

House Bill 3436

Sponsored by Representative VIAL

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**.

Defines terms related to construction material resellers.

Requires construction material reseller to create construction material record before completing transaction. Specifies requirements for payments accepted by reseller. Requires construction material reseller to obtain specified information when receiving or purchasing construction material from commercial seller. Punishes violation of requirements by specific fine of \$1,000, or \$5,000 if person has three or more prior convictions.

Creates crime of unlawfully altering construction material. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both. Creates crime of making a false statement on a construction material record. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both. Creates crime of unlawfully purchasing or receiving construction material. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

Requires construction material reseller to provide peace officer or law enforcement agency with certain information upon receipt of subpoena. Requires construction material reseller to report suspected stolen or lost construction material to law enforcement agency.

Creates defense to crime of theft by receiving if construction material reseller reports suspected stolen construction material to law enforcement agency.

A BILL FOR AN ACT

1
2 Relating to construction materials; creating new provisions; and amending ORS 105.834, 161.005 and
3 164.095.

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

SECTION 1. As used in sections 1 to 5 of this 2017 Act:

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

9 (2) **"Commercial seller" means a business entity, as defined in ORS 60.470, nonprofit**
10 **corporation or government entity that regularly or periodically sells or delivers construction**
11 **material to a construction material reseller as part of the entity's business functions.**

12 (3) **"Construction material" means lumber, plywood and other wood products, stone,**
13 **concrete, gravel, tools, machinery and equipment used in the building of residential or com-**
14 **mercial structures. Construction material does not include metal property.**

15 (4)(a) **"Construction material reseller" means a person that maintains a permanent or**
16 **fixed place of business at which the person engages in the business of purchasing or receiv-**
17 **ing construction material for resale.**

18 (b) **"Construction material reseller" does not include a government entity that accepts**
19 **construction material for recycling.**

20 (5) **"Electronic funds transfer" has the meaning given that term in ORS 293.525.**

21 (6) **"Law enforcement agency" has the meaning given that term in ORS 131.550.**

22 (7) **"Metal property" has the meaning given that term in ORS 165.116.**

23 (8) **"Nonprofit corporation" means a corporation to which the Secretary of State has is-**

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

2 (9) "Stored value device" means a debit card or other device that draws funds from an
3 account owned or operated by the user and that allows the user to obtain something of value
4 from a merchant.

5 (10)(a) "Transaction" means a sale, purchase, receipt or trade of, or a contract, agree-
6 ment or pledge to sell, purchase, receive or trade, construction material that occurs or
7 forms between an individual and a construction material reseller.

8 (b) "Transaction" does not include:

9 (A) A transfer of construction material made without consideration; or

10 (B) A sale, purchase, receipt or trade of, or a contract, agreement or pledge to sell,
11 purchase, receive or trade, construction material that occurs or forms between a commer-
12 cial seller, or an authorized employee or agent of the commercial seller, and a construction
13 material reseller, or an authorized employee or agent of the construction material reseller.

14 **SECTION 2.** (1) Before completing a transaction, a construction material reseller engaged
15 in business in this state shall:

16 (a) Create a construction material record for the transaction at the time and in the lo-
17 cation where the transaction occurs. The record must:

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

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

21 (C) Contain all of the following information:

22 (i) The signature of the individual with whom the construction material reseller conducts
23 the transaction.

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

25 (iii) The name of the employee who conducts the transaction on behalf of the con-
26 struction material reseller.

27 (iv) The name and telephone number of the individual with whom the construction ma-
28 terial reseller conducts the transaction and a street address or, if a post office box is listed
29 on the government-issued photo identification described in sub-subparagraph (vi) of this
30 subparagraph, a post office box, to which the construction material reseller will mail pay-
31 ment to the individual.

32 (v) A description of, and the license number and issuing state shown on the license plate
33 affixed to, the motor vehicle, if any, used to transport the individual who conducts, or the
34 construction material that is the subject of, the transaction.

35 (vi) A photocopy of a current, valid driver license or other government-issued photo
36 identification belonging to the individual with whom the construction material reseller con-
37 ducts the transaction.

38 (vii) A photograph of, or video surveillance recording depicting, a recognizable facial im-
39 age of the individual with whom the construction material reseller conducts the transaction.

40 (viii) A general description of the construction material that constitutes the predominant
41 part of the transaction. The description must include any identifiable marks on the property,
42 if readily discernible, and must specify the weight, quantity or volume of the construction
43 material.

