551
Fax: (785) 368-9458
www.topeka.org

An Accredited
Law Enforcement Agency



Senate Judiciary Committee Members,

On behalf of the Topeka Police Department I thank you for allowing me the opportunity to speak to you about the importance of HB2312. Metal thefts are plaguing many cities in our state. While the existing statutes have proven beneficial in our investigations, we must find better answers. In Topeka, copper thefts alone increased in 2010 over 2009 by a rate that concerns citizens, elected officials and law enforcement.

Crime	2009	2010
Burglaries involving Copper theft	30	67
Thefts of Copper	47	131
Attempted thefts of Copper	9	11

This bill will do two major things for us: 1) Provide the mechanism to assure better compliance of the existing scrap metal statutes found in KSA 50-6,109 et. seq. and; 2) enhance the consequences to those persons committing these crimes. Ultimately these will be tools law enforcement can use to deter as well as investigate these crimes. These are tools currently in use in Wichita by city ordinance and they have proven to be effective in responding to these crimes.

In many cases the cost to repair the facility where the metal is stolen from far exceeds the value of the metal itself. We must find ways to hold these criminals accountable for the total cost for the victims to restore their property. I have attached some photographs of crime scenes where these crimes have occurred.

Accountability of the scrap metal dealers through statewide licensing is critical to assuring they are keeping the records and fulfilling other requirements of the state law. Those laws were passed with the provisions to afford law enforcement the opportunity to quickly develop information and leads to aid in recovery of the stolen property and the identity of persons involved in the theft and disposal of the regulated metal.

Ed Klumpp and Whitney Damron are here and can explain the details of the bill. I am here today to express my support for this bill.

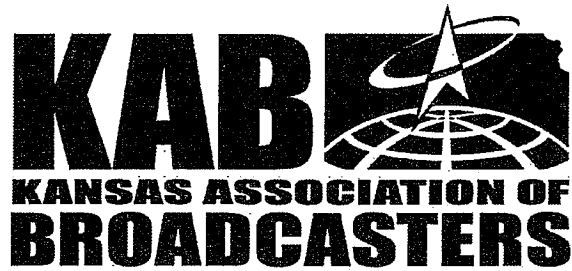
On behalf of the Topeka Police Department and all of Kansas law enforcement I urge you to pass this bill favorably to help us deter and investigate these crimes which cost Kansans dearly.

Ronald Miller
Chief of Police
Topeka Police Department

Senate Judiciary

3-14-11

Attachment 6



Written Testimony on HB 2312
Monday, March 14, 2011
Senate Judiciary Committee

Good Morning Mr. Chairman and members of the Committee. I am Kent Cornish, President/Executive Director of the Kansas Association of Broadcasters, representing nearly 280 radio and television stations across the state.

We are in full support of HB 2312 which would increase penalties for those found guilty of stealing precious metals and attempting to sell them to scrap dealers - as well as dealers who fail to meet registration requirements. Our radio and television stations use enormous amounts of copper wiring in the transmission of their signals.

That transmission occurs through equipment located at tower sites, which generally are located in sparse rural areas of a community. Despite FCC required security such as fencing, lighting and alarms systems, the thefts continue. In the past year I have received six reports of theft from members around the state - and there could be more. These varied from stealing a small copper line and some air conditioning units to over 150 feet of copper line at one location.

Replacement costs of these totaled nearly \$75,000. But just as devastating is the fact that several of the stations were knocked off the air because of the stolen wiring - which cost can't be calculated. The thieves have gotten bolder. In the case of the stolen air conditioning units, they broke in one night to steal the equipment and wiring, and the owners purchased a stronger pad lock only to have it cut the next night when the thieves returned to look for more.

Anything that can help deter this kind of criminal behavior, including stronger penalties, is encouraged by all broadcasters. Thank you for your time and consideration.

Kent Cornish 785-235-1307 kent@kab.net

Senate Judiciary
3-14-11
Attachment 7



Chris Carroll
Director
External Affairs

AT&T Kansas
8900 Indian Creek Parkway
Suite 120
Overland Park, KS 66210

T: 913.676.1519
M: 913.449.8696
F: 913.676.1504
chris.carroll@att.com

**Testimony of Chris Carroll, Director of External Affairs – AT&T
Before the Senate Judiciary Committee in Support of HB 2312
March 14, 2011**

Chairman Owens and Members of the Committee,

My name is Chris Carroll. I am the Director of External & Legislative Affairs for AT&T in Kansas, and I appreciate this opportunity to provide written testimony in support of House Bill 2312.

