

By: Representative Compretta

To: Judiciary B

HOUSE BILL NO. 1136
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 97-17-71, MISSISSIPPI CODE OF 1972,
2 TO EXPAND THE TYPE OF METALS REGULATED BY THIS SECTION; TO REQUIRE
3 SCRAP METAL DEALERS TO MAINTAIN A RECORD OF PURCHASES; TO PROVIDE
4 A PROCEDURE BY WHICH RECORDS ARE MAINTAINED AND MAY BE INSPECTED;
5 TO AUTHORIZE A HOLD BY LAW ENFORCEMENT ON CERTAIN SALES OF METALS;
6 TO REQUIRE THE REPORTING OF PURCHASES OF CERTAIN METALS; TO REVISE
7 PENALTIES; TO PROVIDE EXEMPTIONS; TO PROVIDE THAT MUNICIPALITIES
8 AND COUNTIES MAY IMPOSE ADDITIONAL OR STRICTER REQUIREMENTS; TO
9 REQUIRE REGISTRATION BY SCRAP METAL DEALERS WITH THE OFFICE OF THE
10 SECRETARY OF STATE; TO PROVIDE THAT SCRAP METAL DEALERS MAY ONLY
11 PURCHASE AIR CONDITIONER EVAPORATOR COILS OR CONDENSERS FROM
12 CERTAIN CONTRACTORS OR COMPANIES; TO PROVIDE PENALTIES FOR
13 VIOLATIONS; AND FOR RELATED PURPOSES.

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

15 **SECTION 1.** Section 97-17-71, Mississippi Code of 1972, is
16 amended as follows:

17 97-17-71. (1) For the purposes of this section, the
18 following terms shall have the meanings ascribed in this section:

19 (a) "Railroad track materials" means any rail, switch
20 component, spike, angle bar, tie plate or bolt of the type used in
21 constructing railroads.

22 (b) "Copper materials" means any copper wire, bars,
23 rods or tubing, including copper wire or cable or coaxial cable of
24 the type used by public utilities, common carriers or
25 communication services providers, whether wireless or wire line,
26 and aluminum copper radiators not attached to a motor vehicle, or
27 any combination of these.

28 (c) "Aluminum materials" means any aluminum cable,
29 bars, rods or tubing of the type used to construct utility,
30 communication or broadcasting towers, aluminum utility wire and
31 aluminum irrigation pipes or tubing.



32 (d) "Law enforcement officer" means any person
33 appointed or employed full time by the state or any political
34 subdivision thereof, or by the state military department as
35 provided in Section 33-1-33, who is duly sworn and vested with
36 authority to bear arms and make arrests, and whose primary
37 responsibility is the prevention and detection of crime, the
38 apprehension of criminals and the enforcement of the criminal
39 traffic laws of this state and/or the ordinances of any political
40 subdivision thereof.

41 (e) "Metal property" means materials as defined in this
42 section as railroad track materials, copper materials and aluminum
43 materials and electrical, communications or utility brass,
44 stainless steel sinks, catalytic converters not attached to a
45 motor vehicle and metal beer kegs. Metal property does not
46 include ferrous materials not listed in this section.

47 (f) "Person" means an individual, partnership,
48 corporation, joint venture, trust, limited liability company,
49 association or any other legal or commercial entity.

50 (g) "Personal identification card" means any government
51 issued photographic identification card.

52 (h) "Purchase transaction" means a transaction in which
53 a person gives consideration in exchange for metal property.

54 (i) "Purchaser" means a person who gives consideration
55 in exchange for metal property.

56 (j) "Record" or "records" means a paper, electronic or
57 other method of storing information.

58 (k) "Scrap metal dealer" means any person who is
59 engaged, from a fixed location or otherwise, in the business of
60 paying compensation for metal property that has served its
61 original economic purpose, whether or not the person is engaged in
62 the business of performing the manufacturing process by which
63 metals are converted into raw material products consisting of



prepared grades and having an existing or potential economic value.

(2) Every scrap metal dealer, owner, keeper or proprietor of a junk shop, junk store or yard, junk cart or other vehicle or boat, or collector of or dealer in junk or other secondhand property of the types and kinds hereinafter described, shall keep an accurate and legible record in which he shall enter the following information for each purchase transaction:

(a) The name, address and age of the person from whom the metal property is purchased as obtained from the seller's personal identification card;

(b) A right thumbprint impression of the person selling or delivering the metal property; however, if taking the right thumbprint is not possible, the fingerprint shall be taken from the left thumb or another finger and the purchaser shall identify which finger has been used. A thumb or fingerprint taken pursuant to this paragraph must be clear and complete and contain no smears or smudges. A thumb or fingerprint taken pursuant to this paragraph shall be maintained for a period of three (3) years from the date of the metal property sale;

