

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 SENATE BILL 365

By: Griffin

4
5
6 AS INTRODUCED

7 An Act relating to scrap metal dealers; amending 59
8 O.S. 2011, Sections 1422, 1423 and 1425, which relate
9 to the Oklahoma Scrap Metal Dealers Act; adding
10 definitions; prohibiting cash transactions in excess
11 of certain amount; requiring certain payment method;
12 modifying certain penalty provision; requiring all
13 scrap metal dealers to be licensed by the Oklahoma
14 Department of Agriculture, Food, and Forestry;
15 providing application guidelines and requirements for
16 scrap metal dealer license; authorizing background
17 investigations; setting fees for original and renewal
18 license; stating term of license; prohibiting the
19 transfer of licenses; establishing license renewal
20 procedures; directing the Oklahoma Department of
21 Agriculture, Food, and Forestry to promulgate certain
22 rules and procedures; providing for the suspension,
23 cancelation or revocation of a scrap metal dealer
24 license under certain circumstances; providing for
codification; and providing an effective date.

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

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

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

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

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

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

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

21 c. holder of a farm-use tax permit,

22 d. manufacturer,

23 e. distributor, or

24 f. retailer;

1 ~~4.~~ 5. "License" means a scrap metal dealer license;

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

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

10 ~~6.~~ 8. "Yard" means the place where any scrap metal dealer
11 stores scrap metal materials or keeps such materials for purpose of
12 sale.

13 SECTION 2. AMENDATORY 59 O.S. 2011, Section 1423, is
14 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 _____
5 Signature"

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

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

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

1 M. A scrap metal dealer shall not enter into any cash
2 transactions in excess of One Thousand Dollars (\$1,000.00) in
3 payment for the purchase of scrap metal. Payment by check shall be
4 issued and made payable only to the seller of the scrap metal and
5 whose identification information has been obtained pursuant to the
6 provisions of this section.

7 SECTION 3. AMENDATORY 59 O.S. 2011, Section 1425, is
8 amended to read as follows:

9 Section 1425. A. Any person found in violation of any
10 provision of ~~this act~~ the Oklahoma Scrap Metal Dealers Act, with the
11 exceptions as provided by subsections B, C and D of this section,
12 shall, upon conviction, be ~~deemed~~ guilty of a misdemeanor and
13 punished by a fine of not more than Two Thousand Five Hundred
14 Dollars (\$2,500.00) per offense. A Any person convicted of a
15 second violation of ~~this act~~ the Oklahoma Scrap Metal Dealers Act
16 shall, upon conviction, be deemed guilty of a misdemeanor and
17 punished by a fine of not more than Five Thousand Dollars
18 (\$5,000.00) per offense or by imprisonment in the county jail for a
19 period of not more than six (6) months. A Any person convicted of a
20 third or subsequent violation of ~~this act~~ the Oklahoma Scrap Metal
21 Dealers Act shall, upon conviction, be guilty of a felony punishable
22 by a fine of not more than Ten Thousand Dollars (\$10,000.00) per
23 offense or by imprisonment in the custody of the Department of
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1 Corrections for a period of not more than two (2) years, or by both
2 such fine and imprisonment.

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

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

17 D. Any person convicted of purchasing or selling burnt copper
18 material or copper wire as prohibited by subsection G of Section ~~3~~
19 1423 of this ~~act~~ title shall, upon first conviction, be ~~deemed~~
20 guilty of a misdemeanor and punished by a fine of Two Thousand Five
21 Hundred Dollars (\$2,500.00). ~~A~~ Any person convicted of a second or
22 subsequent ~~conviction~~ violation shall be ~~deemed~~ guilty of a felony
23 ~~offense~~ punishable by a fine of Five Thousand Dollars (\$5,000.00),
24 or by imprisonment in the custody of the Department of Corrections

1 for a period of not more than two (2) years, or by both such fine
2 and imprisonment.

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

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

14 SECTION 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1428 of Title 59, unless there
16 is created a duplication in numbering, reads as follows:

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

21 SECTION 5. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1429 of Title 59, unless there
23 is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

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

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

21 8. Whether the person has been previously convicted of, or pled
22 guilty or nolo contendere to any felony or to a misdemeanor
23 involving moral turpitude or dishonesty; and
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1 9. Any other additional information that will sufficiently
2 enable the Oklahoma Department of Agriculture, Food, and Forestry to
3 determine if the scrap metal dealer is prohibited from being issued
4 a license.

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

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

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

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

3 F. A scrap metal dealer license issued pursuant to the
4 provisions of the Oklahoma Scrap Metal Dealers Act is valid for the
5 conduct of business as a scrap metal dealer only at the location
6 specified in the application. A separate scrap metal dealer license
7 shall be required for each location specified in the application
8 form and each license shall designate the location to which it
9 applies. The business of the scrap metal dealer shall not be
10 conducted in any place other than that designated by the license.
11 The scrap metal dealer license shall not be transferable.

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

16 H. A scrap metal dealer license may be renewed any time within
17 sixty (60) days prior to the expiration date of the license. To
18 renew a scrap metal dealer license, the licensee must first obtain a
19 renewal form from the Department. The licensee must complete the
20 renewal form and submit a renewal fee in the amount of One Hundred
21 Dollars (\$100.00) to the Department. Upon receipt of the renewal
22 application and fee, the Department shall conduct a national
23 criminal history record check and investigate any other records or
24 information deemed by the Department to be relevant to the renewal

1 of the scrap metal dealer license. If the licensee appears not to
2 have any prohibition to renewing the scrap metal dealer license, the
3 Department shall issue the renewed license for a period of one (1)
4 year.

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

8 SECTION 6. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1430 of Title 59, unless there
10 is created a duplication in numbering, reads as follows:

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

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

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

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

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

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1 SECTION 7. This act shall become effective November 1, 2013.

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