SENATE FLOOR VERSION
April 10, 2013

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1740

By: Wright, Armes, Roberts (Dustin), Newell and Sherrer of the House

and

Griffin of the Senate

[scrap metal dealers - Oklahoma Scrap Metal Dealers Act - scrap metal dealer license - investigations - fees - codification - effective date]

~~BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:~~

SECTION 1. AMENDATORY 2 O.S. 2011, Section 2-4, is amended to read as follows:

Section 2-4. A. The State Board of Agriculture shall have the power to:

1. Adopt and prescribe the use of a seal, which shall be in the custody of the Secretary of the Board;

2. Promulgate rules necessary, expedient, or appropriate to the performance, enforcement, or carrying out of any of the purposes, objectives, or provisions of the Oklahoma Agricultural Code;

3. Initiate and prosecute administrative, civil, or criminal actions and proceedings necessary under the Oklahoma Agricultural Code;

4. Appoint authorized agents to make inspections or investigations and to perform other services for the Board or any division of the Oklahoma Department of Agriculture, Food, and Forestry;

5. Consolidate any of the divisions established by the Oklahoma Agricultural Code, transfer any of the functions or activities to another division, place additional functions or activities in a division, establish new divisions, and create new or additional positions in the Department, when conducive to a more efficient administration and enforcement of laws pertaining to agriculture;

6. Sell, exchange, or dispose of property;

7. Have jurisdiction over all matters affecting animal industry, animal health, and animal quarantine;

8. Issue stop-sale and stop-use orders and quarantines;

9. Employ, appoint, or contract and fix the duties and compensation of the director of each division of the Department and other personnel, either on a full-time, part-time, or contractual basis, as deemed necessary by the Board;

10. Fix the qualifications of the personnel in the Department;

11. Accept and use grants of money and other property from any source;

12. Advise, consult, cooperate, and enter into agreements or contracts with persons as defined in the Oklahoma Agricultural Code;

13. Coordinate with the federal government and other states on matters pertaining to agriculture;

14. Revoke, suspend, or deny for up to one (1) year, any license, permit, or charter issued by the Board if the Board finds any violations of the Oklahoma Agricultural Code or any rule of the Board;

15. Adopt a master plan and promulgate rules for the protection of state-owned and private forestry, grazing, and other lands from damage by fire and for suppressing fires on lands. In carrying out the master plan the Board is authorized to enter into contractual agreements with the federal government, local political subdivisions of the state, individuals, private organizations, companies, and corporations for protection and for the suppression of fires and to expend funds as available for these services. To effectuate the purposes of the Oklahoma Agricultural Code, the Board is authorized to enter into contractual agreements with private landowners for the protection and suppression of fires, provided that the private landowners reimburse the Board for actual expenses incurred in the protection and suppression of fires on privately owned lands;

16. Have jurisdiction over all matters affecting agriculture as contained and set out in the Oklahoma Agricultural Code, which have not been expressly delegated to another state or federal agency and

be responsible for fully implementing and enforcing the laws and rules within its jurisdictional areas of environmental responsibility.

a. The Department of Environmental Quality shall have environmental jurisdiction over:

(1) commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill, and other agricultural products,

(2) slaughterhouses, but not including feedlots at these facilities, and

(3) aquaculture and fish hatcheries, including, but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at these facilities.

b. Facilities storing grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal National Pollutant Discharge Elimination System (NPDES) regulations to obtain a permit for storm water discharges shall only be subject to the jurisdiction

of the Department of Environmental Quality with respect to storm water discharges;

17. Have jurisdiction over all matters affecting the importation, health, and quarantining of exotic livestock;

18. Prescribe forms of application, certification, licenses, charters, and other forms and blanks as may be necessary to carry out the provisions of the Oklahoma Agricultural Code;

19. Stagger throughout the year the renewal dates for any licenses or permits issued by the Department pursuant to the provisions of the Oklahoma Agricultural Code by notifying licensees in writing of the expiration and renewal date being assigned to the licensee and permittee and by making an appropriate adjustment in the fee charged for the license or permit;

20. Establish and collect fees for licenses, permits, charters, and services provided. The fees shall be promulgated in accordance with the Administrative Procedures Act and shall be fair and equitable to all parties concerned;

21. Establish planting and harvesting seasons for the purpose of meeting the maximum driving and on-duty time exemptions set forth in the National Highway System Designation Act of 1995. The Board shall notify the United States Secretary of Transportation of the seasons;

