

By: Senator(s) Thompson, England, Suber,
McCaughn

To: Judiciary, Division B

SENATE BILL NO. 2545
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 97-17-71, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE PENALTIES FOR VIOLATIONS OF PURCHASE TRANSACTIONS
3 FOR SCRAP METAL; TO REVISE DEFINITIONS BY ADDING CERTAIN TERMS; TO
4 REQUIRE RECORD KEEPING FOR DEALER TO DEALER TRANSACTIONS; TO
5 REGULATE DELIVERY OF METAL PROPERTY BY A PERSON OTHER THAN THE
6 SELLER WHO DELIVERS METAL PROPERTY; TO PROVIDE THAT THE SALE OF
7 CERTAIN TELECOMMUNICATION WIRE SHALL BE UNLAWFUL; TO PROVIDE THAT
8 THIS SECTION SHALL TAKE PRECEDENCE OVER LOCAL ORDINANCES GOVERNING
9 PURCHASE TRANSACTIONS OF METAL PROPERTY; TO AMEND SECTION
10 97-17-71.1, MISSISSIPPI CODE OF 1972, TO REQUIRE A REGISTRANT TO
11 DECLARE WHETHER THE REGISTRANT HAS EVER BEEN CONVICTED OF ANY
12 FELONY OFFENSE OR ANY MISDEMEANOR OFFENSE INVOLVING FRAUD,
13 DISHONESTY, OR DECEIT WITHIN FIVE YEARS PRECEDING THE DATE OF
14 APPLICATION; TO PROVIDE THAT A REGISTRANT CONVICTED OF SUCH AN
15 OFFENSE MAY BE PROHIBITED FROM REGISTERING FOR FIVE YEARS FROM THE
16 DATE OF CONVICTION; TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON TO
17 MAKE CERTAIN FALSE OR MISLEADING STATEMENTS; TO AUTHORIZE THE
18 SECRETARY OF STATE TO COMPEL OR ALLOW A PERSON TO TESTIFY OR
19 PRODUCE A RECORD UNDER CERTAIN CIRCUMSTANCES; TO REQUIRE THE
20 SECRETARY OF STATE TO HOLD AN ADMINISTRATIVE HEARING WITHIN A
21 CERTAIN NUMBER OF BUSINESS DAYS OF ISSUING AN IMMEDIATE CEASE AND
22 DESIST ORDER; TO AMEND SECTION 97-17-71.2, MISSISSIPPI CODE OF
23 1972, TO PROVIDE THAT THE PURCHASE OF ANY AIR CONDITIONER
24 EVAPORATOR COIL IS SUBJECT TO CERTAIN RECORD KEEPING REQUIREMENTS;
25 TO CREATE NEW SECTION 97-17-71.3, MISSISSIPPI CODE OF 1972, TO
26 PROVIDE REQUIREMENTS FOR THE PURCHASE AND ACQUISITION OF CERTAIN
27 CATALYTIC CONVERTERS NOT ATTACHED TO A MOTOR VEHICLE; TO PROVIDE
28 THAT IT IS UNLAWFUL FOR ANY PERSON TO TRANSFER OR PURCHASE A USED,
29 DETACHED CATALYTIC CONVERTER WITHOUT MEETING THE REQUIREMENTS OF
30 THIS SECTION; TO PROVIDE CRIMINAL PENALTIES FOR VIOLATIONS; AND
31 FOR RELATED PURPOSES

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



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

35 97-17-71. (1) For the purposes of this section, the
36 following terms shall have the meanings ascribed in this section:

37 (a) "Railroad materials" means any materials, equipment
38 and parts used in the construction, operation, protection and
39 maintenance of a railroad.

40 (b) "Copper materials" means any copper wire, bars,
41 rods or tubing, including copper wire or cable or coaxial cable of
42 the type used by public utilities, common carriers or
43 communication services providers, whether wireless or wire line,
44 copper air conditioner evaporator coil or condenser, aluminum
45 copper radiators not attached to a motor vehicle, or any
46 combination of these.

47 (c) "Aluminum materials" means any aluminum cable,
48 bars, rods or tubing of the type used to construct utility,
49 communication or broadcasting towers, aluminum utility wire and
50 aluminum irrigation pipes or tubing. "Aluminum materials" does
51 not include aluminum cans that have served their original economic
52 purpose.