(c) The date and place of each acquisition of the metal property;

(d) The weight, quantity or volume and a general physical description of the type of metal property, such as wire, tubing, extrusions or casting, purchased in a purchase transaction;

(e) The amount of consideration given in a purchase transaction for the metal property;

(f) The distinctive number from, and type of, personal identification card of the person selling the metal property to the purchaser. Scanning, photocopying or otherwise recording the information from the seller's personal identification card shall satisfy this requirement;



97 (g) The vehicle license tag number, state of issue and
98 the make and type of the vehicle used to deliver the metal
99 property to the purchaser; and

100 (h) If a person other than the seller delivers the
101 metal property to the purchaser:

102 (i) The name, address and age of the person who
103 delivers the metal property;

104 (ii) The distinctive number from, and type of,
105 personal identification card of the person delivering the metal
106 property to the purchaser; and

107 (iii) A photocopy of the personal identification
108 card of the person who delivers the metal property.

109 Such records shall be maintained by the scrap metal dealer or
110 purchaser for not less than two (2) years from the date of the
111 purchase transaction, and such records shall be made available to
112 any law enforcement officer during usual and customary business
113 hours.

114 (3) Every scrap metal dealer, owner, keeper or proprietor of
115 a junk shop, junk store or yard, junk cart or other vehicle or
116 boat, or collector of or dealer in junk or other secondhand
117 property of the types and kinds hereinafter described, shall keep
118 the following for each purchase transaction:

119 (a) A signed statement from the person receiving
120 consideration in the purchase transaction stating that he is the
121 rightful owner of the metal property or is entitled to sell the
122 metal property being sold;

123 (b) A scanned copy or a photocopy of the personal
124 identification card of the person receiving consideration in the
125 purchase transaction;

126 (c) If a person other than the seller delivers the
127 metal property to the purchaser, a photocopy of the personal
128 identification card of the person delivering the metal property to
129 the purchaser; and



130 (d) A photograph, videotape or similar likeness of the
131 person receiving consideration in which such person's facial
132 features are clearly visible and in which the metal property the
133 person is selling is clearly visible.

134 Such documents shall be maintained by the scrap metal dealer
135 or purchaser for not less than two (2) years from the date of the
136 purchase transaction, and such records shall be made available to
137 any law enforcement officer for inspection during usual and
138 customary business hours.

139 (4) (a) The purchaser of metal property as defined in this
140 act, must hold same separate and apart from other purchases for a
141 period of not less than five (5) days from the date of purchase.
142 The purchaser shall permit any law enforcement officer to make an
143 inspection of such metal property during the holding period.

144 (b) Upon the prior written or electronic request of any
145 law enforcement officer, the purchaser shall report all purchases
146 of metal property, within forty-eight (48) hours after any such
147 purchase is made, to the specific requesting authority. The
148 report shall contain all of the information required to be
149 maintained in the records provided for herein.

150 (5) Notwithstanding subsection (3), during the usual and
151 customary business hours of a scrap metal dealer or other
152 purchaser, a law enforcement officer, after properly identifying
153 himself or herself as a law enforcement officer, shall have the
154 right to inspect all purchased metal property in the possession of
155 the scrap metal dealer or purchaser.

156 (6) (a) Whenever a law enforcement officer has reasonable
157 cause to believe that any item of metal property in the possession
158 of a scrap metal dealer or other purchaser has been stolen, a law
159 enforcement officer who has an affidavit from the alleged rightful
160 owner of the property identifying the property with specificity,
161 including any identifying markings, may issue and deliver a
162 written hold notice to the scrap metal dealer or purchaser. The



hold notice shall specifically identify those items of metal property that are believed to have been stolen and that are subject to the hold notice and shall inform the scrap metal dealer or purchaser of the information contained in this section. Upon receipt of the notice, the scrap metal dealer or purchaser may not process or remove the metal property identified in the notice from the place of business of the scrap metal dealer or purchaser for fifteen (15) calendar days after receipt of the notice, unless sooner released by a law enforcement officer.

(b) No later than the expiration of the fifteen-day period, a law enforcement officer, after receiving additional substantive evidence beyond the initial affidavit, may issue and deliver a second written hold notice, which shall be an extended hold notice. The extended hold notice shall specifically identify those items of metal property that are believed to have been stolen and that are subject to the extended hold notice and shall inform the scrap metal dealer or purchaser of the information contained in this section. Upon receipt of the extended hold notice, the scrap metal dealer or purchaser may not process or remove the items of metal property identified in the notice from the place of business of the scrap metal dealer or purchaser for fifteen (15) calendar days after receipt of the extended hold notice, unless sooner released by a law enforcement officer.