22. Fix and adopt official standards for grading and classifying any agricultural commodity, meat, or meat product prepared, produced, or distributed in Oklahoma;

23. Promulgate rules, make investigations, and conduct hearings for the purpose of making inspection compulsory on any agricultural commodity and designate the shipping points where compulsory inspection applies;

24. Inspect agricultural commodities, at any time, upon request of any financially interested party or when necessary and to issue certificates showing the quality and condition of the commodities at the time of the inspection;

25. Grade meat or meat products upon the request of any packing plant in Oklahoma. The packing plant shall be required to pay the cost of services, including the compensation and expenses of personnel employed to perform the actual grading;

26. Apply to the district court for a temporary or permanent injunction or any other remedy restraining any person from violating the Oklahoma Agricultural Code;

27. Extend and implement the powers and provisions granted by the Oklahoma Agricultural Code to all programs administered by the Department regardless of whether the statutes creating the program are codified in this title;

28. Increase its efforts to ensure the safety and quality of food and food products for wholesalers and retail sales in this

state and shall include, but not be limited to, inspections of retailers and wholesalers to ensure compliance with all federal and state certification standards;

29. Exercise all incidental powers which are necessary and proper to implement and administer the purposes of the Oklahoma Agricultural Code;

30. Accept upon behalf of the Department any gift or donation of property, including but not limited to monetary gifts;

31. Promulgate rules regarding prescribed burning and smoke management; ~~and~~

32. Enter into written leases or lease-purchase agreements to acquire equipment, furnishings, supplies and other items necessary for the operation of the Oklahoma Department of Agriculture, Food, and Forestry Agriculture Laboratory; and

33. Exercise all incidental powers and promulgate rules, procedures and forms which are necessary and proper to implement, administer and enforce the Oklahoma Scrap Metal Dealers Act.

B. 1. If upon inspection or investigation, or whenever the Oklahoma Department of Agriculture, Food, and Forestry determines that there are reasonable grounds to believe that any person is in violation of any part of the Oklahoma Environmental Quality Code which is the responsibility and jurisdiction of the Oklahoma Department of Agriculture, Food, and Forestry, any rule promulgated by the State Board of Agriculture, or of any order, permit,

certificate, registration, charter, or license issued by the Board, the Department may give written notice to the alleged violator of the specific violation and of the alleged violator's duty to correct the violation immediately or within a set time period or both and that the failure to do so shall result in administrative fines or penalties.

2. Whenever the Department finds that an emergency exists requiring immediate action to protect the public health, welfare, or the environment, the President of the State Board of Agriculture may without notice or hearing issue an order, effective upon issuance, reciting the existence of an emergency and requiring that action be taken as specified in the order to meet the emergency. Any person to whom an order is directed shall comply immediately but may request an administrative enforcement hearing within fifteen (15) days after the order is served. The hearing shall be held by the Department within ten (10) days after receipt of the request. On the basis of the hearing record, the President of the Board shall sustain or modify the original order.

SECTION 2. AMENDATORY 59 O.S. 2011, Section 1422, is amended to read as follows:

Section 1422. As used in the Oklahoma Scrap Metal Dealers Act:

1. "Aluminum material" means the metal aluminum or aluminum alloy or anything made of either aluminum or aluminum alloy, except aluminum beverage cans;

2. "Copper material" means the metal copper or copper alloy or anything made of either copper or copper alloy;

3. "Department" means the Oklahoma Department of Agriculture, Food, and Forestry and its employees, officers and divisions;

4. "Exempted seller" means any person, firm, corporation or municipal corporation which constructs, operates or maintains electric distribution and transmission or communications facilities; or any person, firm or corporation that produces or otherwise acquires any scrap metal regulated by the provisions of ~~this act~~ the Oklahoma Scrap Metal Dealers Act in the normal course of business as:

a. mechanical, electrical or plumbing contractor licensed to do business in this state,

b. scrap metal dealer (Standard Industrial Classification Codes 5051 or 5093), licensed pursuant to the provisions of ~~this act~~ the Oklahoma Scrap Metal Dealers Act,

c. holder of a farm-use tax permit,

d. manufacturer,

e. distributor, or

f. retailer;

~~4.~~ 5. "License" means a scrap metal dealer license;

6. "Scrap metal" means any copper material or aluminum material or any item listed in Section ~~4~~ 1424 of this ~~act~~ title, offered for sale or resale or purchased by any person, firm or corporation;

~~5.~~ 7. "Scrap metal dealer" means any person, firm or corporation being an owner, keeper or proprietor of a retail or wholesale business which buys, sells, salvages, processes or otherwise handles scrap metal materials regulated by the provisions of ~~this act~~ the Oklahoma Scrap Metal Dealers Act; and

~~6.~~ 8. "Yard" means the place where any scrap metal dealer stores scrap metal materials or keeps such materials for purpose of sale.

