

# House Bill 2421

Sponsored by Representatives BARTON, MATTHEWS; Representatives BAILEY, BARKER, BOONE, CANNON, COWAN, DEMBROW, C EDWARDS, KAHL, KOMP, NATHANSON, READ, RILEY, ROBLAN, SCHAUFLEER, STIEGLER, TOMEI, VANORMAN

## 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**.

Requires person operating as scrap metal business to obtain certificate from Director of Department of Consumer and Business Services. Specifies civil penalty of not more than \$5,000 for operating scrap metal business without certificate.

Requires scrap metal business to create and maintain certain records of purchase or receipt of or other transactions related to metal property. Prohibits scrap metal business from purchasing, receiving or conducting transaction related to certain types of metal property. Requires payment for purchase or transaction by check mailed to seller's street address.

Requires scrap metal business to produce records in response to lawful demand and to segregate, identify and hold metal property reasonably suspected to be lost or stolen. Requires within 10 days determination of whether metal property is lost or stolen.

Requires consignment or secondhand store that purchases or receives metal property to comply with provisions of Act.

Provides immunity to owner of land for injury or damage caused by theft or attempted theft of metal property.

Specifies civil penalty of not more than \$1,000 for first violation of certain provisions of Act and not more than \$2,000 for subsequent violations.

Creates crime of unlawfully operating as scrap metal business. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

Creates crime of unlawfully altering metal property. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

Creates crime of making false statement on metal property record. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

Creates crime of unlawfully purchasing or receiving metal property. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

Creates crime of unlawfully possessing metal property. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to metal property; creating new provisions; amending ORS 161.005, 165.107, 646A.060 and  
3 646A.062; and declaring an emergency.

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

5 **SECTION 1. As used in sections 1 to 8 of this 2009 Act:**

6 (1) **"Commercial account" means an agreement or arrangement between a commercial**  
7 **seller and a scrap metal business for regularly or periodically selling, delivering, purchasing**  
8 **or receiving metal property.**

9 (2) **"Commercial metal property" means an item fabricated or containing parts made of**  
10 **metal or metal alloys that:**

11 (a) **Is used as, used in or used as part of:**

12 (A) **A utility access cover or a cover for a utility meter;**

13 (B) **A pole, fixture or component of a street light or traffic light;**

14 (C) **A sign or marker located, with the permission of a governmental entity, alongside a**  
15 **street, road or bridge for the purpose of directing or controlling traffic or providing infor-**

**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 mation to motorists;

2 (D) A traffic safety device, including a guardrail for a highway, road or bridge;

3 (E) A vase, plaque, marker, tablet, plate or other sign or ornament affixed to or in  
4 proximity to a historic site, grave, statue, monument or similar property accessible to  
5 members of the public; or

6 (F) An agricultural implement, including an irrigation wheel, sprinkler head or pipe;

7 (b) Bears the name of, or a serial or model number, logo or other device used by, a  
8 commercial seller to identify the commercial seller's property including, but not limited to,  
9 implements or equipment used by railroads and utilities that provide telephone, commercial  
10 mobile radio, cable television, electricity, water, natural gas or similar services; or

11 (c) Consists of material used in building construction or other commercial construction,  
12 including:

13 (A) Copper or aluminum pipe, tubing or wiring;

14 (B) Aluminum gutters, downspouts, siding, decking, bleachers or risers; or

15 (C) Aluminum or stainless steel fence panels made of one-inch tubing 42 inches long, with  
16 four-inch gaps.

17 (3) "Commercial seller" means a business entity, as defined in ORS 60.470, or govern-  
18 mental entity that regularly or periodically sells or delivers metal property to a scrap metal  
19 business as part of the entity's business functions.

20 (4) "Metal property" means commercial metal property, nonferrous metal property or  
21 private metal property.

22 (5)(a) "Nonferrous metal property" means an item fabricated or containing parts made  
23 of or in an alloy with platinum, palladium, rhodium, copper, brass, aluminum, bronze, lead,  
24 zinc or nickel.

25 (b) "Nonferrous metal property" does not include gold, silver or platinum that is used in  
26 the manufacture, repair, sale or resale of jewelry.

27 (6) "Private metal property" means a catalytic converter that has been removed from a  
28 vehicle and is offered for sale as an independent item, whether individually or as part of a  
29 bundle, bale or in other bulk form.

