

By: Representative Banks

To: Judiciary B

HOUSE BILL NO. 381

1 AN ACT TO AMEND SECTION 97-17-71, MISSISSIPPI CODE OF 1972,
 2 TO PROHIBIT TRANSACTIONS INVOLVING THE SALE OF COPPER MATERIALS TO
 3 A SCRAP METAL DEALER UNLESS THE SELLER IS A LICENSED PLUMBER,
 4 ELECTRICIAN, CONTRACTOR OR HOLDER OF A CERTIFICATE OF
 5 RESPONSIBILITY OR DEMOLITION PERMIT; TO REQUIRE A SCRAP METAL
 6 DEALER TO MAINTAIN A SCANNED COPY OF A SELLER'S APPROPRIATE
 7 LICENSE, CERTIFICATE OF RESPONSIBILITY OR PERMIT; TO BRING FORWARD
 8 SECTION 97-17-71.2, MISSISSIPPI CODE OF 1972, WHICH GOVERNS THE
 9 SALE OF AIR CONDITIONER EVAPORATOR COILS AND CONDITIONERS TO SCRAP
 10 METAL DEALERS, FOR PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED
 11 PURPOSES.

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

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

15 97-17-71. (1) For the purposes of this section, the
 16 following terms shall have the meanings ascribed in this section:

17 (a) "Railroad materials" means any materials, equipment
 18 and parts used in the construction, operation, protection and
 19 maintenance of a railroad.

20 (b) "Copper materials" means any copper wire, bars,
 21 rods or tubing, including copper wire or cable or coaxial cable of
 22 the type used by public utilities, common carriers or



23 communication services providers, whether wireless or wire line,
24 copper air conditioner evaporator coil or condenser, aluminum
25 copper radiators not attached to a motor vehicle, or any
26 combination of these.

27 (c) "Aluminum materials" means any aluminum cable,
28 bars, rods or tubing of the type used to construct utility,
29 communication or broadcasting towers, aluminum utility wire and
30 aluminum irrigation pipes or tubing. "Aluminum materials" does
31 not include aluminum cans that have served their original economic
32 purpose.

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

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

45 (f) "Metal property" means materials as defined in this
46 section as railroad track materials, copper materials and aluminum
47 materials and electrical, communications or utility brass, metal



48 covers for service access and entrances to sewers and storm
49 drains, metal bridge pilings, irrigation wiring and other metal
50 property attached to or part of center pivots, grain bins,
51 stainless steel sinks, catalytic converters not attached to a
52 motor vehicle and metal beer kegs. Metal property does not
53 include ferrous materials not listed in this section.

54 (g) "Person" means an individual, partnership,
55 corporation, joint venture, trust, limited liability company,
56 association or any other legal or commercial entity.

57 (h) "Personal identification card" means any government
58 issued photographic identification card including a valid
59 identification card issued by a federally recognized Indian tribe
60 that contains a color photograph of the card holder and the card
61 holder's legal name, residence address and date of birth.

62 (i) "Photograph" or "photographically" means a still
63 photographic image, including images captured in digital format,
64 that are of such quality that the persons and objects depicted are
65 clearly identifiable.

66 (j) "Purchase transaction" means a transaction in which
67 metal property is acquired whether the person acquiring the metal
68 property gives consideration for the metal property or not. For
69 purposes of Sections 97-17-71 through 97-17-71.3, the words
70 "purchase" and "purchased" mean a purchase transaction.



71 (k) "Purchaser" means a person who acquires metal
72 property, whether the person gives consideration for the metal
73 property or not.

74 (l) "Record" or "records" means a paper, electronic or
75 other method of storing information.

76 (m) "Registered business entity" means a business
77 entity created by statute, registered and in good standing with
78 its state of incorporation or formation, and having a federal
79 Employer Identification Number (EIN). This term does not include
80 any sole proprietorship, fictitious business name, or nonstatutory
81 general partnership.

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

84 (o) "Scrap metal dealer" means any person who is
85 engaged, from a fixed location or otherwise, acquiring by purchase
86 transaction, metal property that has served its original economic
87 purpose, whether or not the person is engaged in the business of
88 performing the manufacturing process by which metals are converted
89 into raw material products consisting of prepared grades and
90 having an existing or potential economic value. Any person who
91 falls under this definition must register as a scrap metal dealer
92 pursuant to Sections 97-17-71 through 97-17-71.3 and its rules.

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



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

99 (i) If a person other than the seller delivers the
100 metal property to the purchaser, the purchaser shall enter the
101 name, address, and age of the person who delivers the metal
102 property, as obtained from the personal identification card of the
103 person delivering the metal property. If the person delivering
104 the metal property is the employee of the scrap metal dealer
105 acting in his official capacity and at the direction of the scrap
106 metal dealer, the purchaser is not required to enter the name,
107 address, and age of the person who delivers the metal property.

