

By: Senator(s) Hewes

To: Judiciary, Division B

SENATE BILL NO. 2006
(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 REVISE PENALTIES; TO PROVIDE EXEMPTIONS; TO REQUIRE
7 REGISTRATION BY SCRAP METAL DEALERS WITH THE OFFICE OF THE
8 SECRETARY OF STATE WITH CERTAIN ENFORCEMENT POWERS UNDER THE ACT;
9 TO PROVIDE PENALTIES FOR VIOLATIONS; TO PROVIDE THAT SCRAP METAL
10 DEALERS MAY ONLY PURCHASE AIR CONDITIONER EVAPORATOR COILS OR
11 CONDENSERS FROM CERTAIN CONTRACTORS OR COMPANIES; TO PROVIDE
12 PENALTIES; AND FOR RELATED PURPOSES.

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

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

16 97-17-71. (1) For the purposes of this section, the
17 following terms shall have the meanings ascribed in this section:

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

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



32 not include aluminum cans that have served their original economic
33 purpose.

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

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

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

52 (g) "Personal identification card" means any government
53 issued photographic identification card.

54 (h) "Photograph" or "photographically" means a still
55 photographic image, including images captured in digital format,
56 that are of such quality that the persons and objects depicted are
57 clearly identifiable.

58 (i) "Purchase transaction" means a transaction in which
59 a person gives consideration in exchange for metal property.

60 (j) "Purchaser" means a person who gives consideration
61 in exchange for metal property.

62 (k) "Record" or "records" means a paper, electronic or
63 other method of storing information.



64 (1) "Scrap metal dealer" means any person who is
65 engaged, from a fixed location or otherwise, in the business of
66 paying compensation for metal property that has served its
67 original economic purpose, whether or not the person is engaged in
68 the business of performing the manufacturing process by which
69 metals are converted into raw material products consisting of
70 prepared grades and having an existing or potential economic
71 value.

72 (2) Every scrap metal dealer or other purchaser shall keep
73 an accurate and legible record in which he shall enter the
74 following information for each purchase transaction:

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

78 (b) The date and place of each acquisition of the metal
79 property;

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

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

86 (e) The vehicle license tag number, state of issue and
87 the make and type of the vehicle used to deliver the metal
88 property to the purchaser;

89 (f) If a person other than the seller delivers the
90 metal property to the purchaser, the name, address and age of the
91 person who delivers the metal property;

92 (g) A signed statement from the person receiving
93 consideration in the purchase transaction stating that he is the
94 rightful owner of the metal property or is entitled to sell the
95 metal property being sold;



96 (h) (i) A scanned copy or a photocopy of the personal
97 identification card of the person receiving consideration in the
98 purchase transaction; or

99 (ii) If a person other than the seller delivers
100 the metal property to the purchaser, a scanned copy or a photocopy
101 of the personal identification card of the person delivering the
102 metal property to the purchaser; and

103 (i) A photograph, videotape or similar likeness of the
104 person receiving consideration or any person other than the seller
105 who delivers the metal property to the purchaser in which the
106 person's facial features are clearly visible and in which the
107 metal property the person is selling or delivering is clearly
108 visible.

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) The purchaser of metal property must hold the metal
115 property separate and identifiable from other purchases for not
116 less than three (3) business days from the date of purchase. The
117 purchaser shall also photographically capture the metal property
118 in the same form, without change, in which the metal property was
119 acquired, and maintain the photograph for a period of not less
120 than two (2) years. The time and date shall be digitally recorded
121 on the photograph, and the identity of the person taking the
122 photograph shall be recorded. The purchaser shall permit any law
123 enforcement officer to make an inspection of the metal property
124 during the holding period, and of all photographs of the metal
125 property. Any photograph of metal property taken and maintained
126 pursuant to this subsection shall be admissible in any civil or
127 criminal proceeding.



128 (4) During the usual and customary business hours of a scrap
129 metal dealer or other purchaser, a law enforcement officer, after
130 proper identification as a law enforcement officer, shall have the
131 right to inspect all purchased metal property in the possession of
132 the scrap metal dealer or purchaser.

133 (5) (a) Whenever a law enforcement officer has reasonable
134 cause to believe that any item of metal property in the possession
135 of a scrap metal dealer or other purchaser has been stolen, a law
136 enforcement officer who has an affidavit from the alleged rightful
137 owner of the property identifying the property with specificity,
138 including any identifying markings, may issue and deliver a
139 written hold notice to the scrap metal dealer or other purchaser.
140 The hold notice shall specifically identify those items of metal
141 property that are believed to have been stolen and that are
142 subject to the hold notice. Upon receipt of the notice, the scrap
143 metal dealer or other purchaser may not process or remove the
144 metal property identified in the notice from the place of business
145 of the scrap metal dealer or purchaser for fifteen (15) calendar
146 days after receipt of the notice, unless sooner released by a law
147 enforcement officer.