SECTION 3. AMENDATORY 59 O.S. 2011, Section 1423, is amended to read as follows:

Section 1423. A. Every scrap metal dealer shall keep a separate book, record or other electronic system as authorized by ~~this act~~ the Oklahoma Scrap Metal Dealers Act, to record and maintain the following data from any seller of any amount of scrap metal as defined by ~~this act~~ the Oklahoma Scrap Metal Dealers Act:

1. A legible photocopy of the seller's driver license or other form of government issued photo identification that contains his or her name, address, date of birth, weight and height;

2. Vehicle description and license tag number of the seller if the vehicle was used to transport the material being sold;

3. Date and place of the transaction and the transaction number as provided by the scrap metal dealer;

4. Description of the items sold and weight of the items as required by the provisions of ~~this act~~ the Oklahoma Scrap Metal Dealers Act;

5. Whether the scrap metal is in wire, cable, bar, rod, sheet or tube form;

6. If any insulation is on the scrap metal, the names and addresses of the persons, groups or corporations from whom seller purchased or obtained the materials; and

7. If apparent on the scrap metal, the name of the manufacturer and serial number of each item of scrap metal.

B. Municipalities or other political subdivisions may adopt, and scrap metal dealers shall abide by, local ordinances regarding the format of the information required by subsection A of this section, either written or electronic.

C. Records required by this section shall be made available at any time to any person authorized by law for such inspection.

D. Purchases of thirty-five (35) pounds or more of scrap metal containing a manufacturer's serial number or other unique label or mark shall be held separate and apart so that the purchased scrap metal may be readily identifiable from all other purchases for a period of not less than ten (10) days from the date of purchase. During the holding period the scrap metal dealer may not change the

form of the purchased scrap metal and shall permit any person authorized by law to make inspection of such materials.

E. Purchases of thirty-five (35) pounds or more of scrap metal which does not contain a manufacturer's serial number or other unique label or mark shall either be held for the same time and in the same manner as required by subsection D of this section; or in the alternative, the scrap metal dealer shall be required to obtain a digital image of the items purchased, the seller of the items, a copy of the bill of sale and a copy of the seller's photo identification. The digital image shall contain a depiction that can reasonably be utilized for identification of the seller and the items sold and captured in the common JPEG format with a minimum resolution of 640 pixels by 480 pixels. The digital image shall be retained by the purchaser for a minimum of ninety (90) days from the date of purchase. For the purpose of this section a "digital image" means a raster-based two-dimensional, rectangular array of static data elements called pixels, intended for display on a computer monitor or for transformation into another format, such as a printed page.

F. No purchase of any amount of scrap metal from an exempted seller, as defined by Section ~~2~~ 1422 of this ~~act~~ title, shall be subject to any holding period or digital imaging identification required by ~~subsections~~ subsection D or E of this section.

G. It shall be unlawful for any person to sell or purchase copper material or copper wire from which the actual or apparent insulation or other coating has been burned, melted or exposed to heat or fire resulting in melting some or all of the insulation or coating. This provision shall not apply to sales by or purchases from an exempted seller.

H. It shall be unlawful for any scrap metal dealer to purchase any item from a minor without having first obtained the consent, in writing, of a parent or guardian of such minor. Such written consent shall be kept with the book, record or other electronic recording system required by subsection A of this section and, if requested by a law enforcement agency where the purchase was made, shall be transmitted to the law enforcement agency and may be kept as a permanent record and made available for public inspection.

I. A scrap metal dealer shall obtain from each seller of a scrap metal item regulated by ~~this act~~ the Oklahoma Scrap Metal Dealers Act, or a parent or guardian on behalf of a minor, a written declaration of ownership containing a legible signature of the seller. The declaration of ownership shall be in the following form and shall appear on the bill of sale or transaction ticket to be completed by the seller in the presence of the purchaser at the time of the transaction:

"I hereby affirm under penalty of prosecution that I am the rightful owner of the hereon described merchandise; or I am an

authorized representative of the rightful owner and affirm that I have been given authority by the rightful owner to sell the hereon described merchandise.

