

Enrolled
House Bill 2696

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

CHAPTER

AN ACT

Relating to scrap metal; amending ORS 165.107 and 165.116; and declaring an emergency.

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

SECTION 1. ORS 165.107, as amended by section 5, chapter 56, Oregon Laws 2010, 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 **and a street address to which the scrap metal business will mail payment to the individual.** 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.

(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.

(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, **made payable to the individual**, for the amount of the transaction to the 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) Purchase metal property from a nonprofit corporation other than by mailing a nontransferable check, made payable to the nonprofit corporation, for the amount of the purchase price to the business address provided under subsection (3)(a)(B) of this section not earlier than three business days after the date of the purchase. 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)] **(e) Cash or release** a check issued in payment for a transaction or *[release a check issued in payment for a transaction]* **for a purchase described in paragraph (d) of this subsection** other than as provided in **this paragraph or** paragraph (c) **or (d)** of this subsection. If a check is returned as undelivered or undeliverable, the scrap metal business:

(A) Shall retain the check until the individual *[with whom the scrap metal business conducted the transaction]* **or nonprofit corporation to which the check was mailed** provides a valid address in accordance with subsection (1)(a)(C)(iv) **or (3)(a)(B)** of this section. If after 30 days following the date of the transaction **or the purchase described in paragraph (d) of this subsection** the individual **or nonprofit corporation** fails to provide a valid address, the scrap metal business may cancel the check and the individual **or nonprofit corporation** shall forfeit to the scrap metal business the amount due as payment; **or**

(B) May release the check directly to the individual or nonprofit corporation with the written approval of a law enforcement agency having jurisdiction over the scrap metal business. The scrap metal business shall retain the written approval for one year following the date the approval is received.

(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 2. ORS 165.116, as amended by section 1, chapter 56, Oregon Laws 2010, is amended to read:

165.116. As used in ORS 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, **nonprofit corporation** 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) "**Law enforcement agency**" has the meaning given that term in ORS 131.550.

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

[(5)(a)] (6)(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.

(7) "**Nonprofit corporation**" means a corporation to which the Secretary of State has issued a certificate of existence or a certificate of authorization under ORS 65.027.

[(6)] (8) "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)] (9)(a) "Scrap metal business" means a person 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)] (10)(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 3. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by House March 24, 2011

Received by Governor:

Repassed by House June 9, 2011

.....M.,....., 2011

Approved:

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Ramona Kenady Line, Chief Clerk of House

.....M.,....., 2011

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Bruce Hanna, Speaker of House

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John Kitzhaber, Governor

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Arnie Roblan, Speaker of House

Filed in Office of Secretary of State:

Passed by Senate June 7, 2011

.....M.,....., 2011

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Peter Courtney, President of Senate

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Kate Brown, Secretary of State