

A-Engrossed Senate Bill 570

Ordered by the Senate April 27
Including Senate Amendments dated April 27

Sponsored by Senators ATKINSON, BATES, BONAMICI, BOQUIST, BURDICK, CARTER, COURTNEY, DEVLIN, DINGFELDER, FERRIOLI, GEORGE, GIROD, HASS, JOHNSON, KRUSE, METSGER, MONNES ANDERSON, MONROE, MORRISSETTE, MORSE, NELSON, PROZANSKI, ROSENBAUM, SCHRADER, STARR, TELFER, VERGER, WALKER, WHITSETT, WINTERS, Representatives BAILEY, BARKER, BARNHART, BARTON, BENTZ, BERGER, BEYER, BOONE, BRUUN, BUCKLEY, CAMERON, CANNON, CLEM, COWAN, DEMBROW, C EDWARDS, D EDWARDS, ESQUIVEL, FREEMAN, GALIZIO, GARRARD, GARRETT, GELSER, GILLIAM, GILMAN, GREENLICK, HANNA, HARKER, HOLVEY, HUFFMAN, HUNT, JENSON, KAHL, KENNEMER, KOMP, KOTEK, KRIEGER, MATTHEWS, MAURER, NATHANSON, NOLAN, OLSON, READ, RICHARDSON, RILEY, ROBLAN, SCHAUFLEER, G SMITH, J SMITH, SPRENGER, STIEGLER, THATCHER, THOMPSON, TOMEI, VANORMAN, WEIDNER, WHISNANT, WINGARD, WITT

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.

Requires scrap metal business to create and maintain certain records of purchase or receipt of metal property or other transactions related to metal property. Prohibits scrap metal business from [*purchasing, receiving or conducting transaction related to*] **purchasing or receiving** certain types of metal property. Requires payment for purchase or transaction by check mailed to seller's street address **no earlier than three days after date of transaction**.

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 Oregon Criminal Justice Commission to adopt rules establishing disproportionate impact as aggravating factor for purposes of court imposing upward departure from presumptive sentence for conviction of theft in first degree or of aggravated theft in first degree.

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 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*] **transporting** metal property. Punishes by maximum of [*one year's imprisonment, \$6,250 fine,*] **30 days' imprisonment, \$1,250 fine,** or both.

A BILL FOR AN ACT

1
2 Relating to commerce in metal property; creating new provisions; and amending ORS 133.619,
3 161.005, 164.095, 165.107, 423.565, 646A.060 and 646A.062.

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

5 **SECTION 1. As used in sections 1 to 5 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.**

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) “Commercial metal property” means an item fabricated or containing parts made of
2 metal or metal alloys that:

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

4 (A) A utility access cover or a cover for a utility meter;

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

6 (C) A sign or marker located, with the permission of a governmental entity, alongside a
7 street, road or bridge for the purpose of directing or controlling traffic or providing infor-
8 mation to motorists;

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

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

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

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

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

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

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

22 (C) Aluminum or stainless steel fence panels made of one-inch tubing 42 inches long, with
23 four-inch gaps; or

24 (d) Constitutes wire of a gauge typically used by utilities to provide electrical or tele-
25 communications service.

26 (3) “Commercial seller” means a business entity, as defined in ORS 60.470, or govern-
27 mental entity that regularly or periodically sells or delivers metal property to a scrap metal
28 business as part of the entity’s business functions.

29 (4) “Metal property” means commercial metal property, nonferrous metal property or
30 private metal property.

31 (5)(a) “Nonferrous metal property” means an item fabricated or containing parts made
32 of or in an alloy with copper, brass, aluminum, bronze, lead, zinc or nickel.

33 (b) “Nonferrous metal property” does not include gold, silver or platinum that is used in
34 the manufacture, repair, sale or resale of jewelry.