53 (d) "Dealer-to-dealer transaction(s)" means any
54 transaction of regulated metals, regardless of compensation,
55 between registered scrap metal dealers.

56 (* * *e) "Law enforcement officer" means any person
57 appointed or employed full time by the state or any political



58 subdivision thereof, or by the state military department as
59 provided in Section 33-1-33, who is duly sworn and vested with
60 authority to bear arms and make arrests, and whose primary
61 responsibility is the prevention and detection of crime, the
62 apprehension of criminals and the enforcement of the criminal
63 traffic laws of this state or the ordinances of any political
64 subdivision thereof.

65 (* * *f) "Metal property" means materials as defined
66 in this section as railroad track materials, copper materials and
67 aluminum materials and electrical, communications or utility
68 brass, metal covers for service access and entrances to sewers and
69 storm drains, metal bridge pilings, irrigation wiring and other
70 metal property attached to or part of center pivots, grain bins,
71 stainless steel sinks, catalytic converters not attached to a
72 motor vehicle and metal beer kegs. Metal property does not
73 include ferrous materials not listed in this section.

74 (* * *g) "Person" means an individual, partnership,
75 corporation, joint venture, trust, limited liability company,
76 association or any other legal or commercial entity.

77 (* * *h) "Personal identification card" means any
78 government issued photographic identification card including a
79 valid identification card issued by a federally recognized Indian
80 tribe that contains a color photograph of the card holder and the
81 card holder's legal name, residence address and date of birth.



82 (* * *i) "Photograph" or "photographically" means a
83 still photographic image, including images captured in digital
84 format, that are of such quality that the persons and objects
85 depicted are clearly identifiable.

86 (* * *j) "Purchase transaction" means a transaction in
87 which * * * metal property is acquired whether the person
88 acquiring the metal property gives consideration for the metal
89 property or not. For purposes of this act, the words "purchase"
90 and "purchased" mean a purchase transaction.

91 (* * *k) "Purchaser" means a person who * * * acquires
92 metal property, whether the person gives consideration for the
93 metal property or not.

94 (* * *l) "Record" or "records" means a paper,
95 electronic or other method of storing information.

96 (m) "Registered business entity" means a business
97 entity created by statute, registered and in good standing with
98 its state of incorporation or formation, and having a federal
99 Employer Identification Number (EIN). This term does not include
100 any sole proprietorship, fictitious business name, or nonstatutory
101 general partnership.

102 (n) "Scrap metal" means any metal property that is
103 acquired by a scrap metal dealer in a purchase transaction.

104 (* * *o) "Scrap metal dealer" means any person who is
105 engaged, from a fixed location or otherwise, * * * acquiring by
106 purchase transaction, metal property that has served its original



107 economic purpose, whether or not the person is engaged in the
108 business of performing the manufacturing process by which metals
109 are converted into raw material products consisting of prepared
110 grades and having an existing or potential economic value. Any
111 person who falls under this definition must register as a scrap
112 metal dealer pursuant to this act and its rules.

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

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

119 (i) If a person other than the seller delivers the
120 metal property to the purchaser, the purchaser shall enter the
121 name, address, and age of the person who delivers the metal
122 property, as obtained from the personal identification card of the
123 person delivering the metal property. If the person delivering
124 the metal property is the employee of the scrap metal dealer
125 acting in his official capacity and at the direction of the scrap
126 metal dealer, the purchaser is not required to enter the name,
127 address, and age of the person who delivers the metal property.

128 (ii) If the seller is a registered business
129 entity, and a person other than the seller delivers the metal
130 property to the purchaser, in addition to the information required
131 by this paragraph (a), the purchaser shall enter the name,



132 principal business address, state of incorporation or formation of
133 the entity, the federal Employer Identification Number (EIN) of
134 the entity, and the name and telephone number of a contact person
135 for the seller;

136 (b) The date and place of each acquisition of the metal
137 property;

138 (c) The weight, quantity or volume and a general
139 physical description of the type of metal property, such as wire,
140 tubing, extrusions or casting, * * * acquired in a purchase
141 transaction;

142 (d) The amount of consideration given in a purchase
143 transaction for the metal property. If no consideration is given,
144 a record of the origin of the regulated metal;

145 (e) The vehicle license tag number, state of issue and
146 the make and type of the vehicle used to deliver the metal
147 property to the purchaser;