The steady rise in the market price of copper and other scrap metals over the last few years coupled with the state of the economy has led some people to extreme measures, pilfering things like catalytic converters from automobiles, stealing air conditioning units or other pipes and wires from homes or businesses, and even gutting from vacant houses or construction sites.

During the past several years the incidence of theft of copper telephone cable has been steadily increasing. Each year on an enterprise basis, AT&T loses millions of dollars to copper thieves who steal cable from company storage yards, or steal copper wiring and cables from communications towers. These costs include not only the replacement of the cable itself, but the many man hours spent repairing the telephone cable to restore service to those in affected areas. In Kansas, during the last two years alone the replacement cost for stolen copper was almost half a million dollars with nearly 8000 customers placed out of service.

Of particular concern, is that the theft of telephone cable and the oftentimes loss of telephone service places citizens at risk due to their inability to contact 911 emergency services. Thieves also place themselves in danger when climbing utility poles where they could be killed or seriously injured.

AT&T continues to work with local, state, and federal law enforcement officials to apprehend those responsible for these thefts. We ask the Kansas Legislature to approve the passage of House Bill No. 2312 as a means of combating this very serious and growing problem.

I urge your support for House Bill 2312.

Thank You.



Kansas County & District Attorneys Association

1200 SW 10th Avenue
Topeka, KS 66604
(785) 232-5822 Fax: (785) 234-2433
www.kcdaa.org

March 14, 2011

**Testimony in support of HB 2312
Provided by Patrick Vogelsberg
On Behalf of the Kansas County and District Attorneys Association**

Honorable Chairman Owens and Members of the Senate Judiciary Committee:

The Kansas County and District Attorneys Association (KCDAA), wishes to offer its support for HB 2312. This bill will give law enforcement and prosecutors a valuable tool in fighting scrap metal thefts in the state of Kansas. Scrap metal thefts are a statewide problem and affect both urban and rural communities. HB 2312 is a solution for this statewide problem.

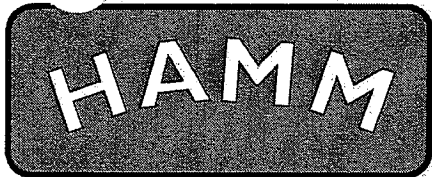
The KCDAA stands in support with the other proponents of HB 2312 and respectfully request that the committee pass this bill favorably.

Respectfully submitted,

Patrick Vogelsberg
KCDAA

Senate Judiciary

3-14-11
Attachment 9



QUARRIES
CONSTRUCTION
ASPHALT
WASTE MANAGEMENT

609 Perry Place
PO Box 17
Perry, KS 66073-0017
Telephone 785-597-5111
FAX 785-597-5117

14 March 2011

Chairman Tim Owens
Senate Committee on Judiciary
State Capitol Building, Room 559-S
Topeka, Kansas 66612

In re HB 2312 – Scrap Metal Theft

Dear Chairman Owens:

By way of introduction, my name is Charlie Sedlock, Division Manager for Hamm, Inc. located in Perry, Kansas. Hamm, Inc. is a mining, construction, and waste services firm operating in eastern Kansas that employs 250-300 Kansans. We understand your committee is considering legislation that would increase the penalties for metal theft and provide a statewide licensing system for those involved in the scrap metal business. On behalf of Hamm, Inc., I would like to convey our strong support for this important piece of legislation.

Our company has been the victim of a number of metal thefts in the past year, including the loss of tens of thousands of dollars of equipment and metal. These crimes are difficult to prevent in our business, as we often work and have equipment in rural areas of the state where there are few witnesses to these kinds of crimes. Each time a theft occurs, we suffer major monetary and production losses in excess of \$50,000.

For example, during the past two years we have had the following incidents at our quarry locations:

- Two copper wire thefts at North Lawrence, KS Quarry
- Copper wire theft at Meriden, KS Quarry
- Copper wire theft at Circleville, KS Quarry
- Copper wire theft at Woodbine, KS Quarry

We support your efforts to increase penalties on the criminals involved in this activity and the creation of a regulatory structure for the scrap metal business that can help insure responsible dealers are allowed to conduct their business can continue to do so and those who are willing accomplices to the thieves are not allowed to remain in business.

If you have questions in regard to our comments, please do not hesitate to contact me directly. Thank you.

Sincerely,

A handwritten signature in black ink that reads "C. Sedlock". The signature is fluid and cursive, with the first name being more prominent.