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



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

167 (d) If the scrap metal dealer or other purchaser
168 contests the identification or ownership of the metal property,
169 the party other than the scrap metal dealer or other purchaser
170 claiming ownership of any metal property in the possession of a
171 scrap metal dealer or other purchaser, provided that a timely
172 report of the theft of the metal property was made to the proper
173 authorities, may bring a civil action in the circuit court of the
174 county in which the scrap metal dealer or purchaser is located.
175 The petition for the action shall include the means of
176 identification of the metal property utilized by the petitioner to
177 determine ownership of the metal property in the possession of the
178 scrap metal dealer or other purchaser.

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

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

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



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

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

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

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

203 (7) It shall be unlawful for any person to give a false
204 statement of ownership or to give a false or altered
205 identification or vehicle tag number and receive money or other
206 consideration from a scrap metal dealer or other purchaser in
207 return for metal property.

208 (8) A scrap metal dealer or other purchaser shall not enter
209 into any cash transactions in payment for the purchase of metal
210 property. Payment shall be made by check issued to the seller of
211 the metal, made payable to the name and address of the seller and
212 mailed to the recorded address of the seller, or by electronic
213 funds transfer. Payment shall not be made for a period of three
214 (3) days after the purchase transaction.

215 (9) If a person acquiring metal property fails to maintain
216 the records or * * * to hold such materials for the period of time
217 prescribed by this section, such failure shall be prima facie
218 evidence that the person receiving the metal property received it
219 knowing it to be stolen in violation of Section 97-17-70.

220 (10) It shall be unlawful for any person * * * to transport
221 or cause to be transported for himself or another from any point
222 within this state to any point outside this state any metal
223 property, unless the person or entity first reports to the sheriff
224 of the county from which he * * * departs this state transporting



225 such materials the same information that a purchaser in this state
226 would be required to obtain and keep in a record as set forth in
227 subsection (2) of this section * * *. In such a case the sheriff
228 receiving the report shall keep the information in records
229 maintained in his office as a public record available for
230 inspection by any person at all reasonable times. * * * This
231 section shall not apply to a public utility, as that term is
232 defined in Section 77-3-3, * * * engaged in carrying on utility
233 operations; to a railroad, as that term is defined in Section
234 77-9-5; * * * to a communication service provider, whether
235 wireless or wire line; to a scrap metal dealer; or to a person
236 identified in subsection (6) as being exempt from the provisions
237 of this section.

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

249 (12) It shall be unlawful to sell to a scrap metal dealer
250 any bronze vase and/or marker, memorial, statue, plaque, or other
251 bronze object used at a cemetery or other location where deceased
252 persons are interred or memorialized, or for any such dealer to
253 purchase those objects, unless the source of the bronze is known
254 and notice is provided to the municipal or county law enforcement
255 agency where the dealer is located. The notice shall identify all
256 names, letters, dates and symbols on the bronze and a photograph
257 of the bronze shall be attached thereto. Written permission from



258 the cemetery and the appropriate law enforcement agency must be
259 received before any type of bronze described in this subsection
260 may be purchased, processed, sold or melted.

261 (13) It shall be unlawful for a scrap metal dealer or other
262 purchaser to purchase metal property from a person younger than
263 eighteen (18) years of age.

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

266 (15) Except as provided in this subsection, any person
267 willfully or knowingly violating the provisions of this section
268 shall, upon conviction thereof, be deemed guilty of a misdemeanor,
269 and shall be punished by a fine not to exceed One Thousand Dollars
270 (\$1,000.00) per offense, unless the purchase transaction or
271 transactions related to the violation, in addition to any costs
272 which are, or would be, incurred in repairing or in the attempt to
273 recover any property damaged in the theft of or removal of the
274 metal property, are in aggregate an amount which exceeds Five
275 Hundred Dollars (\$500.00), in which case the person shall be
276 guilty of a felony and shall be imprisoned in the custody of the
277 Department of Corrections for a term not to exceed ten (10) years,
278 fined not more than Ten Thousand Dollars (\$10,000.00), or both.
279 Any person found guilty of stealing metal property or receiving
280 metal property, knowing it to be stolen in violation of Section
281 97-17-70, shall be ordered to make full restitution to the victim,
282 including, without limitation, restitution for property damage
283 that resulted from the theft of the property.

284 (16) This section shall not be construed to repeal other
285 criminal laws. Whenever conduct proscribed by any provision of
286 this section is also proscribed by any other provision of law, the
287 provision which carries the more serious penalty shall be applied.

288 (17) This section shall apply to all businesses regulated
289 under this section without regard to the location within the State
290 of Mississippi.



291 (18) This section shall not be construed to prohibit
292 municipalities and counties from enacting and implementing
293 ordinances, rules and regulations that impose stricter
294 requirements relating to purchase transactions.