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

38 (7)(a) “Scrap metal business” means a person that is licensed to do business in this state
39 or another state and that:

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

41 (i) Engages in the business of purchasing or receiving metal property;

42 (ii) Alters or prepares metal property the person receives for use in manufacturing other
43 products; and

44 (iii) Owns, leases, rents, maintains or uses a device used in metal recycling, including a
45 hydraulic baler, metal shearer or metal shredder;

1 (B) Maintains a permanent or fixed place of business at which the person engages in the
2 business of purchasing or receiving metal property for the purpose of aggregation and sale
3 to another scrap metal business; or

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

7 (b) "Scrap metal business" does not include a governmental entity that accepts metal
8 property for recycling.

9 (8)(a) "Transaction" means a sale, purchase, receipt or trade of, or a contract, agreement
10 or pledge to sell, purchase, receive or trade, private metal property or nonferrous metal
11 property that occurs or forms between an individual and a scrap metal business.

12 (b) "Transaction" does not include:

13 (A) A transfer of metal property made without consideration; or

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

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

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

20 **SECTION 2.** (1) A person commits the offense of unlawfully altering metal property if the
21 person, with intent to deceive a scrap metal business as to the ownership or origin of an item
22 of metal property, knowingly removes, alters, renders unreadable or invisible or obliterates
23 a name, logo, model or serial number, personal identification number or other mark or
24 method that a manufacturer uses to identify the metal property.

25 (2) A person commits the offense of making a false statement on a metal property record
26 if the person:

27 (a) Knowingly makes, causes or allows to be made a false entry or misstatement of ma-
28 terial fact in a metal property record described in ORS 165.107; or

29 (b) Signs a declaration under ORS 165.107 knowing that the nonferrous metal property
30 or private metal property that is the subject of a transaction is stolen.

31 (3) A scrap metal business or an agent or employee of a scrap metal business commits
32 the offense of unlawfully purchasing or receiving metal property if the scrap metal business
33 or agent or employee fails to report any of the following to a law enforcement agency within
34 24 hours:

35 (a) The purchase or receipt of metal property that the person knows or has good reason
36 to know was the subject of theft.

37 (b) The purchase or receipt of metal property that the person knows or reasonably sus-
38 pects has been unlawfully altered as described in subsection (1) of this section.

39 (c) The purchase or receipt of metallic wire from which insulation has been removed, in
40 whole or in part, by burning, unless the individual offering the wire for purchase or receipt
41 can prove by appropriate documentation that the individual owns or is entitled to offer the
42 wire for purchase or receipt and that the burning was the result of a fire or other accident
43 or was done by legitimate means or for a legitimate purpose. The scrap metal business shall
44 retain a copy of the documentation provided.

45 (d) The purchase or receipt of commercial metal property from a person other than:

1 (A) A commercial seller that has a commercial account with the scrap metal business;
2 or

3 (B) An individual who can produce written documentation or identification that proves
4 that the individual is an employee, agent or other individual authorized by a commercial
5 seller that has a commercial account with the scrap metal business to deliver commercial
6 metal property for purchase or receipt.

7 (e) The purchase or receipt of metal property from an individual whom the scrap metal
8 business knows or reasonably suspects:

9 (A) Is under 16 years of age; or

10 (B) Has, according to information provided by a peace officer or law enforcement agency,
11 been convicted within the past five years, as a principal, agent or accessory of a crime in-
12 volving:

13 (i) Drugs;

14 (ii) Burglary, robbery or theft;

15 (iii) Possession or receipt of stolen property;

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

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

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

22 (vii) Possession of anhydrous ammonia with intent to manufacture methamphetamine.

23 (4) Violation of a provision of subsections (1) to (3) of this section is a Class A
24 misdemeanor.

25 **SECTION 3.** (1) A person commits the offense of unlawfully transporting metal property
26 if the person transports metal property on a public highway or on premises open to the
27 public with the intent to deliver the metal property to a scrap metal business and the person
28 does not have a metal transportation certificate in the person's possession.

29 (2) A seller or transferor of metal property that has reason to believe that a buyer or
30 transferee intends to obtain the metal property for delivery to a scrap metal business shall
31 provide the buyer or transferee with a metal transportation certificate.