(c) At the expiration of the hold period or, if extended in accordance with this section, at the expiration of the extended hold period, the hold is automatically released, then the scrap metal dealer or purchaser may dispose of the metal property unless other disposition has been ordered by a court of competent jurisdiction.

(d) If the scrap metal dealer or purchaser contests the identification or ownership of the metal property, the party other than the scrap metal dealer or purchaser claiming ownership of any metal property in the possession of a scrap metal dealer or



purchaser may, provided that a timely report of the theft of the
metal property was made to the proper authorities, bring an action
in the circuit court of the county in which the scrap metal dealer
or purchaser is located. The petition for the action shall
include the means of identification of the metal property utilized
by the petitioner to determine ownership of the metal property in
the possession of the scrap metal dealer or purchaser. If the
person who sold the metal property to the scrap metal dealer or
purchaser is convicted of theft of property or criminal mischief
related to the removal of the metal property, the court shall
order the defendant to make full restitution to the victim
including, without limitation, attorney fees, court costs,
property damage which resulted from the theft of the property, and
other expenses.

(e) When a lawful owner recovers stolen metal property
from a scrap metal dealer or purchaser who has complied with this
section, and the person who sold the metal property to the scrap
metal dealer is convicted of a violation of this section, or theft
by receiving stolen property pursuant to Section 97-17-70, the
court shall order the defendant to make full restitution,
including, without limitation, attorney fees, court costs and
other expenses to the scrap metal dealer.

(7) This section shall not apply to purchases of metal
property from any of the following:

(a) A law enforcement officer acting in an official
capacity;

(b) A trustee in bankruptcy, executor, administrator or
receiver who has presented proof of such status to the scrap metal
dealer;

(c) Any public official acting under a court order who
has presented proof of such status to the scrap metal dealer;



227 (d) A sale on the execution, or by virtue of any
228 process issued by a court, if proof thereof has been presented to
229 the scrap metal dealer; or

230 (e) A manufacturing, industrial or other commercial
231 vendor that generates or sells regulated metal property in the
232 ordinary course of its business.

233 (8) It shall be unlawful for any person to give a false
234 statement of ownership or to give a false or altered
235 identification or vehicle tag number and receive money or other
236 consideration from a scrap metal dealer or purchaser in return for
237 metal property.

238 (9) A scrap metal dealer or other purchaser shall not enter
239 into any cash transactions in payment for the purchase of the
240 metal property. Payment shall be made by check issued to the
241 seller of the metal. The check shall be made payable to the name
242 and address of the seller of the metal and mailed to the recorded
243 address of the seller.

244 (10) If a person acquiring metal property knowingly or
245 willfully fails to maintain the records or, * * * to hold such
246 materials for the period of time prescribed by this section, shall
247 be prima facie evidence that the person receiving such metal
248 property received it knowing it to be stolen in violation of
249 Section 97-17-70.

250 (11) It shall be unlawful for any person * * * to transport
251 or cause to be transported for himself or another from any point
252 within this state to any point outside this state any metal
253 property, except if such person or entity first report to the
254 sheriff of the county from which he * * * departs this state
255 transporting such materials the same information that a purchaser
256 in this state would be required to obtain and keep in a record as
257 set forth in subsection (2) hereof * * *. In such a case the
258 sheriff receiving such report shall keep such information in
259 records maintained in his office as a public record available for



inspection by any person at all reasonable times. Provided, this section shall not apply to a public utility as that term is defined in Section 77-3-3, Mississippi Code of 1972, engaged in carrying on utility operations or to a railroad as that term is defined in Section 77-9-5, Mississippi Code of 1972,communications service providers, whether wireless or wire line, to a scrap metal dealer, or to a person identified in subsection (7) as being exempt from the provisions of this section.

(12) It shall be unlawful for a scrap metal dealer or other purchaser to knowingly purchase or possess a metal beer keg, or a metal syrup tank generally used by the soft drink industry, whether damaged or undamaged, or any reasonably recognizable part thereof, on any premises that the dealer uses to buy, sell, store, shred, melt, cut or otherwise alter scrap metal. However, it shall not be unlawful to purchase or possess a metal syrup tank generally used by the soft drink industry if the scrap metal dealer or other purchaser obtains a bill of sale at the time of purchase from a seller if the seller is a manufacturer of such tanks, a soft drink company or a soft drink distributor.

(13) It shall be unlawful to sell any bronze vase marker, memorial, statue, plaque, or other bronze object used at a cemetery or other location where deceased persons are interred or memorialized to a scrap metal dealer or for any such dealer to purchase those objects, unless the source of the bronze is known and notice is provided to the municipal or county law enforcement agency where the dealer is located. The notice shall identify all names, letters, dates and symbols on the bronze and a photograph of the bronze shall be attached thereto. Written permission from the cemetery and the appropriate law enforcement agency must be received before any type of bronze described in this subsection may be purchased, processed, sold or melted.