108 (ii) If the seller is a registered business
109 entity, and a person other than the seller delivers the metal
110 property to the purchaser, in addition to the information required
111 by this paragraph (a), the purchaser shall enter the name,
112 principal business address, state of incorporation or formation of
113 the entity, the federal Employer Identification Number (EIN) of
114 the entity, and the name and telephone number of a contact person
115 for the seller;

116 (iii) If the transaction is for the purchase of
117 copper materials, a scanned copy of either: the license to do
118 business issued to the plumber, electrician or contractor by a
119 municipality or county in this state or the certificate of
120 responsibility issued by the State Board of Contractors; or a



121 demolition permit issued to the seller by the municipality or
122 county in which the scrap metal dealer is located;

123 (b) The date and place of each acquisition of the metal
124 property;

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

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

131 (e) The vehicle license tag number, state of issue and
132 the make and type of the vehicle used to deliver the metal
133 property to the purchaser;

134 (f) A signed statement from the person receiving
135 consideration in the purchase transaction stating that he or she
136 is the rightful owner of the metal property or is entitled to sell
137 the metal property being sold. Signed statements as required by
138 this section may be collected and recorded on paper, by
139 photographic copy, or other alternative formats as set forth in
140 the rules promulgated by the Secretary of State;

141 (g) A scanned copy or a photocopy of the personal
142 identification card of the person receiving consideration, or
143 delivering the metal property in the purchase transaction; and

144 (h) A photograph, videotape or similar likeness of the
145 person receiving consideration or any person other than the seller



146 who delivers the metal property to the purchaser in which the
147 person's facial features are clearly visible and in which the
148 metal property the person is selling or delivering is clearly
149 visible.

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

155 (3) The purchaser shall photographically capture the metal
156 property as it exists when it is acquired by the purchaser. The
157 time and date shall be digitally recorded on the photograph, and
158 the identity of the person taking the photograph shall be
159 recorded. The purchaser shall permit any law enforcement officer
160 or Secretary of State examiner to make an inspection of the metal
161 property, if the metal property is still in the purchaser's
162 possession, and of all photographs of the metal property. Any
163 photograph of metal property taken and maintained pursuant to this
164 subsection shall be admissible in any civil or criminal
165 proceeding.

166 (4) During the usual and customary business hours of a scrap
167 metal dealer, a law enforcement officer or Secretary of State
168 examiner, after proper identification as a law enforcement officer
169 or Secretary of State examiner, shall have the right to inspect
170 all purchased metal property and all records pertaining to the



171 purchase of regulated metals in the possession of the scrap metal
172 dealer or purchaser.

173 (5) (a) Whenever a law enforcement officer has reasonable
174 cause to believe that any item of metal property in the possession
175 of a scrap metal dealer has been stolen, a law enforcement officer
176 who has an affidavit from the alleged rightful owner of the
177 property identifying the property with specificity, including any
178 identifying markings, may issue and deliver a written hold notice
179 to the scrap metal dealer. The hold notice shall specifically
180 identify those items of metal property that are believed to have
181 been stolen and that are subject to the hold notice. Upon receipt
182 of the notice, the scrap metal dealer may not process or remove
183 the metal property identified in the notice from the place of
184 business of the scrap metal dealer for fifteen (15) calendar days
185 after receipt of the notice, unless sooner released by a law
186 enforcement officer.

187 (b) No later than the expiration of the fifteen-day
188 period, a law enforcement officer, after receiving additional
189 substantive evidence beyond the initial affidavit, may issue and
190 deliver a second written hold notice, which shall be an extended
191 hold notice. The extended hold notice shall specifically identify
192 those items of metal property that are believed to have been
193 stolen and that are subject to the extended hold notice. Upon
194 receipt of the extended hold notice, the scrap metal dealer may
195 not process or remove the items of metal property identified in



196 the notice from the place of business of the scrap metal dealer
197 for fifteen (15) calendar days after receipt of the extended hold
198 notice, unless sooner released by a law enforcement officer.

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

205 (d) If the scrap metal dealer contests the
206 identification or ownership of the metal property, the party other
207 than the scrap metal dealer claiming ownership of any metal
208 property in the possession of a scrap metal dealer, provided that
209 a timely report of the theft of the metal property was made to the
210 proper authorities, may bring a civil action in the circuit court
211 of the county in which the scrap metal dealer or purchaser is
212 located. The petition for the action shall include the means of
213 identification of the metal property utilized by the petitioner to
214 determine ownership of the metal property in the possession of the
215 scrap metal dealer.