32 (3) A metal transportation certificate must include:

33 (a) The date the metal property was acquired and the amount and type of metal property
34 that the person is transporting;

35 (b) The location where the metal property was loaded and the destination of the metal
36 property;

37 (c) The name, address and telephone number of the seller or the transferor;

38 (d) The signature of the seller or transferor or the authorized agent of the seller or
39 transferor; and

40 (e) The name, address and telephone number of the person transporting the metal prop-
41 erty.

42 (4) The Department of State Police shall create a form that may serve as a metal
43 transportation certificate and shall make the form available on the department's website.

44 (5) It is a defense to a charge of unlawfully transporting metal property that the person
45 transporting the metal property is the owner of the property or an agent or employee of the

1 owner of the property.

2 (6) Unlawfully transporting metal property is a Class C misdemeanor.

3 **SECTION 4.** (1) Not later than two business days after receiving from a peace officer or
4 law enforcement agency a subpoena for information related to a named or specified individ-
5 ual, vehicle or item of metal property, a scrap metal business shall provide to the peace of-
6 ficer or law enforcement agency a copy of a metal property record created under ORS 165.107
7 or a copy of the relevant portion of a commercial account that contains the information
8 about the individual, vehicle or item of metal property that is the subject of the subpoena.
9 The scrap metal business shall provide the information in any form or by any method rea-
10 sonably required by the peace officer or law enforcement agency.

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

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

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

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

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

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

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

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

27 (4) A peace officer or law enforcement agency may not require a scrap metal business
28 to hold metal property under subsection (3) of this section unless the peace officer or law
29 enforcement agency reasonably suspects that the metal property was lost by or stolen from
30 the owner or lawful possessor of the metal property. Within 10 days after notifying a scrap
31 metal business that an item of metal property may be lost or stolen, the peace officer or law
32 enforcement agency shall:

33 (a) Determine that the metal property is lost or stolen and take appropriate lawful action
34 to impound or recover the metal property and return the metal property to the owner or
35 lawful possessor; or

36 (b) Determine that the metal property is not lost or stolen and notify the scrap metal
37 business that it is not necessary to hold the metal property any longer.

38 **SECTION 5.** (1) Except as provided in subsection (2) of this section, sections 1 to 4 of this
39 2009 Act and ORS 165.107 do not apply to:

40 (a) A person engaged in recycling beverage containers as defined in ORS 459A.700.

41 (b) A person engaged in buying or selling used or empty food containers made of metal.

42 (c) A person to whom a vehicle dealer certificate has been issued under ORS 822.020.

43 (d) A person to whom a dismantler certificate has been issued under ORS 822.110.

44 (e) A person to whom a towing business certificate has been issued under ORS 822.205.

45 (2) A person described in subsection (1)(c) to (e) of this section shall comply with and is

1 **subject to the penalty provided for violating a provision of ORS 165.107 or sections 1 to 4 of**
2 **this 2009 Act, if the person purchases, receives or transports:**

3 **(a) Private metal property; or**

4 **(b) Commercial metal property or nonferrous metal property, that is not a motor vehicle**
5 **or a part of a motor vehicle.**

6 **SECTION 6.** ORS 165.107 is amended to read:

7 165.107. *[(1) A scrap metal dealer commits the offense of failing to maintain a metal purchase re-*
8 *cord if the scrap metal dealer knowingly buys or otherwise obtains new, used or secondhand nonferrous*
9 *metals or alloys thereof without keeping a record of all such articles purchased or obtained.]*

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

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

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

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

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

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

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

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

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

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

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

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

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

37 *[(c) "Seller" means a person who sells or delivers the property or otherwise makes the property*
38 *available to the scrap metal dealer.]*

39 **(1) Before completing a transaction, a scrap metal business engaged in business in this**
40 **state shall:**

41 **(a) Create a metal property record for the transaction at the time and in the location**
42 **where the transaction occurs. The record must:**

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

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

1 (C) Contain all of the following information:

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

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

5 (iii) The name of the employee who conducts the transaction on behalf of the scrap metal
6 business;

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

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

12 (vi) A photocopy of a current, valid driver license or other government-issued photo
13 identification belonging to the individual with whom the scrap metal business conducts the
14 transaction;

15 (vii) A photograph of, or video surveillance recording depicting, a recognizable facial im-
16 age of the individual with whom the scrap metal business conducts the transaction; and

17 (viii) A general description of the nonferrous metal property or private metal property
18 that constitutes the predominant part of the transaction. The description must include any
19 identifiable marks on the property, if readily discernible, and must specify the weight,
20 quantity or volume of the nonferrous metal property or private metal property and indicate
21 the appropriate classification code from the current edition of the Institute of Scrap Recy-
22 cing Industries' Scrap Specifications Circular, or successor publication, for each separately
23 classifiable component of the nonferrous metal property or private metal property.

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

28 _____
29
30 I, _____, AFFIRM UNDER PENALTY OF LAW THAT THE PROPERTY
31 I AM SELLING IN THIS TRANSACTION IS NOT, TO THE BEST OF MY KNOWLEDGE,
32 STOLEN PROPERTY.
33 _____

34
35 (c) Require the employee of the scrap metal business who conducts the transaction on
36 behalf of the scrap metal business to witness the individual sign the declaration, and also to
37 sign and date the declaration in a space provided for that purpose.

38 (d) For one year following the date of the transaction, keep a copy of the record and the
39 signed and dated declaration described in this subsection. If the scrap metal business uses
40 a video surveillance recording as part of the record kept in accordance with this subsection,
41 the scrap metal business need not keep the video surveillance recording for one year, but
42 shall retain the video surveillance recording for a minimum of 30 days following the date of
43 the transaction. The scrap metal business shall at all times keep the copies at the current
44 place of business for the scrap metal business.

45 (2) A scrap metal business engaged in business in this state may not do any of the fol-

1 **lowing:**

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

5 (b) **Conduct a transaction with an individual if the individual does not at the time of the**
6 **transaction consent to the creation of the record described in subsection (1) of this section**
7 **and produce for inspection a valid driver license or other government-issued photo identifi-**
8 **cation that belongs to the individual.**

9 (c) **Conduct a transaction with an individual in which the scrap metal business pays the**
10 **individual other than by mailing a nontransferable check for the amount of the transaction**
11 **to the street address the individual provided under subsection (1) of this section not earlier**
12 **than three business days after the date of the transaction. The check must be drawn on an**
13 **account that the scrap metal business maintains with a financial institution, as defined in**
14 **ORS 706.008.**

15 (d) **Cash a check issued in payment for a transaction or release a check issued in pay-**
16 **ment for a transaction other than as provided in paragraph (c) of this subsection. If a check**
17 **is returned as undelivered or undeliverable, the scrap metal business shall retain the check**
18 **until the individual with whom the scrap metal business conducted the transaction provides**
19 **a valid street address for the individual. If after 30 days following the date of the transaction**
20 **the individual fails to provide a valid street address, the scrap metal business may cancel the**
21 **check and the individual shall forfeit to the scrap metal business the amount due as pay-**
22 **ment.**

23 (3) **Before purchasing or receiving metal property from a commercial seller, a scrap**
24 **metal business shall:**

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

29 (A) **The full name of the commercial seller;**

30 (B) **The business address and telephone number of the commercial seller; and**

31 (C) **The full name of each employee, agent or other individual the commercial seller au-**
32 **thorizes to deliver metal property to the scrap metal business.**

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

35 (A) **The time, date and location at which the commercial seller delivered the metal**
36 **property for purchase or receipt;**

37 (B) **The monetary amount or other value of the metal property;**

38 (C) **A description of the type of metal property that constitutes the predominant part of**
39 **the purchase or receipt; and**

40 (D) **The signature of the individual who delivered the metal property to the scrap metal**
41 **business.**

42 (4) **A scrap metal business may require an individual from whom the business obtains**
43 **metal property to provide the individual's thumbprint to the scrap metal business.**

44 (5) **A scrap metal business shall make all records and accounts required to be maintained**
45 **under this section available to any peace officer on demand.**

1 (6)(a) A scrap metal [*dealer*] **business** that violates **a provision of subsections (1) to (3) of this**
2 section shall pay a fine of \$1,000.

