

House Bill 2696

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

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**.

Adds nonprofit corporation to definition of "commercial seller" for purpose of selling scrap metal to scrap metal business. Requires scrap metal business to mail check in payment for scrap metal to nonprofit corporation's business address.

Authorizes scrap metal business to release check directly to individual or nonprofit corporation with written approval of law enforcement agency if check is returned undelivered.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to scrap metal; amending ORS 165.107 and 165.116; and declaring an emergency.

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

4 **SECTION 1.** ORS 165.107, as amended by section 5, chapter 56, Oregon Laws 2010, is amended
5 to read:

6 165.107. (1) Before completing a transaction, a scrap metal business engaged in business in this
7 state shall:

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

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

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

13 (C) Contain all of the following information:

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

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

16 (iii) The name of the employee who conducts the transaction on behalf of the scrap metal busi-
17 ness.

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

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

26 (vi) A photocopy of a current, valid driver license or other government-issued photo identifica-
27 tion belonging to the individual with whom the scrap metal business conducts the transaction.

28 (vii) A photograph of, or video surveillance recording depicting, a recognizable facial image of

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 the individual with whom the scrap metal business conducts the transaction.

2 (viii) A general description of the nonferrous metal property or private metal property that
3 constitutes the predominant part of the transaction. The description must include any identifiable
4 marks on the property, if readily discernible, and must specify the weight, quantity or volume of the
5 nonferrous metal property or private metal property.

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

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

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

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

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

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

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

35 (c) Conduct a transaction with an individual in which the scrap metal business pays the indi-
36 vidual other than by mailing a nontransferable check, **made payable to the individual**, for the
37 amount of the transaction to the address the individual provided under subsection (1)(a)(C)(iv) of this
38 section not earlier than three business days after the date of the transaction. The check must be
39 drawn on an account that the scrap metal business maintains with a financial institution, as defined
40 in ORS 706.008.

41 (d) **Purchase metal property from a nonprofit corporation other than by mailing a**
42 **nontransferable check, made payable to the nonprofit corporation, for the amount of the**
43 **purchase price to the business address provided under subsection (3)(a)(B) of this section not**
44 **earlier than three business days after the date of the purchase. The check must be drawn**
45 **on an account that the scrap metal business maintains with a financial institution, as defined**

1 **in ORS 706.008.**

2 [(d)] (e) Cash **or release** a check issued in payment for a transaction or [*release a check issued*
3 *in payment for a transaction*] **for a purchase described in paragraph (d) of this subsection** other
4 than as provided in **this paragraph or** paragraph (c) **or (d)** of this subsection. If a check is returned
5 as undelivered or undeliverable, the scrap metal business:

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

13 (B) **May release the check directly to the individual or nonprofit corporation with the**
14 **written approval of a law enforcement agency having jurisdiction over the scrap metal busi-**
15 **ness.**

16 (3) Before purchasing or receiving metal property from a commercial seller, a scrap metal busi-
17 ness shall:

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

22 (A) The full name of the commercial seller;

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

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

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

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

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

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

33 (D) The signature of the individual who delivered the metal property to the scrap metal busi-
34 ness.

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

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

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

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

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

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

3 165.116. As used in ORS 165.116 to 165.124:

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

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

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

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

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

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

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

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

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

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

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

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

27 (c) Consists of material used in building construction or other commercial construction, includ-
 28 ing:

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

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

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

33 (d) Constitutes wire of a gauge typically used by utilities to provide electrical or telecommuni-
 34 cations service.

35 (3) “Commercial seller” means a business entity, as defined in ORS 60.470, **nonprofit corpo-**
 36 **ration** or governmental entity that regularly or periodically sells or delivers metal property to a
 37 scrap metal business as part of the entity’s business functions.

38 (4) **“Law enforcement agency” has the meaning given that term in ORS 131.550.**

39 [(4)] (5) “Metal property” means commercial metal property, nonferrous metal property or pri-
 40 vate metal property.

41 [(5)(a)] (6)(a) “Nonferrous metal property” means an item fabricated or containing parts made
 42 of or in an alloy with copper, brass, aluminum, bronze, lead, zinc or nickel.

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

45 (7) **“Nonprofit corporation” means a corporation to which the Secretary of State has is-**

1 **sued a certificate of existence or a certificate of authorization under ORS 65.027.**

2 [(6)] (8) "Private metal property" means a catalytic converter that has been removed from a
3 vehicle and is offered for sale as an independent item, whether individually or as part of a bundle,
4 bale or in other bulk form.

5 [(7)(a)] (9)(a) "Scrap metal business" means a person that:

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

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

8 (ii) Alters or prepares metal property the person receives for use in manufacturing other pro-
9 ducts; and

10 (iii) Owns, leases, rents, maintains or uses a device used in metal recycling, including a hy-
11 draulic baler, metal shearer or metal shredder;

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

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

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

20 [(8)(a)] (10)(a) "Transaction" means a sale, purchase, receipt or trade of, or a contract, agree-
21 ment or pledge to sell, purchase, receive or trade, private metal property or nonferrous metal
22 property that occurs or forms between an individual and a scrap metal business.

23 (b) "Transaction" does not include:

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

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

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

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

29 **SECTION 3. This 2011 Act being necessary for the immediate preservation of the public**
30 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
31 **on its passage.**

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