Michael Watson
SECRETARY OF STATE

Scrap Metal Dealers

§ 97-17-71. Receiving stolen property; definitions; scrap metal dealers and other purchasers to keep records of purchases of metal property; content of records; metal property to be held separate and identifiable from other purchases for not less than three (3) business days from date of purchase; inspection by law enforcement personnel; hold notice; recovery of metal property by rightful owner; restitution to dealer by unlawful seller; false statement of ownership; cash transactions for purchase of scrap metal prohibited; failure to maintain appropriate records; interstate transportation of metal property; purchase and possession of metal beer kegs and/or metal syrup tanks generally used by soft drink industry prohibited except in limited circumstances; sales and purchases of bronze memorials prohibited except in limited circumstances; purchase of utility access covers or metal property identified as belonging to political subdivision except in limited circumstances; purchases of metal property from minors prohibited; limitation on hours of purchase; penalties.

(1) For the purposes of this section, the following terms shall have the meanings ascribed in this section:

(a) “Railroad materials” means any materials, equipment and parts used in the construction, operation, protection and maintenance of a railroad.

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

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

(d) “Law enforcement officer” means any person appointed or employed full time by the state or any political subdivision thereof, or by the state military department as provided in Section 33-1-33, who is duly sworn and vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime, the apprehension of criminals

and the enforcement of the criminal traffic laws of this state or the ordinances of any political subdivision thereof.

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

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

(g) “Personal identification card” means any government issued photographic identification card.

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

(i) “Purchase transaction” means a transaction in which a person gives consideration in exchange for metal property.

(j) “Purchaser” means a person who gives consideration in exchange for metal property.

(k) “Record” or “records” means a paper, electronic or other method of storing information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 97-17-71.1. Registration by scrap metal dealers with office of Secretary of State required; penalties for violations; enforcement.

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

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

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

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

(3)(a) To register or renew registration, the registrant must declare, under penalty of perjury, whether such registrant has ever been convicted of a violation of Section 97-17-71 or convicted of a criminal offense of larceny, burglary or vandalism, where the offense involved metal property as defined in Section 97-17-71.

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

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

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

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

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

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

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

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

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

§ 97-17-71.2. Scrap metal dealers prohibited from paying cash or making payment of any kind at time of transaction for air conditioner evaporator coil or condenser; scrap metal dealers permitted to purchase air conditioner evaporator coil or condenser only from certain contractors or companies; payment for scrap metal to be made by check or money order and mailed to business address of company for whom metal being sold; penalties for violations.

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

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

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

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

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

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

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

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

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

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