30 (7) "Scrap metal business" means a person that is licensed to do business in this state  
31 or another state and that:

32 (a) Maintains a permanent or fixed place of business at which the person:

33 (A) Engages in the business of purchasing or receiving metal property;

34 (B) Alters or prepares metal property the person receives for use in manufacturing other  
35 products; and

36 (C) Owns, leases, rents, maintains or uses a device used in metal recycling, including a  
37 hydraulic baler, metal shearer or metal shredder;

38 (b) Maintains a permanent or fixed place of business at which the person engages in the  
39 business of purchasing or receiving metal property for the purpose of aggregation and sale  
40 to another scrap metal business; or

41 (c) Does not necessarily maintain a permanent or fixed place of business in this state but  
42 engages in the business of purchasing or receiving nonferrous metal property or private  
43 metal property for the purpose of aggregation and sale to another scrap metal business.

44 (8)(a) "Transaction" means a sale, purchase, receipt or trade of, or a contract, agreement  
45 or pledge to sell, purchase, receive or trade, private metal property or nonferrous metal

1 property that occurs or forms between an individual and a scrap metal business.

2 (b) "Transaction" does not include:

3 (A) A donation made without a provision for or expectation of a reciprocal benefit; or

4 (B) A sale, purchase, receipt or trade of, or a contract, agreement or pledge to sell,  
5 purchase, receive or trade, private metal property or nonferrous metal property that occurs  
6 or forms between:

7 (i) A commercial seller or an authorized employee or agent of the commercial seller; and

8 (ii) A scrap metal business or an authorized employee or agent of the scrap metal busi-  
9 ness.

10 **SECTION 2.** (1) A person may not operate as a scrap metal business without holding a  
11 valid, current certificate issued under section 3 of this 2009 Act.

12 (2) The Director of the Department of Consumer and Business Services may impose a  
13 civil penalty of not more than \$5,000 on a person that operates as a scrap metal business  
14 without holding a certificate issued under section 3 of this 2009 Act. A civil penalty imposed  
15 by the director is in addition to other applicable penalties. The director shall impose a civil  
16 penalty under this section in the manner provided in ORS 183.745.

17 **SECTION 3.** (1) Except as provided in subsection (2) of this section, the Director of the  
18 Department of Consumer and Business Services shall issue a certificate to operate as a scrap  
19 metal business to a person that meets all of the following requirements:

20 (a) The person completes and submits an application to the director in a form the di-  
21 rector specifies by rule. The application must include:

22 (A) The person's full name, business address and residence address;

23 (B) If the person is a partnership or limited liability company, the name and business  
24 address of the partnership or limited liability company and the names and residence ad-  
25 dresses of each member of the partnership or limited liability company;

26 (C) If the person is a corporation, the name and business address of the corporation, the  
27 state in which the person is incorporated and the names and residence addresses of each of  
28 the corporation's principal officers; and

29 (D) Other information the director may require by rule.

30 (b) The person pays a fee in an amount the director sets by rule. The director shall set  
31 the fee in an amount that in the aggregate is sufficient to pay the expenses of administering  
32 and enforcing this section and section 2 of this 2009 Act.

33 (c) The person files a corporate surety bond or irrevocable letter of credit with the di-  
34 rector in an amount the director specifies by rule. The director by rule may require the  
35 person to maintain the corporate surety bond or irrevocable letter of credit at a certain  
36 amount at all times or may require the person to obtain a new corporate surety bond or  
37 irrevocable letter of credit if the corporate surety or insured institution pays an amount out  
38 of the bond or irrevocable letter of credit. The corporate surety bond or irrevocable letter  
39 of credit must:

40 (A) Be issued by a corporate surety licensed to transact business in this state or by an  
41 insured institution, as defined in ORS 706.008;

42 (B) Run in favor of the State of Oregon;

43 (C) Be approved as to form by the Attorney General; and

44 (D) Provide that:

45 (i) The surety or insured institution will pay for loss or damage that results from the

1 person's violation of section 2, 4, 5 or 6 of this 2009 Act or ORS 165.107; and

2 (ii) The corporate surety bond or irrevocable letter of credit is subject to an action by  
3 the director or another person that suffers loss or damage as a result of the person's vio-  
4 lation of section 2, 4, 5 or 6 of this 2009 Act or ORS 165.107.