216 (e) When a lawful owner recovers stolen metal property
217 from a scrap metal dealer who has complied with this section, and
218 the person who sold the metal property to the scrap metal dealer
219 is convicted of a violation of this section, or theft by receiving
220 stolen property under Section 97-17-70, the court shall order the



221 convicted person to make full restitution to the scrap metal
222 dealer, including, without limitation, attorney's fees, court
223 costs and other expenses.

224 (6) For dealer-to-dealer transactions, records required to
225 be kept include:

226 (a) Name and address of selling dealer;

227 (b) Date and place of each acquisition of the metal
228 property;

229 (c) The weight, quantity, or volume and a general
230 description of the type of metal property; and

231 (d) The amount or type of consideration given for the
232 metal property by the purchasing dealer.

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

238 (7) It shall be unlawful for any person to give a false
239 statement of ownership or to give a false or altered
240 identification or vehicle tag number and receive money or other
241 consideration from a scrap metal dealer or other purchaser in
242 return for metal property.

243 (8) A scrap metal dealer or other purchaser shall not enter
244 into any cash transactions in payment for the purchase of metal



245 property. Payment shall be made by check issued to the seller of
246 the metal property or by electronic funds transfer.

247 (9) If a person acquiring metal property fails to maintain
248 the records or to hold such materials as requested by a law
249 enforcement officer under Sections 97-17-71 through 97-17-71.3,
250 such failure shall be prima facie evidence that the person
251 receiving the metal property received it knowing it to be stolen
252 in violation of Section 97-17-70.

253 (10) It shall be unlawful for any person to transport or
254 cause to be transported for himself or another from any point
255 within this state to any point outside this state any metal
256 property, unless the person or entity first reports to the sheriff
257 of the county from which he departs this state transporting such
258 materials the same information that a purchaser in this state
259 would be required to obtain and keep in a record as set forth in
260 subsection (2) of this section. In such a case the sheriff
261 receiving the report shall keep the information in records
262 maintained in his office as a public record available for
263 inspection by any person at all reasonable times. This section
264 shall not apply to a public utility, as that term is defined in
265 Section 77-3-3, engaged in carrying on utility operations; to a
266 railroad, as that term is defined in Section 77-9-5; to a
267 communications service provider, whether wireless or wire line; or
268 to a scrap metal dealer.



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

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

292 (13) (a) It shall be unlawful for any scrap metal dealer to
293 purchase any manhole cover and other similar types of utility



294 access covers, including storm drain covers, or any metal property
295 clearly identified as belonging to a political subdivision of the
296 state or a municipality, unless that metal property is purchased
297 from the political subdivision, the municipal utility or the
298 manufacturer of the metal. Any purchaser who purchases metal
299 property in bulk shall be allowed twenty-four (24) hours to
300 determine if any metal property prohibited by this subsection is
301 included in a bulk purchase. If such prohibited metal property is
302 included in a bulk purchase, the purchaser shall notify law
303 enforcement no later than twenty-four (24) hours after the
304 purchase.

305 (b) It shall be unlawful for a person to sell, or any
306 scrap metal dealer to purchase, any copper telecommunication wire
307 in any form or any metal property clearly identified as belonging
308 to a telecommunications company, unless that metal property is
309 purchased from (i) an electrician or contractor to whom either a
310 license has been issued by a municipality or county in this state
311 or a current certificate of responsibility has been issued by the
312 State Board of Public Contractors; or (ii) a person who holds a
313 demolition permit issued by a municipality or county in this
314 state. It shall be unlawful for a person to sell, or a scrap
315 metal dealer to purchase, copper telecommunication wire that has
316 been burned to remove the insulation, unless the seller provides
317 certification, on a form as issued by the Secretary of State and
318 signed by a firefighter who is currently in compliance with the



319 certification requirements of the Mississippi Fire Personnel
320 Minimum Standards and Certification Board or a certified law
321 enforcement officer, that the source of the copper
322 telecommunication wire was from a building destroyed by fire.

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

326 (15) It is unlawful for a seller to sell, and for a scrap
327 metal dealer or other purchaser to purchase, copper materials if
328 the seller:

329 (a) Is not a plumber, electrician or contractor to whom
330 either a license has been issued by a municipality or county in
331 this state or a current certificate of responsibility has been
332 issued by the State Board of Public Contractors; or

333 (b) Is not the holder of a demolition permit issued by
334 the municipality or county in which the scrap metal dealer is
335 located.

336 (* * *16) Metal property may not be purchased, acquired or
337 collected between the hours of 9:00 p.m. and 6:00 a.m.