148 * * *

149 (* * * f) A signed statement from the person receiving
150 consideration in the purchase transaction stating that he or she
151 is the rightful owner of the metal property or is entitled to sell
152 the metal property being sold. Signed statements as required by
153 this section may be collected and recorded on paper, by
154 photographic copy, or other alternative formats as set forth in
155 the rules promulgated by the Secretary of State;



156 (* * *g) * * * A scanned copy or a photocopy of the
157 personal identification card of the person receiving
158 consideration, or delivering the metal property in the purchase
159 transaction; * * * and

160 * * *

161 (* * *h) A photograph, videotape or similar likeness
162 of the person receiving consideration or any person other than the
163 seller who delivers the metal property to the purchaser in which
164 the person's facial features are clearly visible and in which the
165 metal property the person is selling or delivering is clearly
166 visible.

167 Such records shall be maintained by the scrap metal dealer or
168 purchaser for not less than two (2) years from the date of the
169 purchase transaction, and such records shall be made available to
170 any law enforcement officer or Secretary of State examiner during
171 usual and customary business hours.

172 (3) * * * The purchaser shall * * * photographically capture
173 the metal property * * * as it exists when it is acquired by the
174 purchaser. The time and date shall be digitally recorded on the
175 photograph, and the identity of the person taking the photograph
176 shall be recorded. The purchaser shall permit any law enforcement
177 officer or Secretary of State examiner to make an inspection of
178 the metal property * * * , if the metal property is still in the
179 purchaser's possession, and of all photographs of the metal
180 property. Any photograph of metal property taken and maintained



181 pursuant to this subsection shall be admissible in any civil or
182 criminal proceeding.

183 (4) During the usual and customary business hours of a scrap
184 metal dealer * * *, a law enforcement officer or Secretary of
185 State examiner, after proper identification as a law enforcement
186 officer or Secretary of State examiner, shall have the right to
187 inspect all purchased metal property and all records pertaining to
188 the purchase of regulated metals in the possession of the scrap
189 metal dealer or purchaser.

190 (5) (a) Whenever a law enforcement officer has reasonable
191 cause to believe that any item of metal property in the possession
192 of a scrap metal dealer * * * has been stolen, a law enforcement
193 officer who has an affidavit from the alleged rightful owner of
194 the property identifying the property with specificity, including
195 any identifying markings, may issue and deliver a written hold
196 notice to the scrap metal dealer * * *. The hold notice shall
197 specifically identify those items of metal property that are
198 believed to have been stolen and that are subject to the hold
199 notice. Upon receipt of the notice, the scrap metal dealer * * *
200 may not process or remove the metal property identified in the
201 notice from the place of business of the scrap metal dealer * * *
202 for fifteen (15) calendar days after receipt of the notice, unless
203 sooner released by a law enforcement officer.

204 (b) No later than the expiration of the fifteen-day
205 period, a law enforcement officer, after receiving additional



206 substantive evidence beyond the initial affidavit, may issue and
207 deliver a second written hold notice, which shall be an extended
208 hold notice. The extended hold notice shall specifically identify
209 those items of metal property that are believed to have been
210 stolen and that are subject to the extended hold notice. Upon
211 receipt of the extended hold notice, the scrap metal dealer * * *
212 may not process or remove the items of metal property identified
213 in the notice from the place of business of the scrap metal
214 dealer * * * for fifteen (15) calendar days after receipt of the
215 extended hold notice, unless sooner released by a law enforcement
216 officer.

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

223 (d) If the scrap metal dealer * * * contests the
224 identification or ownership of the metal property, the party other
225 than the scrap metal dealer * * * claiming ownership of any metal
226 property in the possession of a scrap metal dealer * * *, provided
227 that a timely report of the theft of the metal property was made
228 to the proper authorities, may bring a civil action in the circuit
229 court of the county in which the scrap metal dealer or purchaser
230 is located. The petition for the action shall include the means



231 of identification of the metal property utilized by the petitioner
232 to determine ownership of the metal property in the possession of
233 the scrap metal dealer * * *.

234 (e) When a lawful owner recovers stolen metal property
235 from a scrap metal dealer * * * who has complied with this
236 section, and the person who sold the metal property to the scrap
237 metal dealer * * * is convicted of a violation of this section, or
238 theft by receiving stolen property under Section 97-17-70, the
239 court shall order the convicted person to make full restitution to
240 the scrap metal dealer * * *, including, without limitation,
241 attorney's fees, court costs and other expenses.