44 (b) Require the individual with whom the construction material reseller conducts a
45 transaction to sign and date a declaration printed in conspicuous type, either on the record

1 described in this subsection or on a receipt issued to the individual with whom the con-
2 struction material reseller conducts the transaction, that states:

3 _____
4
5 I, _____, AFFIRM UNDER PENALTY OF LAW THAT THE CON-
6 STRUCTION MATERIAL I AM SELLING IN THIS TRANSACTION IS NOT, TO THE BEST
7 OF MY KNOWLEDGE, STOLEN PROPERTY.
8 _____
9

10 (c) Require the employee of the construction material reseller who conducts the trans-
11 action on behalf of the construction material reseller to witness the individual sign the dec-
12 laration, and also to sign and date the declaration in a space provided for that purpose.

13 (d) For one year following the date of the transaction, keep a copy of the record and the
14 signed and dated declaration described in this subsection. If the construction material re-
15 seller uses a video surveillance recording as part of the record kept in accordance with this
16 subsection, the construction material reseller need not keep the video surveillance recording
17 for one year, but shall retain the video surveillance recording for a minimum of 30 days fol-
18 lowing the date of the transaction. The construction material reseller shall at all times keep
19 the copies at the current place of business for the construction material reseller.

20 (2) A construction material reseller engaged in business in this state may not do any of
21 the following:

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

26 (b) Conduct a transaction with an individual in which the construction material reseller
27 pays the individual other than by electronic funds transfer, stored value card or stored value
28 device, or by mailing a nontransferable check, made payable to the individual, for the amount
29 of the transaction to the street address or post office box the individual provided under
30 subsection (1)(a)(C)(iv) of this section. Payment must be made not earlier than three busi-
31 ness days after the date of the transaction. The check, electronic funds transfer or stored
32 value device must be drawn on or must draw from an account that the construction material
33 reseller maintains with a financial institution, as defined in ORS 706.008. A stored value card
34 may be issued by a money transmission business licensed under ORS 717.200 to 717.320 or
35 exempt from the licensing requirement under ORS 717.210.

36 (c) Purchase construction material from a nonprofit corporation not operating as a
37 commercial seller, other than by electronic funds transfer, stored value card or stored value
38 device, or by mailing a nontransferable check, made payable to the nonprofit corporation, for
39 the amount of the purchase price to the business address provided under subsection (4)(a)(B)
40 of this section. Payment must be made not earlier than three business days after the date
41 of the purchase. The check, electronic funds transfer or stored value device must be drawn
42 on or must draw from an account that the construction material reseller maintains with a
43 financial institution, as defined in ORS 706.008. A stored value card may be issued by a money
44 transmission business licensed under ORS 717.200 to 717.320 or exempt from the licensing
45 requirement under ORS 717.210.

1 (d) Cash or release a check issued in payment for a transaction or for a purchase de-
 2 scribed in paragraph (c) of this subsection other than as provided in this paragraph or par-
 3 agraph (b) or (c) of this subsection. If a check is not delivered to the intended recipient
 4 within 10 days of the date of the transaction or the purchase, the construction material re-
 5 seller may release the check directly to the individual or nonprofit corporation with the
 6 written approval of a law enforcement agency having jurisdiction over the construction ma-
 7 terial reseller. If a check is returned as undelivered or undeliverable, the construction ma-
 8 terial reseller shall:

9 (A) Release the check directly to the individual or nonprofit corporation with the written
 10 approval of a law enforcement agency having jurisdiction over the construction material re-
 11 seller; or

12 (B) Retain the check until the individual or nonprofit corporation to which the check was
 13 mailed provides a valid address in accordance with subsection (1)(a)(C)(iv) or (4)(a)(B) of this
 14 section. If after 30 days following the date of the transaction or of the purchase described
 15 in paragraph (c) of this subsection the individual or nonprofit corporation fails to provide a
 16 valid address, the construction material reseller may cancel the check and the individual or
 17 nonprofit corporation shall forfeit to the construction material reseller the amount due as
 18 payment.

19 (3) If a construction material reseller obtains the approval of a law enforcement agency
 20 under subsection (2)(d) of this section, the construction material reseller shall retain the
 21 written approval for one year following the date the approval is received.