3 (b) Notwithstanding paragraph (a) of this subsection, a scrap metal [*dealer*] **business** that vio-
4 lates **a provision of subsections (1) to (3) of this section** shall pay a fine of \$5,000 if the scrap
5 metal [*dealer*] **business** has at least three previous convictions for violations of **a provision of**
6 **subsections (1) to (3) of this section.**

7 **(7) The definitions in section 1 of this 2009 Act apply to this section.**

8 **SECTION 7. (1) As used in this section, “disproportionate impact” means that, in a case**
9 **of theft in the first degree under ORS 164.055 or aggravated theft in the first degree under**
10 **ORS 164.057:**

11 **(a) The offender caused damage to property during the commission of the theft and the**
12 **cost to restore the damaged property to the condition the property was in immediately be-**
13 **fore the theft is more than three times the value of the property that was the subject of the**
14 **theft; or**

15 **(b) The theft of the property creates a hazard to public health or safety or the environ-**
16 **ment.**

17 **(2) The Oregon Criminal Justice Commission shall adopt rules that establish dispropor-**
18 **tionate impact as an aggravating factor that a court may consider as a substantial and**
19 **compelling reason to impose an upward departure from a presumptive sentence under the**
20 **rules of the commission.**

21 **SECTION 8.** ORS 133.619 is amended to read:

22 133.619. (1) A warrant authorizing the installation or tracking of a mobile tracking device shall
23 be executed as provided in this section.

24 (2) The officer need not inform any person of the existence or content of the warrant prior to
25 its execution.

26 (3) Except as provided in subsection (4) of this section, the officer need not deliver or leave a
27 receipt for things seized or observations made under authority of the warrant.

28 (4) Within five days of the execution of the warrant, or, in the case of an ongoing investigation,
29 within such additional time as the issuing judge may allow upon application, the officer shall mail
30 a receipt for things seized or observations made under authority of the warrant to the following:

31 (a) If the mobile tracking device has been affixed to a vehicle, to the registered owner; and

32 (b) To such other persons as the court may direct in the warrant.

33 (5) The receipt provided for in subsection (4) of this section shall include the dates and times
34 during which the officer monitored or attempted to monitor the mobile tracking device.

35 (6) A warrant authorizing the installation or tracking of a mobile tracking device shall only be
36 issued based upon the submission of an affidavit or oral statement as set forth in ORS 133.545, which
37 affidavit or statement demonstrates that probable cause exists to believe that an individual is com-
38 mitting or is about to commit a particular felony of murder, kidnapping, arson, robbery or other
39 crime dangerous to life and punishable as a felony, any crime punishable as a felony arising under
40 ORS 475.840 or 475.846 to 475.894, **unlawfully transporting metal property, any crime described**
41 **in section 2 of this 2009 Act**, bribery, extortion, burglary or unauthorized use of a motor vehicle
42 punishable as a felony, or any conspiracy to commit any of the crimes listed in this subsection.

43 **SECTION 9.** ORS 164.095 is amended to read:

44 164.095. (1) A person commits theft by receiving if the person receives, retains, conceals or dis-
45 poses of property of another knowing or having good reason to know that the property was the

1 subject of theft.

2 (2) It is a defense to a charge of violating subsection (1) of this section if:

3 (a) The person is a scrap metal business as defined in section 1 of this 2009 Act or an
4 agent or employee of a scrap metal business;

5 (b) The person receives or retains metal property as defined in section 1 of this 2009 Act;
6 and

7 (c) The person makes a report in accordance with section 2 (3)(a) of this 2009 Act.

8 [(2)] (3) "Receiving" means acquiring possession, control or title, or lending on the security of
9 the property.