242 (6) * * * For dealer-to-dealer transactions, records
243 required to be kept include:

244 (a) * * * Name and address of selling dealer;

245 (b) * * * Date and place of each acquisition of the
246 metal property;

247 (c) * * * The weight, quantity, or volume and a general
248 description of the type of metal property; and

249 (d) * * * The amount or type of consideration given for
250 the metal property by the purchasing dealer.

251 * * *

252 Such records shall be maintained by the scrap metal dealer
253 for not less than two (2) years from the date of the purchase
254 transaction, and such records shall be made available to any law



255 enforcement officer or Secretary of State examiner during usual
256 and customary business hours.

257 (7) It shall be unlawful for any person to give a false
258 statement of ownership or to give a false or altered
259 identification or vehicle tag number and receive money or other
260 consideration from a scrap metal dealer or other purchaser in
261 return for metal property.

262 (8) A scrap metal dealer or other purchaser shall not enter
263 into any cash transactions in payment for the purchase of metal
264 property. Payment shall be made by check issued to the seller of
265 the metal property * * * or by electronic funds transfer. * * *

266 (9) If a person acquiring metal property fails to maintain
267 the records or to hold such materials * * * as requested by a law
268 enforcement officer under this act, such failure shall be prima
269 facie evidence that the person receiving the metal property
270 received it knowing it to be stolen in violation of Section
271 97-17-70.

272 (10) It shall be unlawful for any person to transport or
273 cause to be transported for himself or another from any point
274 within this state to any point outside this state any metal
275 property, unless the person or entity first reports to the sheriff
276 of the county from which he departs this state transporting such
277 materials the same information that a purchaser in this state
278 would be required to obtain and keep in a record as set forth in
279 subsection (2) of this section. In such a case the sheriff



280 receiving the report shall keep the information in records
281 maintained in his office as a public record available for
282 inspection by any person at all reasonable times. This section
283 shall not apply to a public utility, as that term is defined in
284 Section 77-3-3, engaged in carrying on utility operations; to a
285 railroad, as that term is defined in Section 77-9-5; to a
286 communications service provider, whether wireless or wire line; to
287 a scrap metal dealer; or to a person identified in subsection (6)
288 as being exempt from the provisions of this section.

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

300 (12) It shall be unlawful to sell to a scrap metal dealer
301 any bronze vase and/or marker, memorial, statue, plaque, or other
302 bronze object used at a cemetery or other location where deceased
303 persons are interred or memorialized, or for any such dealer to
304 purchase those objects, unless the source of the bronze is known



305 and notice is provided to the municipal or county law enforcement
306 agency where the dealer is located. The notice shall identify all
307 names, letters, dates and symbols on the bronze and a photograph
308 of the bronze shall be attached thereto. Written permission from
309 the cemetery and the appropriate law enforcement agency must be
310 received before any type of bronze described in this subsection
311 may be purchased, processed, sold or melted.

312 (13) (a) It shall be unlawful for any scrap metal dealer to
313 purchase any manhole cover and other similar types of utility
314 access covers, including storm drain covers, or any metal property
315 clearly identified as belonging to a political subdivision of the
316 state or a municipality, unless that metal property is purchased
317 from the political subdivision, the municipal utility or the
318 manufacturer of the metal. Any purchaser who purchases metal
319 property in bulk shall be allowed twenty-four (24) hours to
320 determine if any metal property prohibited by this subsection is
321 included in a bulk purchase. If such prohibited metal property is
322 included in a bulk purchase, the purchaser shall notify law
323 enforcement no later than twenty-four (24) hours after the
324 purchase.

325 (b) It shall be unlawful for a person to sell, or any
326 scrap metal dealer to purchase, any copper telecommunication wire
327 in any form or any metal property clearly identified as belonging
328 to a telecommunications company, unless that metal property is
329 purchased from (i) an electrician or contractor to whom either a



330 license has been issued by a municipality or county in this state
331 or a current certificate of responsibility has been issued by the
332 State Board of Public Contractors; or (ii) a person who holds a
333 demolition permit issued by a municipality or county in this
334 state. It shall be unlawful for a person to sell, or a scrap
335 metal dealer to purchase, copper telecommunication wire that has
336 been burned to remove the insulation, unless the seller provides
337 certification, on a form as issued by the Secretary of State and
338 signed by a firefighter who is currently in compliance with the
339 certification requirements of the Mississippi Fire Personnel
340 Minimum Standards and Certification Board or a certified law
341 enforcement officer, that the source of the copper
342 telecommunication wire was from a building destroyed by fire.