22 (4) Before purchasing or receiving construction material from a commercial seller, a
 23 construction material reseller shall:

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

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

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

30 (C) The full name of each employee, agent or other individual the commercial seller au-
 31 thORIZES to receive payment for construction material from the construction material re-
 32 seller.

33 (b) Record as part of the commercial account at the time the construction material re-
 34 seller purchases or receives construction material from a commercial seller the following
 35 information:

36 (A) The time, date and location at which the commercial seller delivered the construction
 37 material for purchase or receipt;

38 (B) The monetary amount or other value of the construction material;

39 (C) A description of the type of construction material that constitutes the predominant
 40 part of the purchase or receipt; and

41 (D) The signature of the individual who delivered the construction material to the con-
 42 struction material reseller.

43 (5) A construction material reseller may require any individual from whom the business
 44 obtains construction material to provide the individual's thumbprint to the construction
 45 material reseller.

1 (6) A construction material reseller shall make all records and accounts required to be
2 maintained under this section available to any peace officer on demand.

3 (7)(a) Violation of this section is a specific fine violation, and the presumptive fine for the
4 violation is \$1,000.

5 (b) Notwithstanding paragraph (a) of this subsection, the presumptive fine for a violation
6 of a provision of this section is \$5,000 if the construction material reseller has at least three
7 previous convictions for violations of a provision of this section.

8 **SECTION 3.** (1) A person commits the offense of unlawfully altering construction mate-
9 rial if the person, with intent to deceive a construction material reseller as to the ownership
10 or origin of an item of construction material, knowingly removes, alters, renders unreadable
11 or invisible or obliterates a name, logo, model or serial number, personal identification
12 number or other mark or method that a manufacturer or processor uses to identify the
13 construction material.

14 (2) A person commits the offense of making a false statement on a construction material
15 record if the person:

16 (a) Knowingly makes, causes or allows to be made a false entry or misstatement of ma-
17 terial fact in a construction material record described in section 2 of this 2017 Act; or

18 (b) Signs a declaration under section 2 of this 2017 Act knowing that the construction
19 material that is the subject of a transaction is stolen.

20 (3) A person commits the offense of unlawfully purchasing or receiving construction
21 material if the person is a construction material reseller or an agent or employee of a con-
22 struction material reseller and the person fails to report any of the following to a law
23 enforcement agency within 24 hours:

24 (a) The purchase or receipt of construction material that the person knows or has good
25 reason to know was the subject of theft.

26 (b) The purchase or receipt of construction material that the person knows or has good
27 reason to know has been unlawfully altered as described in subsection (1) of this section.

28 (c) The purchase or receipt of construction material that the person knows or has good
29 reason to know was purchased or received from a person other than:

30 (A) A commercial seller that has a commercial account with the construction material
31 reseller; or

32 (B) An individual who can produce written documentation or identification that proves
33 that the individual is an employee, agent or other individual authorized by a commercial
34 seller that has a commercial account with the construction material reseller to deliver con-
35 struction material for purchase or receipt.

36 (d) The purchase or receipt of construction material from an individual whom the person
37 knows or has good reason to know:

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

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

42 (i) Drugs;

43 (ii) Burglary, robbery or theft;

44 (iii) Possession or receipt of stolen property;

45 (iv) The manufacture, delivery or possession of, with intent to deliver, methamphet-

1 amine;

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

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

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

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

9 **SECTION 4.** (1) Not later than two business days after receiving from a peace officer or
10 law enforcement agency a subpoena for information related to a named or specified individ-
11 ual, vehicle or item of construction material, a construction material reseller shall provide
12 to the peace officer or law enforcement agency a copy of a construction material record
13 created under section 2 of this 2017 Act or a copy of the relevant portion of a commercial
14 account that contains the information about the individual, vehicle or item of construction
15 material that is the subject of the subpoena. The construction material reseller shall provide
16 the information in any form or by any method reasonably required by the peace officer or
17 law enforcement agency.

18 (2) If a construction material reseller knows or has good reason to know that con-
19 struction material that the construction material reseller purchased or received or possesses
20 or controls was lost by or stolen from the construction material's owner or lawful possessor,
21 the construction material reseller shall promptly notify an appropriate law enforcement
22 agency and shall:

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

24 (b) Disclose the name of the person that delivered the construction material and the date
25 on which the construction material reseller received the construction material.