5 (2) The director may refuse to issue a certificate to operate as a scrap metal business  
6 to a person that:

7 (a) Has had a certificate to operate as a scrap metal business revoked previously; or

8 (b) Submits information on an application for a certificate to operate as a scrap metal  
9 business that the director finds is false or misleading.

10 (3) The director by rule may specify the period of time for which a certificate to operate  
11 as a scrap metal business is valid and when a person that holds a certificate must renew the  
12 certificate.

13 (4) The director for good cause may revoke a certificate issued under this section. Good  
14 cause includes, but is not limited to, the person's violation of section 4, 5 or 6 of this 2009  
15 Act or ORS 165.107. If the person must pay for a loss or damage that results from the vio-  
16 lation in an amount that exceeds the amount of the corporate surety bond or irrevocable  
17 letter of credit the person filed with the director, the director may suspend a certificate is-  
18 sued under this section until the person pays the amount owed. The director shall provide a  
19 person to which the director issues an order suspending or revoking the person's certificate  
20 with notice and an opportunity for a hearing in accordance with ORS 183.413 to 183.470.

21 **SECTION 4.** (1) Before completing a transaction, a scrap metal business engaged in  
22 business in this state shall:

23 (a) Create a record for the transaction at the time and in the location where the trans-  
24 action occurs. The record of the transaction must:

25 (A) Be accurate and written clearly and legibly in English;

26 (B) Be entered onto a standardized printed form or an electronic form that is securely  
27 stored and is capable of ready retrieval and printing; and

28 (C) Contain all of the following information:

29 (i) The signature of the individual with whom the scrap metal business conducts the  
30 transaction;

31 (ii) The time, date, location and monetary amount or other value of the transaction;

32 (iii) The name of the employee who conducted the transaction on behalf of the scrap  
33 metal business;

34 (iv) The name, street address and telephone number of the individual with whom the  
35 scrap metal business conducts the transaction;

36 (v) A description of, and the license number and issuing state shown on the license plate  
37 affixed to, the motor vehicle, if any, used to transport the individual who conducts, or the  
38 nonferrous metal property or private metal property that is the subject of, the transaction;

39 (vi) A copy of, or the identifying number of, a valid driver license or other government-  
40 issued photo identification belonging to the individual with whom the scrap metal business  
41 conducts the transaction;

42 (vii) A photograph of, or video surveillance depicting, a recognizable facial image of the  
43 individual with whom the scrap metal business conducts the transaction; and

44 (viii) A description of the nonferrous metal property or private metal property that con-  
45 stitutes the predominant part of the transaction. The description must specify the weight,

1 quantity or volume of the nonferrous metal property or private metal property and indicate  
2 the appropriate classification code from the current edition of the Institute of Scrap Recy-  
3 cing Industries' Scrap Specifications Circular, or successor publication, for each separately  
4 classifiable component of the nonferrous metal property or private metal property.

5 (b) Require the individual with whom the scrap metal business conducts a transaction  
6 to sign and date a declaration printed in conspicuous type, either on the record described in  
7 this subsection or on a receipt issued to the individual with whom the scrap metal business  
8 conducts the transaction, that states:

9 \_\_\_\_\_  
10  
11 I, \_\_\_\_\_, AFFIRM UNDER PENALTY OF LAW THAT THE PROPERTY  
12 I AM SELLING IN THIS TRANSACTION IS NOT, TO THE BEST OF MY KNOWLEDGE,  
13 STOLEN PROPERTY.  
14 \_\_\_\_\_

15  
16 (c) Require the employee of the scrap metal business who conducts the transaction on  
17 behalf of the scrap metal business to witness the individual sign the declaration, and also to  
18 sign and date the declaration in a space provided for that purpose.

19 (d) For one year following the date of the transaction, keep a copy of the record and the  
20 signed and dated declaration described in this section. If the scrap metal business uses a  
21 video surveillance recording as part of the record kept in accordance with this subsection,  
22 the scrap metal business need not keep the video surveillance recording for one year, but  
23 shall retain the video surveillance recording for a minimum of 30 days following the date of  
24 the transaction. The scrap metal business shall at all times keep the copies at the current  
25 place of business for the scrap metal business.