_____

Signature"

J. If requested by a law enforcement agency, a scrap metal dealer shall report in writing all purchases of scrap metal as defined by ~~this act~~ the Oklahoma Scrap Metal Dealers Act within forty-eight (48) hours following such purchase. The report shall contain all the information required by this section.

K. A scrap metal dealer purchasing a vehicle from any person shall be required to record the information required in subsection A of this section and the make, model, license tag number and vehicle identification number of the purchased vehicle. A person selling a vehicle to a scrap metal dealer shall be required to present to the dealer the title of the vehicle or a verified bill of sale from the owner of the vehicle or other proof of ownership in addition to signing a declaration of ownership as required by subsection I of this section. The provisions of this subsection shall not apply to sales, purchases or other transfer of vehicles between scrap metal dealers and licensed automotive dismantlers and parts recyclers.

L. The provisions of ~~this act~~ the Oklahoma Scrap Metal Dealers Act shall not apply to the sale or purchase of aluminum beverage cans for recycling purposes.

M. A scrap metal dealer shall not enter into any cash transactions in excess of One Thousand Dollars ($1,000.00) in payment for the purchase of scrap metal that is listed in subsection B of Section 1424 of this title unless the transaction is made with an exempted seller. Payment by check shall be issued and made payable only to the seller of the scrap metal whose identification information has been obtained pursuant to the provisions of this section.

SECTION 4. AMENDATORY 59 O.S. 2011, Section 1425, is amended to read as follows:

Section 1425. A. Any person found in violation of any provision of ~~this act~~ the Oklahoma Scrap Metal Dealers Act, with the exceptions as provided by subsections B, C and D of this section, shall, upon conviction, be ~~deemed~~ guilty of a misdemeanor and punished by a fine of not more than Two Thousand Five Hundred Dollars ($2,500.00) per offense. ~~A~~ Any person convicted of a second violation of ~~this act~~ the Oklahoma Scrap Metal Dealers Act shall~~,~~ ~~upon conviction,~~ be ~~deemed~~ guilty of a misdemeanor and punished by a fine of not more than Five Thousand Dollars ($5,000.00) per offense or by imprisonment in the county jail for a period of not more than six (6) months. ~~A~~ Any person convicted of a third or subsequent violation of ~~this act~~ the Oklahoma Scrap Metal Dealers Act shall~~,~~ ~~upon conviction,~~ be guilty of a felony punishable by a fine of not more than Ten Thousand Dollars ($10,000.00) per offense or by

imprisonment in the custody of the Department of Corrections for a period of not more than two (2) years, or by both such fine and imprisonment.

B. Any person acting as a scrap metal dealer without a scrap metal dealer license or a sales tax permit as required by ~~this act~~ the Oklahoma Scrap Metal Dealers Act shall, upon conviction, be guilty of a misdemeanor and punished by a fine of not more than Five Hundred Dollars ($500.00)~~,~~; provided, that each day of operation in violation of ~~this act~~ the Oklahoma Scrap Metal Dealers Act shall constitute a separate offense.

C. Any person who knowingly provides false information with respect to the ~~information required by~~ provisions of subsection I of Section ~~3~~ 1423 of this ~~act~~ title shall, upon conviction, be guilty of a ~~misdemeanor~~ felony and punished by a fine of ~~not more than Five Hundred Dollars ($500.00)~~ Five Thousand Dollars ($5,000.00), or by imprisonment in the custody of the Department of Corrections for a period of not more than two (2) years, or by both such fine and imprisonment.

D. Any person convicted of purchasing or selling burnt copper material or copper wire as prohibited by subsection G of Section ~~3~~ 1423 of this ~~act~~ title shall, upon first conviction, be ~~deemed~~ guilty of a misdemeanor and punished by a fine of Two Thousand Five Hundred Dollars ($2,500.00). ~~A~~ Any person convicted of a second or subsequent ~~conviction~~ violation shall be ~~deemed~~ guilty of a felony

~~offense~~ punishable by a fine of Five Thousand Dollars ($5,000.00), or by imprisonment in the custody of the Department of Corrections for a period of not more than two (2) years, or by both such fine and imprisonment.

E. Each scrap metal dealer convicted of a violation of ~~this act~~ the Oklahoma Scrap Metal Dealers Act shall be reported to the Oklahoma Tax Commission by the clerk of the court rendering such verdict.