26 (3) If a peace officer or law enforcement agency notifies a construction material reseller
27 that an item of construction material in the possession or control of the construction ma-
28 terial reseller is lost or stolen, the construction material reseller shall:

29 (a) Segregate the construction material that is the subject of the notification from other
30 inventory kept by the construction material reseller;

31 (b) Protect the construction material from alteration or damage;

32 (c) Mark, tag or otherwise identify the construction material; and

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

35 (4) A peace officer or law enforcement agency may not require a construction material
36 reseller to hold construction material under subsection (3) of this section unless the peace
37 officer or law enforcement agency reasonably suspects that the construction material was
38 lost by or stolen from the owner or lawful possessor of the construction material. Within
39 10 days after notifying a construction material reseller that an item of construction material
40 may be lost or stolen, the peace officer or law enforcement agency shall:

41 (a) Determine that the construction material is lost or stolen and take appropriate lawful
42 action to impound or recover the construction material and return the construction material
43 to the owner or lawful possessor; or

44 (b) Determine that the construction material is not lost or stolen and notify the con-
45 struction material reseller that it is not necessary to hold the construction material any

1 longer.

2 **SECTION 5.** Sections 1, 2, 3 and 4 of this 2017 Act do not apply to a nonprofit organiza-
3 tion, or a person who is an agent or employee of a nonprofit organization, that provides,
4 sells, purchases, receives or obtains construction material for charitable purposes.

5 **SECTION 6.** ORS 164.095 is amended to read:

6 164.095. (1) A person commits theft by receiving if the person receives, retains, conceals or dis-
7 poses of property of another knowing or having good reason to know that the property was the
8 subject of theft.

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

10 (a) The person is a scrap metal business as defined in ORS 165.116 or an agent or employee of
11 a scrap metal business, **or a construction material reseller as defined in section 1 of this 2017**
12 **Act or an agent or employee of a construction material reseller;**

13 (b) The person receives or retains metal property as defined in ORS 165.116 **or construction**
14 **material as defined in section 1 of this 2017 Act;** and

15 (c) The person makes a report in accordance with ORS 165.118 (3)(a) **or section 4 of this 2017**
16 **Act.**

17 (3) "Receiving" means acquiring possession, control or title, or lending on the security of the
18 property.

19 **SECTION 7.** ORS 105.834 is amended to read:

20 105.834. (1) As used in this section, "owner" means a person, including a tenant, lessee, occupant
21 or other person, that possesses an interest in land, including but not limited to a possession of a fee
22 title.

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

25 (a) Theft or attempted theft of metal property, as defined in ORS 165.116, **or construction**
26 **materials, as defined in section 1 of this 2017 Act,** from the owner's land; or

27 (b) A hazardous condition that results from theft or attempted theft of metal property, as defined
28 in ORS 165.116, **or construction materials, as defined in section 1 of this 2017 Act,** from the
29 owner's land when the owner did not know or could not reasonably have known of the hazardous
30 condition.

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

32 (a) Public and private land;

33 (b) Roads, bodies of water, watercourses, rights of way, buildings and fixtures or structures on
34 the owner's land; and

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

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

38 **SECTION 8.** ORS 161.005, as amended by section 4, chapter 22, Oregon Laws 2016, is amended
39 to read:

40 161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290
41 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,
42 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to
43 162.425, 162.465, 163.005, 163.115, 163.125 to 163.145, 163.149, 163.160 to 163.208, 163.196, 163.215 to
44 163.257, 163.261, 163.263, 163.264, 163.266, 163.275, 163.285, 163.305 to 163.467, 163.432, 163.433,
45 163.472, 163.505 to 163.575, 163.665 to 163.693, 163.700, 163.701, 164.005, 164.015 to 164.135, 164.138,

1 164.140, 164.205 to 164.270, 164.305 to 164.377, 164.395 to 164.415, 164.805, 164.857, 164.886, 165.002
2 to 165.102, 165.109, 165.118, 165.805, 166.005 to 166.095, 166.350, 166.382, 166.384, 166.660, 167.002 to
3 167.027, 167.057, 167.060 to 167.100, 167.117, 167.122 to 167.162, 167.203 to 167.252, 167.310 to 167.340,
4 167.350, 167.810 and 167.820 and section 1, chapter 22, Oregon Laws 2016, **and section 3 of this 2017**
5 **Act** shall be known and may be cited as Oregon Criminal Code of 1971.
6
