

House Bill 3026

Sponsored by Representatives BRUUN, SCHAUFLE, OLSON, BOONE, CLEM

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies crime of failing to maintain metal purchase record. Increases punishment to maximum of five years' imprisonment, \$125,000 fine, or both under specified circumstances. Imposes presumptive prison sentence under specified circumstances.

Expands theft in first degree to include theft of metals under certain circumstances.

A BILL FOR AN ACT

1
2 Relating to metals; amending ORS 137.717, 164.055 and 165.107.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 165.107 is amended to read:

5 165.107. (1) A [*person*] **metal recycler or secondhand dealer** commits the crime of failing to
6 maintain a metal purchase record if the [*person*] **metal recycler or secondhand dealer** buys or
7 otherwise obtains new, used or secondhand nonferrous metals or alloys thereof without keeping a
8 record of all such articles purchased or obtained.

9 (2) The [*person*] **metal recycler or secondhand dealer** purchasing or obtaining the metal shall
10 retain the record required by subsection (1) of this section for a period of not less than one year
11 and the **metal recycler or secondhand dealer** [*person*] shall make the record available to any
12 peace officer on demand. [*The record shall contain:*]

13 [*(a) A general description of all property purchased.*]

14 [*(b) The type and quantity or weight of the property.*]

15 [*(c) The name, address, description and signature of the person who sells, makes delivery or oth-*
16 *erwise makes the metal available.*]

17 **(3) The record required by subsection (1) of this section shall contain:**

18 **(a) The time and date of the transaction and the name of the person conducting the**
19 **transaction on behalf of the metal recycler or secondhand dealer.**

20 **(b) A general description of all property purchased, including the type and amount and,**
21 **if discernible, any identifiable marks on the property.**

22 **(c) A photocopy of a current, valid driver license, passport or state identification card**
23 **of the seller.**

24 **(d) The amount of consideration given for the metals.**

25 **(e) If the transaction is valued at more than \$100, a declaration, signed by the seller, in**
26 **substantially the following form: "I, the undersigned, hereby declare that the property that**
27 **is subject to this transaction is not, to the best of my knowledge, stolen property. I under-**
28 **stand that this statement is made under penalty of perjury and may be used as evidence in**
29 **court."**

30 **(f) Camera surveillance of the seller receiving consideration. Notwithstanding subsection**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **(2) of this section, the footage must be retained for 15 days from the date of the transaction.**

2 [(d)] (g) A description of any motor vehicle and its license number used in the delivery of such
3 articles.

4 [(3)] (4) This section shall not apply to purchases made by or from a manufacturer, remanufac-
5 turer or a distributor appointed by a manufacturer of such articles.

6 [(4)] (5) As used in this section[,]:

7 (a) **“Metal recycler” means any person who is in the business of buying or selling**
8 **nonferrous metals.**

9 (b) “Nonferrous metal” includes, but is not limited to, aluminum, stainless steel, copper, copper
10 wire, copper cable, brass, electrolytic nickel and zinc. “Nonferrous metal” does not include precious
11 metals when actually used in the manufacture, repair, sale or resale of jewelry.

12 (c) **“Secondhand dealer” means any person engaged in the business of purchasing, con-**
13 **signing or trading previously owned personal property.**

14 (d) **“Seller” means a person who sells or delivers the metal or otherwise makes the metal**
15 **available to the metal recycler or the secondhand dealer.**

16 [(5)] (6)(a) Failing to maintain a metal purchase record is a Class B misdemeanor.

17 (b) **Notwithstanding paragraph (a) of this subsection, failing to maintain a metal pur-**
18 **chase record is a Class C felony if a person has at least three prior convictions for failing**
19 **to maintain a metal purchase record.**

20 **SECTION 2.** ORS 164.055 is amended to read:

21 164.055. (1) A person commits the crime of theft in the first degree if, by other than extortion,
22 the person commits theft as defined in ORS 164.015 and:

23 (a) The total value of the property in a single or aggregate transaction is \$200 or more in a case
24 of theft by receiving, and \$750 or more in any other case;

25 (b) The theft is committed during a riot, fire, explosion, catastrophe or other emergency in an
26 area affected by the riot, fire, explosion, catastrophe or other emergency;

27 (c) The theft is theft by receiving committed by buying, selling, borrowing or lending on the
28 security of the property;

29 (d) The subject of the theft is a firearm or explosive;

30 (e) The subject of the theft is a livestock animal, a companion animal or a wild animal removed
31 from habitat or born of a wild animal removed from habitat, pursuant to ORS 497.308 (2)(c); [or]

32 (f) The subject of the theft is a precursor substance[.]; or

33 (g) **The subject of the theft is a nonferrous metal and:**

34 (A) **The theft is theft by receiving and the person is a metal recycler or secondhand**
35 **dealer; or**

36 (B) **The person intends to sell the nonferrous metal to a metal recycler or a secondhand**
37 **dealer.**

38 (2) As used in this section:

39 (a) “Companion animal” means a dog or cat possessed by a person, business or other entity for
40 purposes of companionship, security, hunting, herding or providing assistance in relation to a phys-
41 ical disability.