Charlie Sedlock

Senate Judiciary
3-14-11
Attachment 10

**HB 2312 Testimony from Advantage Metals Recycling LLC, by Raynard J. Brown, President
Presented to Kansas Senate Judiciary Committee, March 14, 2011**

Advantage Metals Recycling LLC is the largest volume metal recycling operation in Kansas, with 6 recycling operations in Kansas, and 8 in Missouri. We are the Midwest recycling division of Nucor Steel (NYSE: NUE), the largest electric arc furnace steel maker in the U.S. In total our company has 200 locations nationwide, with 67 of those being dedicated to metal recycling like our 6 Kansas locations.

The structure of the current Kansas metal recycling laws are very similar to what has been done in many states across the country, with requirements of transaction documentation, certain restrictions on purchasing designated items, opening purchasing records to police review, and some restrictions on payment methods. The 2008 Missouri statute was modeled after the Kansas 2007 statute, and Colorado is in the process of adopting a new statute that will be close to, but less restrictive than, the current Kansas statute.

The problem of metal theft can be lessened with a proactive and cooperative approach from all interested parties:

Metal recycling industry:	Documentation of transactions – both people and certain products
Law enforcement agencies:	Education, investigation and enforcement of recycling and theft laws
Prosecution/Judicial:	Prioritizing property crimes prosecution and punishment
Property Owners:	Secure and inspect metal items like other valuable property
Legislators:	Provide a workable framework for all of the above

In most of the communities where Advantage Metals operates, we have found the Kansas style statute to be effective when there is an active working relationship between all parties. (See Kansas City, MO Council Committee transcript regarding cooperative approach effectiveness.) As I have talked with other metal recyclers across Kansas, they have the same general feeling that the industry and law enforcement cooperation is working very well. That is why we were very surprised to see HB 2312 and its mandated licensing process introduced, without any input from the metal recycling industry. Even after working with the proponents of HB 2312, I am unsure of how a licensing process state-wide will reduce theft.

The mandated licensing process for metal recycling companies in every city and county in Kansas is over-reaching and unnecessary.

- The licensing provision does nothing to address the theft of metals or the criminals doing it.
- Local governments already have the right to impose licensing requirements, as evidenced by licensing processes in place in Wichita and Kansas City, KS.
- Not all local governments face the same type of issues in regards to metal recycling companies and metal theft. They should be allowed to assess the current level of theft and recycling industry cooperation in their area (rural, urban, or suburban) and draft their own set of rules IF they deem it necessary.
- Each local governmental agency will have different interpretation and enforcement of the licensing process. There is no guarantee that this statewide burden will lead to any of the non-compliant companies being closed since that will still be a local decision.
- Many of the reasons for not issuing or revoking a license are arbitrary and do not provide adequate due process to challenge or appeal a determination.
- The alleged "bad actors" in the recycling industry that will potentially be shut down by license revocation must by definition already be violating some or many laws. Why not use current laws to arrest and prosecute them?

Unintended consequences of the licensing process:

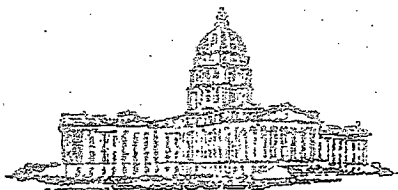
- Companies will be very hesitant to make investment in recycling operations in Kansas if that investment could be lost to an arbitrary licensing process.
- Metal recycling still needs to happen, and without investment in Kansas by properly-run companies, the opportunities for non-compliant companies will only grow.

Certain concepts in HB 2312, with proper language, can be positive supplements to the current Kansas statutes. Those concepts are:

- Changing how "value" is determined in theft of scrap metal to include property damage
- Tightening requirements on documentation and payment methods on certain items
- Adding certain items to the restricted list that require higher standards of documentation

ISSUES

MANAGEMENT GROUP, INC.



March 14, 2011

Mr. Chairman & Members of the Judiciary Committee. My name is Bud Burke and I appear here today on behalf of Advantage Metal Recyclers.

HB 2312 would require all metal recyclers in the State to be licensed by either the County or City in which their facility is located. Not only would this be yet one more Mandate on Local Government it would also be a deterrent to future investment in Kansas.

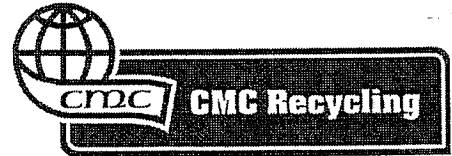
The cost of a metal recycling center can range in the \$ 1 million to \$2 million dollars and there would be no assurance that the license would be renewed by the local government for some, even minor, infraction. Who would make future investments with the uncertainty expressed with licensure provisions of HB 2312.

HB 2312 is exactly the wrong way to grow the Kansas economy and create jobs.

