

By: Senator(s) Clarke

To: Judiciary, Division B

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2582

1 AN ACT TO AMEND SECTION 97-17-71, MISSISSIPPI CODE OF 1972,
2 TO DEFINE "AGRICULTURAL EQUIPMENT" FOR PURPOSES OF THE SCRAP METAL
3 STOLEN PROPERTY LAW; AND FOR RELATED PURPOSES.

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

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

7 97-17-71. (1) For the purposes of this section, the
8 following terms shall have the meanings ascribed in this section:

9 (a) "Railroad materials" means any materials, equipment
10 and parts used in the construction, operation, protection and
11 maintenance of a railroad.

12 (b) "Copper materials" means any copper wire, bars,
13 rods or tubing, including copper wire or cable or coaxial cable of
14 the type used by public utilities, common carriers or
15 communication services providers, whether wireless or wire line,
16 copper air-conditioner evaporator coil or condenser, aluminum
17 copper radiators not attached to a motor vehicle, or any
18 combination of these.



19 (c) "Aluminum materials" means any aluminum cable,
20 bars, rods or tubing of the type used to construct utility,
21 communication or broadcasting towers, aluminum utility wire and
22 aluminum irrigation pipes or tubing. "Aluminum materials" does
23 not include aluminum cans that have served their original economic
24 purpose.

25 (d) "Agricultural equipment" means farm tractors,
26 all-terrain vehicles, and all farm machinery and farm implements,
27 whether mechanized or towed, used by farmers in the production of
28 livestock, livestock products, poultry, domesticated fish,
29 agricultural crops or horticultural, ornamental plant crops, and
30 sod and soil cultivation.

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

40 (* * *ef) "Metal property" means materials as defined
41 in this section as railroad track materials, copper materials and
42 aluminum materials and electrical, communications or utility
43 brass, metal covers for service access and entrances to sewers and



44 storm drains, metal bridge pilings, irrigation wiring and other
45 metal property attached to or part of center pivots, grain bins,
46 agricultural equipment, stainless steel sinks, catalytic
47 converters not attached to a motor vehicle and metal beer kegs.
48 Metal property does not include ferrous materials not listed in
49 this section.

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

53 (* * *gh) "Personal identification card" means any
54 government issued photographic identification card.

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

59 (* * *ij) "Purchase transaction" means a transaction
60 in which a person gives consideration in exchange for metal
61 property.

62 (* * *jk) "Purchaser" means a person who gives
63 consideration in exchange for metal property.

64 (* * *kl) "Record" or "records" means a paper,
65 electronic or other method of storing information.

66 (* * *lm) "Scrap metal dealer" means any person who is
67 engaged, from a fixed location or otherwise, in the business of
68 paying compensation for metal property that has served its



69 original economic purpose, whether or not the person is engaged in
70 the business of performing the manufacturing process by which
71 metals are converted into raw material products consisting of
72 prepared grades and having an existing or potential economic
73 value.

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

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

80 (b) The date and place of each acquisition of the metal
81 property;

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

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

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

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



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

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

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

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

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

116 (3) The purchaser of metal property must hold the metal
117 property separate and identifiable from other purchases for not
118 less than three (3) business days from the date of purchase. The



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

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

135 (5) (a) Whenever a law enforcement officer has reasonable
136 cause to believe that any item of metal property in the possession
137 of a scrap metal dealer or other purchaser has been stolen, a law
138 enforcement officer who has an affidavit from the alleged rightful
139 owner of the property identifying the property with specificity,
140 including any identifying markings, may issue and deliver a
141 written hold notice to the scrap metal dealer or other purchaser.
142 The hold notice shall specifically identify those items of metal
143 property that are believed to have been stolen and that are



144 subject to the hold notice. Upon receipt of the notice, the scrap
145 metal dealer or other purchaser may not process or remove the
146 metal property identified in the notice from the place of business
147 of the scrap metal dealer or purchaser for fifteen (15) calendar
148 days after receipt of the notice, unless sooner released by a law
149 enforcement officer.

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

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



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

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

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

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



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

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

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

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

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

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

217 (9) If a person acquiring metal property fails to maintain
218 the records or to hold such materials for the period of time



219 prescribed by this section, such failure shall be prima facie
220 evidence that the person receiving the metal property received it
221 knowing it to be stolen in violation of Section 97-17-70.

222 (10) It shall be unlawful for any person to transport or
223 cause to be transported for himself or another from any point
224 within this state to any point outside this state any metal
225 property, unless the person or entity first reports to the sheriff
226 of the county from which he departs this state transporting such
227 materials the same information that a purchaser in this state
228 would be required to obtain and keep in a record as set forth in
229 subsection (2) of this section. In such a case the sheriff
230 receiving the report shall keep the information in records
231 maintained in his office as a public record available for
232 inspection by any person at all reasonable times. This section
233 shall not apply to a public utility, as that term is defined in
234 Section 77-3-3, engaged in carrying on utility operations; to a
235 railroad, as that term is defined in Section 77-9-5; to a
236 communications service provider, whether wireless or wire line; to
237 a scrap metal dealer; or to a person identified in subsection (6)
238 as being exempt from the provisions of this section.

