

Enrolled
House Bill 3695

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER

AN ACT

Relating to metal property; amending ORS 164.857, 165.107, 165.116, 165.118 and 165.122; and declaring an emergency.

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

SECTION 1. ORS 165.116 is amended to read:

165.116. As used in ORS [164.857 and] 165.116 to 165.124:

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

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

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

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

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

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

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

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

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

(G) A forestry implement or structure, including silvicultural equipment, gates, culverts and servicing and maintenance parts or supplies; or

(H) A logging operation implement, including mechanical equipment, rigging equipment and servicing and maintenance parts or supplies;

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

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

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

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

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

(d) Constitutes wire of a gauge typically used by utilities to provide electrical or telecommunications service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) "Transaction" does not include:

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

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

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

(ii) A scrap metal business or an authorized employee or agent of the scrap metal business.

SECTION 2. ORS 165.118 is amended to read:

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

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

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

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

(3) A [*scrap metal business or an agent or employee of a scrap metal business*] **person** commits the offense of unlawfully purchasing or receiving metal property if the **person is a scrap metal business or an agent or employee of a scrap metal business and the person** fails to report any of the following to a law enforcement agency within 24 hours:

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

(b) The purchase or receipt of metal property that the person knows or [*reasonably suspects*] **has good reason to know** has been unlawfully altered as described in subsection (1) of this section.

(c) The purchase or receipt of metallic wire from which insulation has been removed, unless the individual offering the wire for purchase or receipt can prove by appropriate documentation that the individual owns or is entitled to offer the wire for purchase or receipt and that the insulation has been removed by accident or was done by legitimate means or for a legitimate purpose. The scrap metal business shall retain a copy of the documentation provided.

(d) The purchase or receipt of commercial metal property **that the person knows or has good reason to know was purchased or received** from a person other than:

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

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

(e) The purchase or receipt of metal property from an individual whom the [*scrap metal business knows or reasonably suspects*] **person knows or has good reason to know:**

(A) Is under 16 years of age; or

(B) Has, according to written or electronically transmitted information provided by a peace officer or law enforcement agency, been convicted within the past five years, as a principal, agent or accessory of a crime involving:

(i) Drugs;

(ii) Burglary, robbery or theft;

(iii) Possession or receipt of stolen property;

(iv) The manufacture, delivery or possession of, with intent to deliver, methamphetamine;

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

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

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

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

SECTION 3. ORS 165.122 is amended to read:

165.122. (1) Not later than two business days after receiving from a peace officer or law enforcement agency a subpoena for information related to a named or specified individual, vehicle or item of metal property, a scrap metal business shall provide to the peace officer or law enforcement agency a copy of a metal property record created under ORS 165.107 or a copy of the relevant portion of a commercial account that contains the information about the individual, vehicle or item of metal property that is the subject of the subpoena. The scrap metal business shall provide the information in any form or by any method reasonably required by the peace officer or law enforcement agency.

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

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

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

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

(a) Segregate the metal property that is the subject of the notification from other inventory kept by the scrap metal business;

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

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

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

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

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

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

SECTION 4. ORS 164.857 is amended to read:

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

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

(3) A metal transportation certificate must include:

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

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

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

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

(e) The name, address and telephone number of the person transporting the metal property.

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

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

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

(7) As used in this section:

(a) "Agent or employee of the owner of the property" includes a motor carrier as defined in ORS 825.005 that is operating in accordance with the provisions of ORS chapter 825.

(b) "Metal property" and "scrap metal business" have the meanings given those terms in ORS 165.116.

SECTION 5. ORS 165.107 is amended to read:

165.107. (1) Before completing a transaction, a scrap metal business engaged in business in this state shall:

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

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

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

(C) Contain all of the following information:

(i) The signature of the individual with whom the scrap metal business conducts the transaction[;].

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

(iii) The name of the employee who conducts the transaction on behalf of the scrap metal business[;].

(iv) The name, street address and telephone number of the individual with whom the scrap metal business conducts the transaction[;]. **The metal property record may contain an address other than a street address if the address is listed on the government-issued photo identification described in sub-subparagraph (vi) of this subparagraph.**

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

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

(vii) A photograph of, or video surveillance recording depicting, a recognizable facial image of the individual with whom the scrap metal business conducts the transaction[; *and*].

(viii) A general description of the nonferrous metal property or private metal property that constitutes the predominant part of the transaction. The description must include any identifiable marks on the property, if readily discernible, and must specify the weight, quantity or volume of the nonferrous metal property or private metal property. [*and indicate the appropriate classification code from the current edition of the Institute of Scrap Recycling Industries' Scrap Specifications Circular, or successor publication, for each separately classifiable component of the nonferrous metal property or private metal property.*]

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

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

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

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

(2) A scrap metal business engaged in business in this state may not do any of the following:

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

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

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

(d) Cash a check issued in payment for a transaction or release a check issued in payment for a transaction other than as provided in paragraph (c) of this subsection. If a check is returned as undelivered or undeliverable, the scrap metal business shall retain the check until the individual with whom the scrap metal business conducted the transaction provides a valid [street address for the individual] **address in accordance with subsection (1)(a)(C)(iv) of this section.** If after 30 days following the date of the transaction the individual fails to provide a valid [street] address, the scrap metal business may cancel the check and the individual shall forfeit to the scrap metal business the amount due as payment.

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

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

(A) The full name of the commercial seller;

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

(C) The full name of each employee, agent or other individual the commercial seller authorizes to deliver metal property to the scrap metal business.

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

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

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

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

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

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

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

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

(b) Notwithstanding paragraph (a) of this subsection, a scrap metal business that violates a provision of subsections (1) to (3) of this section shall pay a fine of \$5,000 if the scrap metal business has at least three previous convictions for violations of a provision of subsections (1) to (3) of this section.

(7) The definitions in ORS 165.116 apply to this section.

SECTION 6. This 2010 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect on its passage.

Passed by House February 11, 2010

.....
Chief Clerk of House

.....
Speaker of House

Passed by Senate February 20, 2010

.....
President of Senate

Received by Governor:

.....M,....., 2010

Approved:

.....M,....., 2010

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2010

.....
Secretary of State