Advantage Metals is only one of many recyclers in the State that run a very tightly controlled company. They have over \$21 million in investment and 160 employees.

There are some good provisions that have been discussed with the proponents of the bill that we strongly support;

- * Procedures that require positive identification of the seller
- * The requirement that the property from which the material is stolen be Restored to the condition it was in before the theft
- * The concept of forming a task force or working group as Colorado has proposed or Missouri has in place. The group would consist of Law Enforcement, Metal Recyclers, Local Officials, Legislators and others who would work to develop an overall strategy to stop the metal thieves.



March 11, 2011

To: Senate Committee on Judiciary

Re: House Bill 2312

We are writing concerning the proposed House Bill (2312) which has a hearing date scheduled on March 14, 2011. We have reviewed this Bill and feel there are many items listed that are a detriment to our business. Though we realize there are always improvements that can and need to be made in any business, we feel that many items proposed in this Bill will greatly inhibit our ability to conduct business in the state of Kansas without reducing metals theft.

Commercial Metals Company Recycling (CMCR) is a publicly traded company that was established in 1915. Our core values include integrity, honesty, respect and the highest ethical, moral and legal standards. We are a member of ISRI (Institute of Scrap Recycling Industries). CMCR follows all guidelines as set out by KS State Statutes, including environmental laws, business licensing, etc. Our standard operating procedures include obtaining the customer's name, address and a copy of his/her driver's license. We are equipped with security cameras located above all scales and cameras which view and record all customers above the cashier areas. Our standards are exceptional and we have worked diligently with local law enforcement with our current surveillance system and detailed paperwork to deter the sale of stolen property to our facility. We believe that concessions could be made in this House Bill allowing surveillance, scanned copies of customer's driver's licenses, etc. as an alternative to some of the more stringent requirements such as check payment, which will place undue burden on legitimate customers.

While we agree with Kansas Lawmakers that there is needed legislation to curve the rise in metals theft, we feel that placing this bill back in committee and involving members of our industry in the solution could have a much more successful result.

We greatly appreciate your time.

Sincerely,

John Fauvergue
Commercial Metals Company Recycling
Independence, KS
Office: 620-331-1710
Cell: 620-330-7351



LKQ Testimony Opposing House Bill 2312 as Written

Mr. Chairman & Members of the Committee:

My name is Jorge Conforme and I represent LKQ Corporation.

LKQ is the nation's largest and leading provider of aftermarket, refurbished and recycled OEM parts. LKQ employs 10,500 people nationwide within a network of approximately 320 facilities in more than 43 states.

It has 168 employees at 5 locations in Kansas found in the following cities: one (1) in Lawrence, one (1) in Liberal, one (1) in Manhattan, one (1) in Topeka, and one (1) in Wichita, and pays taxes on a payroll of over \$4.6 million dollars.

I ask that you **VOTE NO ON HB 2312 as written.** As written, HB 2312 creates an undue burden upon law-abiding auto recyclers by mandating them to obtain an additional license and to double report information already required by state and federal law. LKQ Corporation applauds the Legislature's efforts to create fair and appropriate licensing and reporting requirement for the scrap metal processing industry and would support HB 2313 if the bill were amended to exclude "vehicle recyclers" and "salvage vehicle dealers" (hereinafter "automobile recyclers"), which are already licensed and regulated under Kansas law.

HB 2312 places undue requirements on our industry, will negatively impact jobs, and drive up costs of parts for Kansas consumers and should be opposed as written for the following reasons:

- Current Kansas KSA Section 8-2401 and related code already requires automobile recyclers to obtain a license from the Kansas Department of Motor Vehicles and requires automobile recycler facilities to maintain complete records on vehicles entering their facilities
- Creates an undue financial and operational burden on automobile recyclers by requiring them to obtain an additional license from either a county or local government under separate and possibly differing license and reporting requirements
- Daily reporting to local law enforcement of information already required by Kansas law to be maintained on-site at each facility would create an undue administrative hardship on recyclers. The bill as allows any county, city or town to establish their own ordinance which could be inconsistent with state law – this should remain a statewide provision
- Forces recyclers to double reporting information on the purchase of salvage vehicles – this reporting is already mandated by the U.S. Department of Justice
- Creates an unnecessary added cost of doing business which will lead to increased costs for consumers

I hope you recognize the many detriments this bill poses to the automotive recycling and alternative parts industry in Kansas. On behalf of LKQ Corporation, I ask you to **vote "NO" on HB 2312 as written and support an amendment to remove licensed recyclers from the bill.**

Thank you for your time, consideration, and opportunity to testify.

Senate Judiciary
3-14-11
Attachment 14