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

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

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

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

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

21 (a) Public and private land;

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

24 (c) Machinery or equipment on the owner's land.

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

27 **SECTION 11.** (1) In each county in which a scrap metal business, as defined in section 1
28 of this 2009 Act, has a place of business, the district attorney of the county shall, after
29 consulting with representatives of the affected law enforcement agencies and the business
30 community, create a written plan of action that ensures effective communication between
31 law enforcement and the business community regarding the theft of metal property as de-
32 fined in section 1 of this 2009 Act.

33 (2) The written plan of action must include, but need not be limited to, a procedure for
34 law enforcement agencies to notify scrap metal businesses of a theft of metal property within
35 24 hours after the receipt of the report of the theft.

36 (3) The district attorney shall provide a copy of the written plan of action to the local
37 public safety coordinating council described in ORS 423.560.

38 **SECTION 12.** ORS 423.565 is amended to read:

39 423.565. In addition to the duties assigned to it under ORS 423.560, the local public safety co-
40 ordinating council convened by the board of commissioners shall, at a minimum:

41 (1) Develop and recommend to the county board of commissioners the plan for use of state re-
42 sources to serve the local youth offender population;

43 (2) Coordinate local juvenile justice policy among affected juvenile justice entities; *[and]*

44 (3) In consultation with the local commission on children and families, develop and recommend
45 to the county board of commissioners a plan designed to prevent criminal involvement by youth. The

1 plan must provide for coordination of community-wide services involving treatment, education, em-
2 ployment and intervention strategies aimed at crime prevention; **and**

3 **(4) If a written plan of action has been provided to the council under section 11 of this**
4 **2009 Act, annually review the plan and, if appropriate, make written recommendations to the**
5 **affected district attorney for plan improvements.**

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

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

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

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

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

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

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

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

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

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

31 (3)*[(a)]* The person shall make all records required to be maintained by *[subsections (1) and (2)]*
32 **subsection (1)** of this section available to *[law enforcement personnel conducting an investigation]*
33 **any peace officer on demand.**

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

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

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

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

43 646A.062. *[(1)]* A person that violates ORS 646A.060 (1) commits a Class B violation.

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

45 *[(b) Notwithstanding paragraph (a) of this subsection, a person that violates ORS 646A.060 (2)*

1 *shall pay a fine of \$5,000 if the person has at least three previous convictions for violations of ORS*
2 *646A.060 (2).]*

3 **SECTION 15.** ORS 161.005 is amended to read:

4 161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290
5 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,
6 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to
7 162.425, 162.465, 163.005, 163.115, 163.125 to 163.145, 163.149, 163.160 to 163.208, 163.215 to 163.257,
8 163.261, 163.263, 163.264, 163.266, 163.275, 163.285, 163.305 to 163.467, 163.432, 163.433, 163.505 to
9 163.575, 163.665 to 163.693, 164.005, 164.015 to 164.135, 164.138, 164.140, 164.205 to 164.270, 164.305
10 to 164.377, 164.395 to 164.415, 164.805, 164.886, 165.002 to 165.102, 165.109, 165.805, 166.005 to 166.095,
11 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.054, 167.057, 167.060 to 167.100, 167.117,
12 167.122 to 167.162, 167.203 to 167.252, 167.310 to 167.340 and 167.350, 167.810 and 167.820 **and**
13 **sections 2 and 3 of this 2009 Act** shall be known and may be cited as Oregon Criminal Code of
14 1971.

15 **SECTION 16.** (1) **Sections 1 to 5, 7 and 10 of this 2009 Act and the amendments to ORS**
16 **164.095, 165.107, 646A.060 and 646A.062 by sections 6, 9, 13 and 14 of this 2009 Act apply to**
17 **conduct occurring on or after the effective date of this 2009 Act.**

18 (2) **The amendments to ORS 133.619 by section 8 of this 2009 Act apply to warrant appli-**
19 **cations made on or after the effective date of this 2009 Act.**

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