

House Bill 2423

Sponsored by Representative NATHANSON; Representatives BARKER, BEYER, BOONE, C EDWARDS, GREENLICK, HOLVEY, KOTEK, MATTHEWS, RILEY, STIEGLER, TOMEI

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**.

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 certain types of metal property. Requires payment for purchase or transaction by check mailed to seller's street address.

Requires Director of Department of Consumer and Business Services to develop and implement system by means of which scrap metal business may enter and store required records.

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 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. Permits court to impose additional penalty not to exceed cost of replacing or repairing stolen item or repairing damage caused by theft.

Requires Oregon Criminal Justice Commission to adopt rules that establish disproportionate impact as reason to impose upward departure from presumptive sentence for conviction of certain offenses.

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 metal property. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

A BILL FOR AN ACT

1
2 Relating to protection of property; creating new provisions; and amending ORS 161.005, 165.107,
3 646A.060 and 646A.062.

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

SECTION 1. As used in sections 1 to 6 of this 2009 Act:

5
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.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (b) "Transaction" does not include:

1 (A) A donation made without a provision for or expectation of a reciprocal benefit; or

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

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

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

8 **SECTION 2.** (1) Before completing a transaction, a scrap metal business engaged in
9 business in this state shall:

10 (a) Create a record for the transaction at the time and in the location where the trans-
11 action occurs. The record of the transaction must:

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

13 (B) Be entered into an electronic form accessible by means of the system described in
14 section 4 of this 2009 Act or, in the case of documents that require a signature, kept digitally
15 as part of an electronic form or as a printed or physical transaction record or receipt in the
16 manner provided in paragraph (d) of this subsection; and

17 (C) Contain all of the following information:

18 (i) The signature of the individual with whom the scrap metal business conducts the
19 transaction or a digital facsimile of the signature of the individual;

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

21 (iii) The name of the employee who conducted the transaction on behalf of the scrap
22 metal business;

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

25 (v) A digital photograph that depicts the individual with whom the scrap metal business
26 conducts the transaction together with the property that is the subject of the transaction;

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

30 (vii) The identifying number of a valid driver license or other government-issued photo
31 identification belonging to the individual with whom the scrap metal business conducts the
32 transaction; and

33 (viii) A description of the nonferrous metal property or private metal property that con-
34 stitutes the predominant part of the transaction. The description must specify the weight,
35 quantity or volume of the nonferrous metal property or private metal property and indicate
36 the appropriate classification code from the current edition of the Institute of Scrap Recy-
37 cling Industries' Scrap Specifications Circular, or successor publication, for each separately
38 classifiable component of the nonferrous metal property or private metal property.

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

43 _____

44
45 I, _____, AFFIRM UNDER PENALTY OF LAW THAT THE PROPERTY

1 I AM SELLING IN THIS TRANSACTION IS NOT, TO THE BEST OF MY KNOWLEDGE,
 2 STOLEN PROPERTY.

3
 4
 5 (c) Require the employee of the scrap metal business who conducts the transaction on
 6 behalf of the scrap metal business to witness the individual sign the declaration, and also to
 7 sign and date or digitally sign and date the declaration in a space provided for that purpose.

8 (d) Keep a copy of the record and the signed and dated declaration described in this
 9 section for a period of time after the date of the transaction that is specified by the Director
 10 of the Department of Consumer and Business Services by rule. If the scrap metal business
 11 keeps printed or physical copies of the record and declaration described in this section, the
 12 scrap metal business shall at all times keep the printed or physical copies at the current
 13 place of business for the scrap metal business. If the scrap metal business enters all of the
 14 information required under this section into an electronic form, the scrap metal business
 15 may not erase or delete the form or the information contained in the form except in com-
 16 pliance with rules adopted by the director. The scrap metal business shall keep backup copies
 17 of information entered into an electronic form.

18 (2) A scrap metal business engaged in business in this state may not do any of the fol-
 19 lowing:

20 (a) Purchase or receive metallic wire from which insulation was removed, in whole or in
 21 part, by burning, melting or other means unless the individual offering the metallic wire for
 22 purchase or receipt can prove by appropriate documentation that the individual owns or is
 23 entitled to offer the wire for purchase or receipt and that the burning was the result of a
 24 fire or other accident or was done by legitimate means or for a legitimate purpose. The scrap
 25 metal business shall retain a copy of the documentation provided.

26 (b) Purchase or receive metallic wire, with or without insulation, of the following gauges,
 27 measured according to the American Wire Gauge or the Brown and Sharpe Wire Gauge: No.
 28 4 AWG, No. 6 AWG or No. 8 AWG.

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

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

36 (e) Conduct a transaction with an individual in which the scrap metal business pays the
 37 individual other than by mailing a nontransferable check for the amount of the transaction
 38 to the street address the individual provided under subsection (1) of this section not earlier
 39 than seven days after the date of the transaction. The check must be drawn on an account
 40 that the scrap metal business maintains with a financial institution, as defined in ORS
 41 706.008.