F. The Tax Commission shall revoke the sales tax permit of any person convicted of three separate violations of ~~this act, and he or she~~ the Oklahoma Scrap Metal Dealers Act. The person shall not be eligible to receive a sales tax permit for such purpose for a period of one (1) year following the revocation. ~~Such~~ The revocation procedure shall be subject to notice and hearing as required by Section ~~6~~ 1426 of this ~~act~~ title.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1428 of Title 59, unless there is created a duplication in numbering, reads as follows:

Effective November 1, 2013, a person shall not engage in business as a scrap metal dealer in this state without a scrap metal dealer license issued by the Oklahoma Department of Agriculture, Food, and Forestry.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1429 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. An applicant for a license to engage in business as a scrap metal dealer shall provide all of the following information on the license application:

1. If the applicant is an individual, the full name and place of residence of the applicant;

2. If the applicant is a firm, corporation or other legal entity, the full name, place of residence, and the position of the individual filing the application on behalf of the entity;

3. The business address of the location where the scrap metal dealer conducts business or will conduct business as a scrap metal dealer;

4. Legal proof of ownership, lease agreement or contract for the business location;

5. Proof of a dedicated telephone line for the business location;

6. Proof of a general liability insurance policy for the business location;

7. Proof of a current discharge permit issued pursuant to the provisions of the Oklahoma Pollutant Discharge Elimination System Act;

8. Whether the person has been previously convicted of, or pled guilty or nolo contendere to any felony or to a misdemeanor involving moral turpitude or dishonesty; and

9. Any other additional information that will sufficiently enable the Oklahoma Department of Agriculture, Food, and Forestry to determine if the scrap metal dealer is prohibited from being issued a license.

B. The Department may conduct any reasonable inquiry or investigation relative to the determination of the fitness of the applicant to be licensed or continue to be licensed including, but not limited to, requiring a national criminal history record check as provided in Section 150.9 of Title 74 of the Oklahoma Statutes.

C. The Department shall charge an application fee in the amount of One Hundred Dollars ($100.00) for processing an initial application for a scrap metal dealer license. The Department shall also charge an investigative fee of One Hundred Dollars ($100.00) to be used for the purpose of conducting an investigation of the applicant. All fees shall be nonrefundable.

D. In addition to the application, each applicant shall submit a full set of fingerprints and a photograph with each application for an original license. The fingerprints shall be used for a national criminal history record check as provided for in subsection B of this section. The applicant shall be required to pay for

fingerprints, photographs and the national criminal history records check required for licensure and renewals.

E. If the results of the investigation of the applicant show no prohibition to granting a license, the Department shall issue the scrap metal dealer license. The scrap metal dealer license shall be valid for a period of one (1) year unless otherwise voluntarily surrendered, suspended or revoked by the Department.

F. A scrap metal dealer license issued pursuant to the provisions of this act is valid for the conduct of business as a scrap metal dealer only at the location specified in the application. A separate scrap metal dealer license shall be required for each location specified in the application form and each license shall designate the location to which it applies. The business of the scrap metal dealer shall not be conducted in any place other than that designated by the license. The scrap metal dealer license shall not be transferable.

G. The Department shall deny the license when the applicant fails to properly complete the application form or if it is determined that the applicant is not eligible to receive a scrap metal dealer license.

H. A scrap metal dealer license may be renewed any time within sixty (60) days prior to the expiration date of the license. To renew a scrap metal dealer license, the licensee must first obtain a renewal form from the Department. The licensee must complete the

renewal form and submit a renewal fee in the amount of One Hundred Dollars ($100.00) to the Department. Upon receipt of the renewal application and fee, the Department shall conduct a national criminal history record check and investigate any other records or information deemed by the Department to be relevant to the renewal of the scrap metal dealer license. If the licensee appears not to have any prohibition to renewing the scrap metal dealer license, the Department shall issue the renewed license for a period of one (1) year.

I. The Oklahoma Department of Agriculture, Food, and Forestry shall promulgate rules, procedures and forms governing the application and renewal procedures for scrap metal dealer licenses.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1430 of Title 59, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Department of Agriculture, Food, and Forestry may suspend, cancel, revoke, or refuse reissuance of a scrap metal dealer license after the person has an opportunity for public hearing pursuant to the Administrative Procedures Act for any of the following causes:

1. Engages in fraud or deceit in obtaining or renewing a license;

2. Acts as a scrap metal dealer in this state without a license;

3. Aids or abets another person in acting as a scrap metal dealer without a license; or

4. Violates any of the provisions of the Oklahoma Scrap Metal Dealers Act.

SECTION 8. This act shall become effective November 1, 2013.

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
April 10, 2013 - DO PASS AS AMENDED