26 (2) A scrap metal business engaged in business in this state may not do any of the fol-  
27 lowing:

28 (a) Purchase or receive metallic wire from which insulation was removed, in whole or in  
29 part, by burning unless the individual offering the metallic wire for purchase or receipt can  
30 prove by appropriate documentation that the individual owns or is entitled to offer the wire  
31 for purchase or receipt and that the burning was the result of a fire or other accident or  
32 was done by legitimate means or for a legitimate purpose. The scrap metal business shall  
33 retain a copy of the documentation provided.

34 (b) Purchase or receive kegs or similar metallic containers used to store or dispense al-  
35 coholic beverages, except from a person that manufactures the kegs or containers or from  
36 a person licensed by the Oregon Liquor Control Commission under ORS 471.155.

37 (c) Conduct a transaction with an individual if the individual does not at the time of the  
38 transaction consent to the creation of the record described in subsection (1) of this section  
39 and produce for inspection a valid driver license or other government-issued photo identifi-  
40 cation that belongs to the individual.

41 (d) Conduct a transaction with a value of more than \$30 with an individual in which the  
42 scrap metal business pays the individual other than by mailing a nontransferable check for  
43 the amount of the transaction to the street address the individual provided under subsection  
44 (1) of this section not earlier than 10 days after the date of the transaction. The check must  
45 be drawn on an account that the scrap metal business maintains with a financial institution,

1 as defined in ORS 706.008.

2 (e) Cash a check issued in payment for a transaction or release a check issued in pay-  
 3 ment for a transaction other than as provided in paragraph (d) of this subsection. If a check  
 4 is returned as undelivered or undeliverable, the scrap metal business shall retain the check  
 5 until the individual with whom the scrap metal business conducted the transaction provides  
 6 a valid street address for the individual. If after 30 days following the date of the transaction  
 7 the individual fails to provide a valid street address, the scrap metal business may cancel the  
 8 check and the individual shall forfeit to the scrap metal business the amount due as pay-  
 9 ment.

10 **SECTION 5.** (1) Before purchasing or receiving metal property from a commercial seller,  
 11 a scrap metal business shall:

12 (a) Create and maintain a commercial account with the commercial seller. As part of the  
 13 commercial account, the scrap metal business shall enter accurately, clearly and legibly in  
 14 English onto a standardized printed form, or an electronic form that is securely stored and  
 15 is capable of ready retrieval and printing, the following information:

- 16 (A) The full name of the commercial seller;
- 17 (B) The business address and telephone number of the commercial seller; and
- 18 (C) The full name of each employee, agent or other individual the commercial seller au-  
 19 thorizes to deliver metal property to the scrap metal business.

20 (b) Record as part of the commercial account at the time the scrap metal business pur-  
 21 chases or receives metal property from a commercial seller the following information:

- 22 (A) The time, date and location at which the commercial seller delivered the metal  
 23 property for purchase or receipt;
- 24 (B) The monetary amount or other value of the metal property;
- 25 (C) A description of the type of metal property that constitutes the predominant part of  
 26 the purchase or receipt; and
- 27 (D) The signature of the person that delivered the metal property to the scrap metal  
 28 business.

29 (2) A scrap metal business may not purchase or receive commercial metal property from  
 30 a person unless the person is:

- 31 (a) A commercial seller that has a commercial account with the scrap metal business;  
 32 or
- 33 (b) An individual who can produce written documentation or identification that proves  
 34 that the individual is an employee, agent or other individual authorized by a commercial  
 35 seller that has a commercial account with the scrap metal business to deliver commercial  
 36 metal property for purchase or receipt.

37 **SECTION 6.** (1) Not later than two business days after receiving from a peace officer or  
 38 law enforcement agency a warrant, subpoena or other lawful demand for information related  
 39 to a named or specified individual, vehicle or item of metal property, a scrap metal business  
 40 shall provide to the peace officer or law enforcement agency a copy of a transaction record  
 41 created under section 4 (1) of this 2009 Act or a copy of the relevant portion of a commercial  
 42 account that contains the information about the individual, vehicle or item of metal property  
 43 that is the subject of the lawful demand. The scrap metal business shall provide the infor-  
 44 mation in any form or by any method reasonably required by the peace officer or law  
 45 enforcement agency.