42 (b) “Explosive” means a chemical compound, mixture or device that is commonly used or in-
43 tended for the purpose of producing a chemical reaction resulting in a substantially instantaneous
44 release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin,
45 blasting caps and nitrojelly, but excluding fireworks as defined in ORS 480.110 (1), black powder,

1 smokeless powder, small arms ammunition and small arms ammunition primers.

2 (c) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile
3 by the action of black powder or smokeless powder and which is readily capable of use as a weapon.

4 (d) "Livestock animal" means a ratite, psittacine, horse, gelding, mare, stallion, colt, mule, ass,
5 jenny, bull, steer, cow, calf, goat, sheep, lamb, llama, pig or hog.

6 (e) **"Metal recycler," "nonferrous metal" and "secondhand dealer" have the meanings**
7 **given those terms in ORS 165.107.**

8 [(e)] (f) "Precursor substance" has the meaning given that term in ORS 475.940.

9 (3) Theft in the first degree is a Class C felony.

10 **SECTION 3.** ORS 137.717 is amended to read:

11 137.717. (1) When a court sentences a person convicted of:

12 (a) Aggravated theft in the first degree under ORS 164.057 or burglary in the first degree under
13 ORS 164.225, the presumptive sentence is 19 months of incarceration, unless the rules of the Oregon
14 Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

15 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary
16 in the first degree under ORS 164.225, robbery in the second degree under ORS 164.405 or robbery
17 in the first degree under ORS 164.415; or

18 (B) Four previous convictions for any combination of the other crimes listed in subsection (2)
19 of this section.

20 (b) Theft in the first degree under ORS 164.055, unauthorized use of a vehicle under ORS
21 164.135, burglary in the second degree under ORS 164.215, criminal mischief in the first degree under
22 ORS 164.365, computer crime under ORS 164.377, forgery in the first degree under ORS 165.013,
23 **failing to maintain a metal purchase record under ORS 165.107 (5)(b)**, identity theft under ORS
24 165.800, possession of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under ORS
25 819.310, the presumptive sentence is 13 months of incarceration, unless the rules of the Oregon
26 Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

27 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unau-
28 thorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery
29 in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415, possession
30 of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under ORS 819.310; or

31 (B) Four previous convictions for any combination of the other crimes listed in subsection (2)
32 of this section.

33 (2) The crimes to which subsection (1) of this section applies are:

34 (a) Theft in the second degree under ORS 164.045;

35 (b) Theft in the first degree under ORS 164.055;

36 (c) Aggravated theft in the first degree under ORS 164.057;

37 (d) Unauthorized use of a vehicle under ORS 164.135;

38 (e) Burglary in the second degree under ORS 164.215;

39 (f) Burglary in the first degree under ORS 164.225;

40 (g) Criminal mischief in the second degree under ORS 164.354;

41 (h) Criminal mischief in the first degree under ORS 164.365;

42 (i) Computer crime under ORS 164.377;

43 (j) Forgery in the second degree under ORS 165.007;

44 (k) Forgery in the first degree under ORS 165.013;

45 (L) Criminal possession of a forged instrument in the second degree under ORS 165.017;

- 1 (m) Criminal possession of a forged instrument in the first degree under ORS 165.022;
- 2 (n) Fraudulent use of a credit card under ORS 165.055;
- 3 (o) Identity theft under ORS 165.800;
- 4 (p) Possession of a stolen vehicle under ORS 819.300; *[and]*
- 5 (q) Trafficking in stolen vehicles under ORS 819.310;
- 6 **(r) Failing to maintain a metal purchase record under ORS 165.107 (5)(b); and**
- 7 **(s) Attempted theft in the first degree if the attempted theft is described in ORS 164.055**
- 8 **(1)(g).**

9 (3) The court may impose a sentence other than the sentence provided by subsection (1) of this
10 section if the court imposes:

11 (a) A longer term of incarceration that is otherwise required or authorized by law; or

12 (b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission
13 based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon
14 Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure al-
15 lowed for a person sentenced under this subsection is double the presumptive sentence provided in
16 subsection (1) of this section.

17 (4) As used in this section, "previous conviction" includes:

18 (a) Convictions occurring before, on or after July 1, 2003; and

19 (b) Convictions entered in any other state or federal court for comparable offenses.

20 (5)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have
21 occurred upon the pronouncement of sentence in open court. However, when sentences are imposed
22 for two or more convictions arising out of the same conduct or criminal episode, none of the con-
23 victions is considered to have occurred prior to any of the other convictions arising out of the same
24 conduct or criminal episode.

25 (b) For a crime committed prior to November 1, 1989, a conviction is considered to have oc-
26 curred upon the pronouncement in open court of a sentence or upon the pronouncement in open
27 court of the suspended imposition of a sentence.

28 (6) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

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