295 **SECTION 2.** (1) (a) From and after sixty (60) days after
296 the passage of this act, it shall be unlawful for any scrap metal
297 dealer or any person who purchases scrap metal, deals in scrap
298 metal, or otherwise engages in the scrap metal business to fail to
299 register with the Secretary of State. All registrations under
300 this section shall expire two (2) years from the date of the
301 registration or the renewal thereof.

302 (b) The Secretary of State may promulgate and adopt
303 such rules and regulations as are reasonably necessary to carry
304 out the provisions of this section and establish such registration
305 and renewal fees as are adequate to cover the administrative costs
306 associated with the registration program.

307 (c) The Secretary of State may deny, suspend, revoke or
308 refuse to renew any registration following notice to the applicant
309 or registrant in accordance with the promulgated rules and an
310 opportunity for a hearing for any failure to comply with this
311 section, or for other good cause.

312 (2) A violation of this section is a misdemeanor punishable
313 by a fine of not less than Five Hundred Dollars (\$500.00) but not
314 to exceed One Thousand Dollars (\$1,000.00) for the first offense.
315 Any person who shall be guilty of any subsequent violations of
316 this section requiring registration shall be guilty of a felony
317 offense and shall be imprisoned in the custody of the Department
318 of Corrections for a term not to exceed three (3) years, fined not
319 more than Five Thousand Dollars (\$5,000.00), or both.

320 (3) (a) To register or renew registration, the registrant
321 must declare, under penalty of perjury, whether such registrant
322 has ever been convicted of a violation of Section 97-17-71 or
323 convicted of a criminal offense of larceny, burglary or vandalism,



324 where the offense involved metal property as defined in Section
325 97-17-71.

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

332 (ii) Any false statement submitted to the
333 Secretary of State for the purpose of unlawfully registering under
334 this section shall be punished as perjury in the manner provided
335 in Section 97-9-61, and a person so convicted shall be
336 disqualified for life from registering as a scrap metal dealer
337 under this section.

338 (4) The Secretary of State shall immediately report any
339 suspected criminal violation accompanied by all relevant records
340 to the Office of Attorney General and the appropriate district
341 attorney for further proceedings.

342 (5) The Secretary of State shall have the authority to:

343 (a) Conduct and carry out criminal background history
344 verification of the information provided by the applicant or
345 registrant and to require the submission of information and forms
346 from the applicant or registrant in order to accomplish the
347 registration duties imposed by this section;

348 (b) Issue a cease and desist order, with a prior
349 hearing, against the scrap metal dealer or other purchaser alleged
350 to be in violation of this section, directing the person or
351 persons to cease and desist from further illegal activity;

352 (c) (i) Issue an order against any scrap metal dealer
353 or other purchaser for any violation of this section, imposing an
354 administrative penalty up to a maximum of One Thousand Dollars
355 (\$1,000.00) for each offense. Each violation shall be considered
356 a separate offense in a single proceeding or a series of related



357 proceedings. Any administrative penalty, plus reimbursement for
358 all costs and expenses incurred in the investigation of the
359 violation and any administrative proceedings, shall be paid to the
360 Secretary of State;

361 (ii) For the purpose of determining the amount or
362 extent of a sanction, if any, to be imposed under paragraph (c)(i)
363 of this subsection, the Secretary of State shall consider, among
364 other factors, the frequency, persistence and willfulness of the
365 conduct constituting a violation of this section or any rule or
366 order hereunder; the number of persons adversely affected by the
367 conduct; and the resources of the person committing the violation;

368 (d) Bring an action in chancery court to enjoin the
369 acts or practices complained of to enforce compliance with this
370 section or any rule promulgated or order entered hereunder. Upon
371 a proper showing, a permanent or temporary injunction, restraining
372 order, or writ of mandamus shall be granted and a receiver or
373 conservator may be appointed for the defendant or the defendant's
374 assets. In addition, upon a proper showing by the Secretary of
375 State, the court may enter an order of rescission or restitution
376 directed to any person who has engaged in any act constituting a
377 violation of any provision of this section or any rule or order
378 hereunder, or the court may impose a civil penalty up to a maximum
379 of One Thousand Dollars (\$1,000.00) for each offense, provided
380 that each violation shall be considered as a separate offense in a
381 single proceeding or a series of related proceedings. The court
382 may not require the Secretary of State to post a bond.

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



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

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

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

398 (c) Where the jurisdiction does not require a permit to
399 repair, replace and install HVAC units containing copper
400 evaporator coils or condensers, by a company holding a privilege
401 license indicating the business as that of an HVAC installer or
402 repairer; or

403 (d) A company holding a privilege license indicating
404 the business as that of an HVAC installer or repairer.

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

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

416 (5) (a) A violation of this section is a misdemeanor
417 punishable by a fine not to exceed One Thousand Dollars
418 (\$1,000.00) per offense.



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

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