291 (14) It shall be unlawful for a scrap metal dealer or
292 purchaser to purchase metal property from a person younger than
293 eighteen (18) years of age.

294 (15) Metal property may not be purchased, acquired or
295 collected between the hours of 9:00 p.m. and 6:00 a.m.

296 (16) Except as provided in this subsection, any person
297 willfully or knowingly violating the provisions of this section
298 shall, upon conviction thereof, be deemed guilty of a misdemeanor,
299 and shall be punished by a fine not to exceed One Thousand Dollars
300 (\$1,000.00) per offense, unless the purchase transaction or
301 transactions related to the violation, in addition to any costs
302 which are, or would be, incurred in repairing or in the attempt to
303 recover any property damaged in the theft of or removal of the
304 metal property, are in aggregate an amount which exceeds Five
305 Hundred Dollars (\$500.00), in which case the person shall be
306 guilty of a felony and shall be imprisoned in the custody of the
307 Department of Corrections for a term not to exceed ten (10) years,
308 fined not more than Ten Thousand Dollars (\$10,000.00), or both.
309 Any person found guilty of stealing metal property or receiving
310 metal property, knowing it to be stolen in violation of Section
311 97-17-70, shall be ordered to make full restitution to the victim
312 including, without limitation, restitution for property damage
313 that resulted from the theft of the property.

314 (17) This section shall not be construed to repeal other
315 criminal laws. Whenever conduct proscribed by any provision of
316 this section is also proscribed by any other provision of law, the
317 provision which carries the more serious penalty shall be applied.

318 (18) This section shall apply to all businesses regulated
319 under this section without regard to the location within the State
320 of Mississippi.

321 (19) This section shall not be construed to prohibit
322 municipalities and counties from enacting and implementing



ordinances, rules and regulations that impose additional or
stricter requirements relating to purchase transactions.

SECTION 2. (1) Effective October 1, 2008, no metal property dealer or other purchaser shall purchase, deal or otherwise engage in the scrap metal business unless the dealer is registered with the Secretary of State. All registrations hereunder shall expire two (2) years from the date of the registration or the renewal thereof. The Secretary of State may promulgate and adopt such rules and regulations as are reasonably necessary to carry out the provisions of this section and establish such registration and renewal fees as are adequate to cover the administrative costs associated with the registration program.

(2) Included on each registration and renewal form shall be a section whereby the registrant must declare, under penalty of perjury, whether such registrant has ever been convicted of a violation of Section 97-17-71 or convicted of the criminal offense of larceny, burglary or vandalism, where such offense involved metal property as defined in Section 97-17-71.

(3) An applicant who has been convicted of a violation of Section 97-17-71 or has a conviction for the criminal offense of larceny, burglary or vandalism, where such offense involved metal property, shall be prohibited from registering under this section for five (5) years from the date of conviction.

SECTION 3. (1) It is an offense for a scrap metal dealer or other purchaser to pay cash to a person who presents an air conditioner evaporator coil or condenser, in whole or in part, for sale as scrap, or for such dealer to make payment of any kind at the time of the transaction.

(2) Scrap metal described in subsection (1) may only be sold for scrap by an authorized agent, representative or employee of one (1) of the following:



(a) A licensed HVAC contractor who acquired the evaporator coil or condenser in the performance as a contractor as defined in Section 31-3-1;

(b) A company meeting all local or municipal requirements to obtain a permit from that jurisdiction to repair, replace and install HVAC units containing copper evaporator coils or condensers;

(c) Where the jurisdiction does not require a permit to repair, replace and install HVAC units containing copper evaporator coils or condensers, by a company holding current sales tax identification number and privilege license indicating the business as that of an HVAC installer or repairer; or

(d) A company holding a current sales tax identification number and privilege license indicating the business as that of an HVAC installer or repairer.

(3) The person offering the air conditioner evaporator coil or condenser for sale as scrap shall have in such person's possession documentation that the company for whom it is being sold is a company described in subsection (2), and that the person selling the evaporator coil or condenser is an authorized agent, representative or employee of that company.

(4) Payment for scrap metal described in subsection (1) must be made by check or money order, mailed to the business address of the company for whom the metal is being sold, and the name of such company must be the payee on the check.

(5) (a) A violation of this section is a misdemeanor punishable by a fine not to exceed One Thousand Dollars (\$1,000.00) per offense.

(b) Nothing in this section shall be construed to preclude a person violating this section from also being prosecuted for any other applicable criminal offense.

SECTION 4. This act shall take effect and be in force sixty (60) days after its passage.