1 (2) If a scrap metal business has good cause to believe that metal property that the scrap  
2 metal business purchased or received or possesses or controls was lost by or stolen from the  
3 metal property's owner or lawful possessor, the scrap metal business shall promptly notify  
4 an appropriate law enforcement agency and shall:

5 (a) Name the owner or lawful possessor of the property, if known; and

6 (b) Disclose the name of the person that delivered the metal property and the date on  
7 which the scrap metal business received the metal property.

8 (3) If a peace officer or law enforcement agency notifies a scrap metal business that an  
9 item of metal property in the possession of the scrap metal business is stolen, the scrap  
10 metal business shall:

11 (a) Segregate the metal property that is the subject of the notification from other in-  
12 ventory kept by the scrap metal business;

13 (b) Protect the metal property from alteration or damage;

14 (c) Mark, tag or otherwise identify the metal property; and

15 (d) Hold the metal property for the length of time, not to exceed 10 days, that the peace  
16 officer or law enforcement agency specifies.

17 **SECTION 7.** A peace officer or law enforcement agency may not require a scrap metal  
18 business to hold metal property under the provisions of section 6 (3) of this 2009 Act unless  
19 the peace officer or law enforcement agency reasonably suspects that the metal property  
20 was lost by or stolen from the owner or lawful possessor of the metal property. Within 10  
21 days after notifying a scrap metal business that an item of metal property may be lost or  
22 stolen, the peace officer or law enforcement agency shall:

23 (1) Determine that the metal property is lost or stolen and take appropriate lawful action  
24 to impound or recover the metal property and return the metal property to the owner or  
25 lawful possessor; or

26 (2) Determine that the metal property is not lost or stolen and notify the scrap metal  
27 business that it is not necessary to hold the metal property any longer.

28 **SECTION 8.** (1) Sections 1 to 7 of this 2009 Act do not apply to activities conducted in the  
29 ordinary course of business by:

30 (a) A person in possession of a vehicle dealer certificate issued under ORS 822.020;

31 (b) A person in possession of a dismantler certificate issued under ORS 822.110;

32 (c) A person in possession of a towing business certificate issued under ORS 822.205; or

33 (d) A person engaged in the business of buying or selling used or empty food and beverage  
34 containers, including containers made of metal.

35 (2) A person otherwise exempt under this section that in the ordinary course of business  
36 purchases, receives or conducts a transaction involving private metal property that is not  
37 installed or attached for use in a motor vehicle shall comply with sections 1 to 7 of this 2009  
38 Act.

39 **SECTION 9.** (1) As used in this section, "prosecuting attorney" means the Attorney  
40 General or the district attorney of the county in which a violation of section 4, 5 or 6 of this  
41 2009 Act is alleged to have occurred.

42 (2) A prosecuting attorney who has probable cause to believe that a person has violated,  
43 is violating or is about to violate a provision of section 4, 5 or 6 of this 2009 Act may bring  
44 suit in the name of the State of Oregon in an appropriate court to restrain the person from  
45 engaging in the violation and to enforce compliance with the provisions of section 4, 5 or 6

1 of this 2009 Act. Upon a proper showing, the court shall grant an injunction or restraining  
 2 order.

3 (3) If the court finds that a person violated a provision of section 4, 5 or 6 of this 2009  
 4 Act and the violation is not otherwise subject to a criminal penalty under ORS 165.107, the  
 5 court, in addition to any order the court may issue under subsection (2) of this section, may  
 6 impose a fine of not more than \$1,000 for each violation. The fine shall be entered as a  
 7 judgment and paid to the State Treasury to the credit of the General Fund. Each violation  
 8 is a separate offense.

9 (4) If a court finds that a person has previously violated a provision of section 4, 5 or 6  
 10 of this 2009 Act and the violation is not otherwise subject to a criminal penalty under ORS  
 11 165.107, the court may issue an injunction or restraining order under subsection (2) of this  
 12 section and may impose a fine of not more than \$2,000 for each violation found under this  
 13 subsection and for all subsequent violations. The fine shall be entered and paid as provided  
 14 in subsection (3) of this section.

15 **SECTION 10.** (1) As used in this section, “owner” means a person, including a tenant,  
 16 lessee, occupant or other person, that possesses an interest in land, including but not limited  
 17 to a possession of a fee title.