239 (11) It shall be unlawful for a scrap metal dealer or other
240 purchaser to knowingly purchase or possess a metal beer keg, or a
241 metal syrup tank generally used by the soft drink industry,
242 whether damaged or undamaged, or any reasonably recognizable part
243 thereof, on any premises that the dealer uses to buy, sell, store,



244 shred, melt, cut or otherwise alter scrap metal. However, it
245 shall not be unlawful to purchase or possess a metal syrup tank
246 generally used by the soft drink industry if the scrap metal
247 dealer or other purchaser obtains a bill of sale at the time of
248 purchase from a seller if the seller is a manufacturer of such
249 tanks, a soft drink company or a soft drink distributor.

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

262 (13) It shall be unlawful for any scrap metal dealer to
263 purchase any manhole cover and other similar types of utility
264 access covers, including storm drain covers, or any metal property
265 clearly identified as belonging to a political subdivision of the
266 state or a municipality, unless that metal property is purchased
267 from the political subdivision, the municipal utility or the
268 manufacturer of the metal. Any purchaser who purchases metal



269 property in bulk shall be allowed twenty-four (24) hours to
270 determine if any metal property prohibited by this subsection is
271 included in a bulk purchase. If such prohibited metal property is
272 included in a bulk purchase, the purchaser shall notify law
273 enforcement no later than twenty-four (24) hours after the
274 purchase.

275 (14) It shall be unlawful for a scrap metal dealer or other
276 purchaser to purchase metal property from a person younger than
277 eighteen (18) years of age.

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

280 (16) Except as provided in this subsection, any person
281 willfully or knowingly violating the provisions of this section
282 shall, upon conviction thereof, be deemed guilty of a misdemeanor,
283 and shall be punished by a fine not to exceed One Thousand Dollars
284 (\$1,000.00) per offense, unless the purchase transaction or
285 transactions related to the violation, in addition to any costs
286 which are, or would be, incurred in repairing or in the attempt to
287 recover any property damaged in the theft of or removal of the
288 metal property, are in aggregate an amount which exceeds One
289 Thousand Dollars (\$1,000.00) but less than Five Thousand Dollars
290 (\$5,000.00), in which case the person shall be guilty of a felony
291 and shall be imprisoned in the custody of the Department of
292 Corrections for a term not to exceed five (5) years, fined not
293 more than Ten Thousand Dollars (\$10,000.00), or both. Any person



294 found guilty of stealing metal property or receiving metal
295 property, knowing it to be stolen in violation of Section
296 97-17-70, shall be ordered to make full restitution to the victim,
297 including, without limitation, restitution for property damage
298 that resulted from the theft of the property.

299 (17) If the purchase transaction or transactions related to
300 the violation, in addition to any costs which are, or would be,
301 incurred in repairing or in the attempt to recover any property
302 damaged in the theft of or removal of the metal property, are in
303 aggregate an amount which exceeds Five Thousand Dollars
304 (\$5,000.00) but less than Twenty-five Thousand Dollars
305 (\$25,000.00), the person shall be guilty of a felony and shall be
306 imprisoned in the custody of the Department of Corrections for a
307 term not to exceed ten (10) years, fined not more than Ten
308 Thousand Dollars (\$10,000.00), or both.

309 (18) If the purchase transaction or transactions related to
310 the violation, in addition to any costs which are, or would be,
311 incurred in repairing or in the attempt to recover any property
312 damaged in the theft of or removal of the metal property, are in
313 aggregate an amount which exceeds Twenty-five Thousand Dollars
314 (\$25,000.00), the person shall be guilty of a felony and shall be
315 imprisoned in the custody of the Department of Corrections for a
316 term not to exceed twenty (20) years, fined not more than Ten
317 Thousand Dollars (\$10,000.00), or both.



318 (19) This section shall not be construed to repeal other
319 criminal laws. Whenever conduct proscribed by any provision of
320 this section is also proscribed by any other provision of law, the
321 provision which carries the more serious penalty shall be applied.

322 (20) This section shall apply to all businesses regulated
323 under this section without regard to the location within the State
324 of Mississippi.

325 (21) This section shall not be construed to prohibit
326 municipalities and counties from enacting and implementing
327 ordinances, rules and regulations that impose stricter
328 requirements relating to purchase transactions.

329 **SECTION 2.** This act shall take effect and be in force from
330 and after July 1, 2015, and shall stand repealed from and after
331 June 30, 2015.