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

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

348 (16) Except as provided in this subsection, any person
349 willfully or knowingly violating the provisions of this * * * act
350 shall, upon conviction thereof, be deemed guilty of a misdemeanor,
351 and shall be punished by a fine not to exceed One Thousand Dollars
352 (\$1,000.00) per offense, unless the purchase transaction or
353 transactions related to the violation, in addition to any costs
354 which are, or would be, incurred in repairing or in the attempt to



355 recover any property damaged in the theft of or removal of the
356 metal property, including replacement costs of the metal property,
357 are in aggregate an amount which exceeds One Thousand Dollars
358 (\$1,000.00) but less than Five Thousand Dollars (\$5,000.00), in
359 which case the person shall be guilty of a felony and shall be
360 imprisoned in the custody of the Department of Corrections for a
361 term not to exceed five (5) years, fined not more than Ten
362 Thousand Dollars (\$10,000.00), or both. Any person found guilty
363 of stealing metal property or receiving metal property, knowing it
364 to be stolen in violation of Section 97-17-70, shall be ordered to
365 make full restitution to the victim, including, without
366 limitation, restitution for property damage that resulted from the
367 theft of the property.

368 (17) If the purchase transaction or transactions related to
369 the violation, in addition to any costs which are, or would be,
370 incurred in repairing or in the attempt to recover any property
371 damaged in the theft of or removal of the metal property,
372 including replacement costs of the metal property, are in
373 aggregate an amount which exceeds Five Thousand Dollars
374 (\$5,000.00) but less than Twenty-five Thousand Dollars
375 (\$25,000.00), the person shall be guilty of a felony and shall be
376 imprisoned in the custody of the Department of Corrections for a
377 term not less than one (1) year, but not to exceed ten (10) years,
378 fined not more than * * * Fifteen Thousand Dollars (\$15,000.00),
379 or both.



380 (18) If the purchase transaction or transactions related to
381 the violation, in addition to any costs which are, or would be,
382 incurred in repairing or in the attempt to recover any property
383 damaged in the theft of or removal of the metal property,
384 including replacement costs of the metal property, are in
385 aggregate an amount which exceeds Twenty-five Thousand Dollars
386 (\$25,000.00), the person shall be guilty of a felony and shall be
387 imprisoned in the custody of the Department of Corrections for a
388 term not less than three (3) years, but not to exceed twenty (20)
389 years, fined not more than * * * Twenty Thousand Dollars
390 (\$20,000.00), or both.

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

395 (20) This section shall apply to all businesses regulated
396 under this section without regard to the location within the State
397 of Mississippi.

398 (21) This * * * act shall take precedence over any and all
399 local ordinances governing purchase transactions of metal
400 property. If any municipal or county ordinance, rule or
401 regulation conflicts with the provisions of this act, the
402 provisions of this act shall preempt the municipal or county
403 ordinance, rule or regulation.



404 (22) This section shall be fully applicable to the
405 requirements for the purchase and sale of detached catalytic
406 converters provided in Section 97-17-71.3, Mississippi Code of
407 1972.

408 **SECTION 2.** Section 97-17-71.1, Mississippi Code of 1972, is
409 amended as follows:

410 97-17-71.1. (1) (a) From and after August 7, 2008, it
411 shall be unlawful for any scrap metal dealer or any person who
412 purchases scrap metal, deals in scrap metal, or otherwise engages
413 in the scrap metal business to fail to register with the Secretary
414 of State. All registrations under this section shall expire two
415 (2) years from the date of the registration or the renewal
416 thereof.

417 (b) The Secretary of State may promulgate and adopt
418 such rules and regulations as are reasonably necessary to carry
419 out the provisions of this section and establish such registration
420 and renewal fees as are adequate to cover the administrative costs
421 associated with the registration program.

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

427 (2) A violation of this section is a misdemeanor punishable
428 by a fine of not less than Five Hundred Dollars (\$500.00) but not



429 to exceed One Thousand Dollars (\$1,000.00) for the first offense.
430 Any person who shall be guilty of any subsequent violations of
431 this section requiring registration shall be guilty of a felony
432 offense and shall be imprisoned in the custody of the Department
433 of Corrections for a term not to exceed three (3) years, fined not
434 more than Five Thousand Dollars (\$5,000.00), or both.