18 (2) An owner of land is not liable for personal injury, death or property damage that  
 19 arises out of:

20 (a) Theft or attempted theft of metal property as defined in section 1 of this 2009 Act  
 21 from the owner’s land; or

22 (b) A hazardous condition that results from theft or attempted theft of metal property  
 23 as defined in section 1 of this 2009 Act from the owner’s land when the owner did not know  
 24 or could not reasonably have known of the hazardous condition.

25 (3) The immunities provided under this section apply to:

26 (a) Public and private land;

27 (b) Roads, bodies of water, watercourses, rights of way, buildings and fixtures or struc-  
 28 tures on the owner’s land; and

29 (c) Machinery or equipment on the owner’s land.

30 (4) This section does not create or impose a duty of care upon an owner or possessor of  
 31 land that would not otherwise exist under common law.

32 **SECTION 11.** ORS 165.107 is amended to read:

33 165.107. [(1) A scrap metal dealer commits the offense of failing to maintain a metal purchase re-  
 34 cord if the scrap metal dealer knowingly buys or otherwise obtains new, used or secondhand nonferrous  
 35 metals or alloys thereof without keeping a record of all such articles purchased or obtained.]

36 [(2) The scrap metal dealer purchasing or obtaining the metal shall retain the record required by  
 37 subsection (1) of this section for a period of not less than one year and the scrap metal dealer shall  
 38 make the record available to any peace officer on demand.]

39 [(3) The record required by subsection (1) of this section shall contain:]

40 [(a) The time and date of the transaction and the name of the person conducting the transaction  
 41 on behalf of the scrap metal dealer.]

42 [(b) A general description of the property purchased, including the type and amount and, if readily  
 43 discernible, any identifiable marks on the property.]

44 [(c) A photocopy of a current, valid driver license, passport or state identification card of the  
 45 seller.]



1        *[(d) The amount of the consideration given for the metals.]*

2        *[(e) If the transaction is valued at more than \$100, a declaration, signed by the seller, in substan-*  
 3 *tially the following form: “I, the undersigned, hereby declare that the property that is subject to this*  
 4 *transaction is not, to the best of my knowledge, stolen property. I understand that this statement is*  
 5 *made under penalty of perjury and may be used as evidence in court.”]*

6        *[(f) Video surveillance or a photograph of the seller. Notwithstanding subsection (2) of this section,*  
 7 *the images must be retained for 30 days from the date of the transaction.]*

8        *[(g) A description of any motor vehicle and its license number used in the delivery of the*  
 9 *property.]*

10        *[(4) This section shall not apply to purchases made by or from a manufacturer, remanufacturer or*  
 11 *a distributor appointed by a manufacturer of such articles.]*

12        *[(5) As used in this section:]*

13        *[(a) “Nonferrous metal” includes, but is not limited to, aluminum, stainless steel, copper, copper*  
 14 *wire, copper cable, brass, electrolytic nickel and zinc. “Nonferrous metal” does not include precious*  
 15 *metals when actually used in the manufacture, repair, sale or resale of jewelry.]*

16        *[(b) “Scrap metal dealer” means a person engaged in the business of purchasing or receiving*  
 17 *nonferrous metal property for aggregation and sale to a metal processor or metal recycler.]*

18        *[(c) “Seller” means a person who sells or delivers the property or otherwise makes the property*  
 19 *available to the scrap metal dealer.]*

20        *[(6)(a) A scrap metal dealer that violates this section shall pay a fine of \$1,000.]*

21        *[(b) Notwithstanding paragraph (a) of this subsection, a scrap metal dealer that violates this section*  
 22 *shall pay a fine of \$5,000 if the scrap metal dealer has at least three previous convictions for violations*  
 23 *of this section.]*

24        **(1) As used in this section:**

25        **(a) “Commercial metal property” has the meaning given that term in section 1 of this**  
 26 **2009 Act.**

27        **(b) “Commercial seller” has the meaning given that term in section 1 of this 2009 Act.**

28        **(c) “Metal property” has the meaning given that term in section 1 of this 2009 Act.**

29        **(d) “Metal property record” means information required under section 4 (1) or 5 of this**  
 30 **2009 Act.**

31        **(e) “Nonferrous metal property” has the meaning given that term in section 1 of this 2009**  
 32 **Act.**