338 (* * *17) Except as provided in this subsection, any person
339 willfully or knowingly violating the provisions of Sections
340 97-17-71 through 97-17-71.3 shall, upon conviction thereof, be
341 deemed guilty of a misdemeanor, and shall be punished by a fine
342 not to exceed One Thousand Dollars (\$1,000.00) per offense, unless
343 the purchase transaction or transactions related to the violation,



344 in addition to any costs which are, or would be, incurred in
345 repairing or in the attempt to recover any property damaged in the
346 theft of or removal of the metal property, including replacement
347 costs of the metal property, are in aggregate an amount which
348 exceeds One Thousand Dollars (\$1,000.00) but less than Five
349 Thousand Dollars (\$5,000.00), in which case the person shall be
350 guilty of a felony and shall be imprisoned in the custody of the
351 Department of Corrections for a term not to exceed five (5) years,
352 fined not more than Ten Thousand Dollars (\$10,000.00), or both.
353 Any person found guilty of stealing metal property or receiving
354 metal property, knowing it to be stolen in violation of Section
355 97-17-70, shall be ordered to make full restitution to the victim,
356 including, without limitation, restitution for property damage
357 that resulted from the theft of the property.

358 (* * *18) If the purchase transaction or transactions
359 related to the violation, in addition to any costs which are, or
360 would be, incurred in repairing or in the attempt to recover any
361 property damaged in the theft of or removal of the metal property,
362 including replacement costs of the metal property, are in
363 aggregate an amount which exceeds Five Thousand Dollars
364 (\$5,000.00) but less than Twenty-five Thousand Dollars
365 (\$25,000.00), the person shall be guilty of a felony and shall be
366 imprisoned in the custody of the Department of Corrections for a
367 term not less than one (1) year, but not to exceed ten (10) years,



368 fined not more than Fifteen Thousand Dollars (\$15,000.00), or
369 both.

370 (* * *19) If the purchase transaction or transactions
371 related to the violation, in addition to any costs which are, or
372 would be, incurred in repairing or in the attempt to recover any
373 property damaged in the theft of or removal of the metal property,
374 including replacement costs of the metal property, are in
375 aggregate an amount which exceeds Twenty-five Thousand Dollars
376 (\$25,000.00), the person shall be guilty of a felony and shall be
377 imprisoned in the custody of the Department of Corrections for a
378 term not less than three (3) years, but not to exceed twenty (20)
379 years, fined not more than Twenty Thousand Dollars (\$20,000.00),
380 or both.

381 (* * *20) This section shall not be construed to repeal
382 other criminal laws. Whenever conduct proscribed by any provision
383 of this section is also proscribed by any other provision of law,
384 the provision which carries the more serious penalty shall be
385 applied.

386 (* * *21) This section shall apply to all businesses
387 regulated under this section without regard to the location within
388 the State of Mississippi.

389 (* * *22) Sections 97-17-71 through 97-17-71.3 shall take
390 precedence over any and all local ordinances governing purchase
391 transactions of metal property. If any municipal or county
392 ordinance, rule or regulation conflicts with the provisions of



393 Sections 97-17-71 through 97-17-71.3, the provisions of Sections
394 97-17-71 through 97-17-71.3 shall preempt the municipal or county
395 ordinance, rule or regulation.

396 (* * *23) This section shall be fully applicable to the
397 requirements for the purchase and sale of detached catalytic
398 converters provided in Section 97-17-71.3, Mississippi Code of
399 1972.

400 **SECTION 2.** Section 97-17-71.2, Mississippi Code of 1972, is
401 brought forward as follows:

402 97-17-71.2. (1) It is an offense for a scrap metal dealer
403 to pay cash to a person who presents an air conditioner evaporator
404 coil or condenser, in whole or in part, for sale as scrap.

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

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

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

415 (c) Where the jurisdiction does not require a permit to
416 repair, replace and install HVAC units containing copper
417 evaporator coils or condensers, by a company holding a privilege



418 license indicating the business as that of an HVAC installer or
419 repairer; or

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

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

429 (4) Payment for scrap metal described in subsection (1) must
430 be made by check or money order, and the name of the company or
431 the individual meeting the requirements of subsection (2) of this
432 section must be the payee on the check.

433 (5) (a) A violation of this section is a misdemeanor
434 punishable by a fine not to exceed One Thousand Dollars
435 (\$1,000.00) per offense.

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

439 (6) Any purchase of any air conditioner evaporator coil or
440 condenser, as described in this section, in whole or in part, is
441 subject to the record keeping requirements required by Section
442 97-17-71.



443 **SECTION 3.** This act shall take effect and be in force from
444 and after July 1, 2024.