435 (3) (a) To register or renew registration, the registrant
436 must declare, under penalty of perjury, whether such registrant
437 has ever been convicted of * * * any felony offense, or any
438 misdemeanor offense involving fraud, dishonesty, or deceit within
439 five (5) years preceding the date of application. If the
440 registrant is a business entity, the registrant shall make the
441 same declarations on behalf of every owner of the business who
442 participates in the operation or management of the business.

443 (b) (i) An applicant who has been convicted of
444 an * * * offense as described in paragraph (a) of this subsection
445 may be prohibited from registering under this section for five (5)
446 years from the date of conviction.

447 (ii) Any false statement submitted to the
448 Secretary of State for the purpose of unlawfully registering under
449 this section shall be punished as perjury in the manner provided
450 in Section 97-9-61, and a person so convicted shall be
451 disqualified for life from registering as a scrap metal dealer
452 under this section.



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

457 (5) It is unlawful for a person to make or cause to be made,
458 in a record or statement that is used or obtained in an
459 examination, action, proceeding, or filed under this chapter, a
460 statement that, at the time and in light of the circumstances
461 under which it is made, is false or misleading in a material
462 respect, or, in connection with the statement, to omit to state a
463 material fact necessary to make the statement made, in light of
464 the circumstances under which it was made, not false or
465 misleading.

466 (* * *6) The Secretary of State shall have the authority
467 to:

468 (a) Conduct and carry out criminal background history
469 verification of the information provided by the applicant or
470 registrant and to require the submission of information and forms
471 from the applicant or registrant in order to accomplish the
472 registration duties imposed by this section;

473 (b) Require or permit a person to testify, file a
474 statement, or produce a record, under oath or otherwise, as to all
475 the facts and circumstances concerning a matter to be investigated
476 or about which an action or proceeding is to be instituted;



477 (* * *c) Issue a cease and desist order, with a prior
478 hearing, against the scrap metal dealer or other purchaser alleged
479 to be in violation of this section, directing the person or
480 persons to cease and desist from further illegal activity. When
481 an immediate cease and desist order is issued, the Secretary of
482 State shall hold an administrative hearing on the alleged
483 violations within fifteen (15) business days;

484 (* * *d) (i) Issue an order against any scrap metal
485 dealer or other purchaser for any violation of this section,
486 imposing an administrative penalty up to a maximum of One Thousand
487 Dollars (\$1,000.00) for each offense. Each violation shall be
488 considered a separate offense in a single proceeding or a series
489 of related proceedings. Any administrative penalty, plus
490 reimbursement for all costs and expenses incurred in the
491 investigation of the violation and any administrative proceedings,
492 shall be paid to the Secretary of State;

493 (ii) For the purpose of determining the amount or
494 extent of a sanction, if any, to be imposed under paragraph (c)(i)
495 of this subsection, the Secretary of State shall consider, among
496 other factors, the frequency, persistence and willfulness of the
497 conduct constituting a violation of this section or any rule or
498 order hereunder; the number of persons adversely affected by the
499 conduct; and the resources of the person committing the violation;

500 (* * *e) Bring an action in chancery court to enjoin
501 the acts or practices complained of to enforce compliance with



502 this section or any rule promulgated or order entered hereunder.
503 Upon a proper showing, a permanent or temporary injunction,
504 restraining order, or writ of mandamus shall be granted and a
505 receiver or conservator may be appointed for the defendant or the
506 defendant's assets. In addition, upon a proper showing by the
507 Secretary of State, the court may enter an order of rescission or
508 restitution directed to any person who has engaged in any act
509 constituting a violation of any provision of this section or any
510 rule or order hereunder, or the court may impose a civil penalty
511 up to a maximum of One Thousand Dollars (\$1,000.00) for each
512 offense, provided that each violation shall be considered as a
513 separate offense in a single proceeding or a series of related
514 proceedings. The court may not require the Secretary of State to
515 post a bond.

516 (* * *7) Any person aggrieved by a final order of the
517 Secretary of State may obtain a review of the order in the
518 Chancery Court of the First Judicial District of Hinds County,
519 Mississippi, by filing in the court, within thirty (30) days after
520 the entry of the order, a written petition praying that the order
521 be modified or set aside, in whole or in part. A copy of the
522 petition shall be forthwith served upon the Secretary of State and
523 thereupon the Secretary of State shall certify and file in court a
524 copy of the filing and evidence upon which the order was entered.
525 When these have been filed, the court has exclusive jurisdiction



526 to affirm, modify, enforce or set aside the order, in whole or in
527 part.