33        **(f) “Private metal property” has the meaning given that term in section 1 of this 2009**  
 34 **Act.**

35        **(g) “Scrap metal business” has the meaning given that term in section 1 of this 2009 Act.**

36        **(h) “Transaction” has the meaning given that term in section 1 of this 2009 Act.**

37        **(2) A person commits the offense of unlawfully operating as a scrap metal business if the**  
 38 **person performs a function of a scrap metal business without a certificate issued under**  
 39 **section 3 of this 2009 Act.**

40        **(3) A person commits the offense of unlawfully altering metal property if the person, with**  
 41 **intent to deceive a scrap metal business as to the ownership or origin of an item of metal**  
 42 **property, knowingly removes, alters, renders unreadable or invisible or obliterates a name,**  
 43 **logo, model or serial number, personal identification number or other mark or method that**  
 44 **a manufacturer uses to identify the metal property.**

45        **(4) A person commits the offense of making a false statement on a metal property record**

1 if the person:

2 (a) Knowingly makes, causes or allows to be made a false entry or misstatement of ma-  
3 terial fact in a metal property record; or

4 (b) Signs a declaration under section 4 (1) of this 2009 Act knowing that the nonferrous  
5 metal property or private metal property that is the subject of a transaction is stolen.

6 (5) A scrap metal business commits the offense of unlawfully purchasing or receiving  
7 metal property if the scrap metal business:

8 (a) Purchases or receives metal property from a person whom the scrap metal business  
9 knows or reasonably suspects:

10 (A) Is under 18 years of age;

11 (B) Is under the influence of intoxicating liquor or a narcotic drug or controlled sub-  
12 stance; or

13 (C) Has, according to information provided to the scrap metal business by a peace officer  
14 or law enforcement agency, been convicted within the past 10 years, as a principal, agent or  
15 accessory of a crime involving:

16 (i) Drugs;

17 (ii) Burglary, robbery or theft;

18 (iii) Possession or receipt of stolen property;

19 (iv) The manufacture, delivery or possession of, with intent to deliver, methamphet-  
20 amine;

21 (v) The manufacture, delivery or possession of, with intent to deliver, ephedrine or a salt,  
22 isomer or salt of an isomer of ephedrine;

23 (vi) The manufacture, delivery or possession of, with intent to deliver, pseudoephedrine  
24 or a salt, isomer or salt of an isomer of pseudoephedrine; or

25 (vii) Possession of anhydrous ammonia with intent to manufacture methamphetamine;

26 (b) Purchases or receives metal property that the scrap metal business knows or rea-  
27 sonably suspects has been unlawfully altered as described in subsection (3) of this section;  
28 or

29 (c) Pays an individual in a transaction other than with a check in violation of section 4  
30 (2)(d) of this 2009 Act.

31 (6) A scrap metal business commits the offense of unlawfully possessing metal property  
32 if the scrap metal business possesses metal property:

33 (a) As a consequence of a transaction conducted in violation of section 4 of this 2009 Act;  
34 or

35 (b) As a consequence of a purchase or receipt that violated section 5 of this 2009 Act.

36 (7) Violation of a provision of subsections (2) to (6) of this section is a Class A  
37 misdemeanor.

38 **SECTION 12.** ORS 161.005 is amended to read:

39 161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290  
40 to 161.370, 161.405 to 161.485, 161.505 to 161.585, 161.605, 161.615 to 161.685, 161.705 to 161.737,  
41 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to  
42 162.425, 162.465, 163.005, 163.115, 163.125 to 163.145, 163.149, 163.160 to 163.208, 163.215 to 163.257,  
43 163.261, 163.263, 163.264, 163.266, 163.275, 163.285, 163.305 to 163.467, 163.432, 163.433, 163.505 to  
44 163.575, 163.665 to 163.693, 164.005, 164.015 to 164.135, 164.138, 164.140, 164.205 to 164.270, 164.305  
45 to 164.377, 164.395 to 164.415, 164.805, 164.886, 165.002 to 165.102, **165.107**, 165.109, 165.805, 166.005

1 to 166.095, 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.054, 167.057, 167.060 to 167.100,  
 2 167.117, 167.122 to 167.162, 167.203 to 167.252, 167.310 to 167.340 and 167.350, 167.810 and 167.820  
 3 shall be known and may be cited as Oregon Criminal Code of 1971.