528 **SECTION 3.** Section 97-17-71.2, Mississippi Code of 1972, is
529 amended as follows:

530 97-17-71.2. (1) It is an offense for a scrap metal
531 dealer * * * to pay cash to a person who presents an air
532 conditioner evaporator coil or condenser, in whole or in part, for
533 sale as scrap * * *.

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

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

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

544 (c) Where the jurisdiction does not require a permit to
545 repair, replace and install HVAC units containing copper
546 evaporator coils or condensers, by a company holding a privilege
547 license indicating the business as that of an HVAC installer or
548 repairer; or

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



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

558 (4) Payment for scrap metal described in subsection (1) must
559 be made by check or money order, * * * and the name of the company
560 or the individual meeting the requirements of subsection (2) of
561 this section must be the payee on the check.

562 (5) (a) A violation of this section is a misdemeanor
563 punishable by a fine not to exceed One Thousand Dollars
564 (\$1,000.00) per offense.

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

568 (6) Any purchase of any air conditioner evaporator coil or
569 condenser, as described in this section, in whole or in part, is
570 subject to the record keeping requirements required by this
571 section.

572 **SECTION 4.** The following shall be codified as Section
573 97-17-71.3, Mississippi Code of 1972:



574 97-17-71.3. (1) It is unlawful for any person to purchase
575 or otherwise acquire, a used, detached catalytic converter, or any
576 nonferrous part thereof, unless all of the following apply:

577 (a) The purchaser is registered as a scrap metal dealer
578 under Section 97-17-71;

579 (b) The sale, transfer, purchase or acquisition occurs
580 at the fixed business address of a scrap metal dealer that is a
581 party to the transaction. For purposes of this subsection, the
582 fixed business address of the scrap metal dealer is the address of
583 the business that is registered pursuant to Section 97-17-71;

584 (c) The purchaser has maintained all of the information
585 required under Section 97-17-71;

586 (d) One or more of the following apply:

587 (i) The used, detached catalytic converter or
588 nonferrous part thereof was obtained by the seller thereof as part
589 of a vehicle;

590 (ii) The catalytic converter or nonferrous part
591 thereof was purchased in a dealer-to-dealer transaction or from
592 any of the following bona fide entities: a new or used motor
593 vehicle dealer, an automotive repair service, a motor vehicle
594 manufacturer, a vehicle demolisher or a distributor of catalytic
595 converters; or

596 (iii) The seller of the catalytic converter or
597 nonferrous part thereof provides the purchaser with all of the



598 following information for the motor vehicle from which the
599 catalytic converter or part thereof was taken:

600 1. The name of the person who removed the
601 catalytic converter;

602 2. The name of the person for whom the
603 removal was completed;

604 3. The make and model of the vehicle from
605 which the catalytic converter was removed;

606 4. The vehicle identification number of the
607 vehicle from which the catalytic converter was removed; and

608 5. A copy of the driver's license or
609 nondriver identification card of the seller of the catalytic
610 converter;

611 (e) Before each purchase or acquisition of a used,
612 detached catalytic converter or part thereof, the scrap metal
613 dealer, including an agent, employee, or representative thereof,
614 shall retain the necessary records and information to comply with
615 this act.

616 (2) It is unlawful for a seller of a used, detached
617 catalytic converter, or any nonferrous part of a catalytic
618 converter, to provide any false, fraudulent, altered or
619 counterfeit information or documentation as required by this
620 section.



621 (3) Each catalytic converter that is purchased, possessed,
622 obtained, transported or otherwise acquired in violation of this
623 section is a separate violation of this section.

624 (4) A person who violates this section is guilty of a
625 misdemeanor or a felony for subsequent violations as specifically
626 prescribed under Sections 97-17-71 and 97-17-71.1, Mississippi
627 Code of 1972.

628 (5) For purposes of this section, a used, detached catalytic
629 converter does not include a catalytic converter that has been
630 tested, certified and labeled for reuse in accordance with
631 applicable U.S. Environmental Protection Agency Clean Air Act
632 regulations.

633 **SECTION 5.** This act shall take effect and be in force from
634 and after July 1, 2022.