4 **SECTION 13.** ORS 646A.060 is amended to read:

5 646A.060. (1) A person doing business as a consignment store, a buy-sell store, a secondhand  
 6 store or a similar store or enterprise that in the regular course of business buys used goods from  
 7 individuals for the purpose of resale shall:

8 (a) Require that the individual from whom the person buys the used goods present proof of  
 9 identification; and

10 (b) Maintain a record of the name and address of the individual, the type of identification pro-  
 11 vided by the individual, the date and a description of the goods bought from the individual.

12 (2) If the goods described in subsection (1) of this section are **private metal property or are**  
 13 **constructed of or contain parts made of nonferrous metal property** as *[that term is defined in ORS*  
 14 *165.107]* **those terms are defined in section 1 of this 2009 Act**, in addition to the requirements  
 15 of subsection (1) of this section, **the person shall comply with and is subject to the penalty**  
 16 **provided for violating a provision of section 4, 5 or 6 of this 2009 Act that is applicable to a**  
 17 **scrap metal business as defined in section 1 of this 2009 Act.** *[the records shall contain the fol-*  
 18 *lowing:]*

19 *[(a) A photocopy of the identification provided under subsection (1)(a) of this section;]*

20 *[(b) The amount of consideration given for the goods;]*

21 *[(c) If the transaction is valued at more than \$100, a declaration, signed by the individual from*  
 22 *whom the person buys the used goods, in substantially the following form: "I, the undersigned, hereby*  
 23 *declare that the property that is subject to this transaction is not, to the best of my knowledge, stolen*  
 24 *property. I understand that this statement is made under penalty of perjury and may be used as evi-*  
 25 *dence in court.";]*

26 *[(d) Video surveillance or a photograph of the individual; and]*

27 *[(e) A description and the registration plate number of any motor vehicle used in the delivery of*  
 28 *the goods.]*

29 (3)(a) The person shall make all records required to be maintained *[by subsections (1) and (2)]*  
 30 **under subsection (1)** of this section available to law enforcement personnel conducting an investi-  
 31 gation.

32 *[(b) The person shall retain the records described in subsection (2) of this section for a period of*  
 33 *not less than one year, except that the video surveillance or photograph described in subsection (2)(d)*  
 34 *of this section must be retained for 30 days from the date of the transaction.]*

35 (4) This section does not apply to pawnbrokers licensed under ORS 726.080.

36 (5) This section does not preempt, invalidate or in any way affect the operation of any provision  
 37 of a county, city or district ordinance regulating the activities of consignment stores, buy-sell stores,  
 38 secondhand stores or similar stores or enterprises that in the regular course of business buy used  
 39 goods from individuals for the purpose of resale.

40 **SECTION 14.** ORS 646A.062 is amended to read:

41 646A.062. *[(1)]* A person that violates ORS 646A.060 (1) commits a Class B violation.

42 *[(2)(a) A person that violates ORS 646A.060 (2) shall pay a fine of \$1,000.]*

43 *[(b) Notwithstanding paragraph (a) of this subsection, a person that violates ORS 646A.060 (2)*  
 44 *shall pay a fine of \$5,000 if the person has at least three previous convictions for violations of ORS*  
 45 *646A.060 (2).]*

1       **SECTION 15.** (1) Sections 1 to 10 of this 2009 Act and the amendments to ORS 161.005,  
2 165.107, 646A.060 and 646A.062 by sections 11 to 14 of this 2009 Act apply to offenses com-  
3 mitted and transactions conducted on or after the operative date specified in subsection (2)  
4 of this section.

5       (2) Sections 1 to 10 of this 2009 Act and the amendments to ORS 161.005, 165.107, 646A.060  
6 and 646A.062 by sections 11 to 14 of this 2009 Act become operative January 1, 2010.

7       (3) The Director of the Department of Consumer and Business Services may take any  
8 action before the operative date specified in subsection (2) of this section that is necessary  
9 to enable the director to exercise, on and after the operative date specified in subsection (2)  
10 of this section all the duties, functions and powers conferred on the director by sections 2  
11 and 3 of this 2009 Act.

12       **SECTION 16.** This 2009 Act being necessary for the immediate preservation of the public  
13 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect  
14 on its passage.

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