42 (f) Cash a check issued in payment for a transaction or release a check issued in payment
 43 for a transaction other than as provided in paragraph (e) of this subsection. If a check is
 44 returned as undelivered or undeliverable, the scrap metal business shall retain the check
 45 until the individual with whom the scrap metal business conducted the transaction provides

1 a valid street address for the individual. If after 30 days following the date of the transaction
 2 the individual fails to provide a valid street address, the scrap metal business may cancel the
 3 check and the individual shall forfeit to the scrap metal business the amount due as pay-
 4 ment.

5 **SECTION 3.** (1) Before purchasing or receiving metal property from a commercial seller,
 6 a scrap metal business shall:

7 (a) Create and maintain a commercial account with the commercial seller. The com-
 8 mercial account and all records kept as part of the commercial account must:

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

10 (B) Be entered into an electronic form accessible by means of the system described in
 11 section 4 of this 2009 Act or, in the case of documents that require a signature, kept digitally
 12 as part of an electronic form or as a printed or physical record or receipt in the manner
 13 provided in paragraph (c) of this subsection; and

14 (C) Contain the following information:

15 (i) The full name of the commercial seller;

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

17 (iii) The full name of each employee, agent or other individual the commercial seller au-
 18 thorizes to deliver metal property to the scrap metal business.

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

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

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

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

26 (D) The signature of the person that delivered the metal property to the scrap metal
 27 business.

28 (c) Keep a copy of the commercial account for a period of time the Director of the De-
 29 partment of Consumer and Business Services specifies by rule. If the scrap metal business
 30 keeps a printed or physical copy of the commercial account described in this subsection, the
 31 scrap metal business shall at all times keep the printed or physical copy at the current place
 32 of business for the scrap metal business. If the scrap metal business enters all of the infor-
 33 mation required under this subsection into an electronic form, the scrap metal business may
 34 not erase or delete the form or the information contained in the form except in compliance
 35 with rules adopted by the director. The scrap metal business shall keep backup copies of in-
 36 formation entered into an electronic form.

37 (2) A scrap metal business may not purchase or receive commercial metal property from
 38 a person unless the person is:

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

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

45 **SECTION 4.** (1) The Director of the Department of Consumer and Business Services shall

1 develop and implement, by contract with a vendor or service provider or otherwise, a website
 2 or other electronic system capable of access by means of the Internet that a scrap metal
 3 business may use to enter and keep records required under section 2 or 3 of this 2009 Act.
 4 The director may specify the form and contents of the system but shall ensure at a minimum
 5 that information entered into or stored by the system is:

6 (a) Accessible to and usable by scrap metal businesses and the director from any lo-
 7 cation; and

8 (b) Secured against public disclosure, tampering, theft or unauthorized acquisition or use.

9 (2) Notwithstanding ORS 192.410 to 192.505, the information entered into or stored in the
 10 system is not subject to public inspection or disclosure except by warrant, subpoena or other
 11 lawful process or demand from a peace officer or law enforcement agency.

12 (3) The director or a vendor or service provider with which the director contracts to
 13 develop, implement, operate or administer the system described in this section may charge
 14 a scrap metal business a fee for access to or use of the system in an amount the director
 15 must approve by rule.

16 (4) The director by rule shall establish requirements consistent with sections 2 and 3 of
 17 this 2009 Act for retaining, archiving and deleting information entered into or stored by the
 18 system described in this section.

19 **SECTION 5.** (1) Not later than two business days after receiving from a peace officer or
 20 law enforcement agency a warrant, subpoena or other lawful process or demand for infor-
 21 mation related to a named or specified individual, vehicle or item of metal property, a scrap
 22 metal business or the Director of the Department of Consumer and Business Services shall
 23 provide to the peace officer or law enforcement agency a copy of a transaction record cre-
 24 ated under section 2 (1) of this 2009 Act or a copy of the relevant portion of a commercial
 25 account created under section 3 of this 2009 Act that contains information about the indi-
 26 vidual, vehicle or item of metal property that is the subject of the lawful demand. The scrap
 27 metal business or the director shall provide the information in any form or by any method
 28 reasonably required by the peace officer or law enforcement agency.

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

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

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

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

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

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

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

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

45 **SECTION 6.** A peace officer or law enforcement agency may not require a scrap metal

1 **business to hold metal property under the provisions of section 5 (3) of this 2009 Act unless**
 2 **the peace officer or law enforcement agency reasonably suspects that the metal property**
 3 **was lost by or stolen from the owner or lawful possessor of the metal property. Within 10**
 4 **days after notifying a scrap metal business that an item of metal property may be lost or**
 5 **stolen, the peace officer or law enforcement agency shall:**

6 (1) **Determine that the metal property is lost or stolen and take appropriate lawful action**
 7 **to impound or recover the metal property and return the metal property to the owner or**
 8 **lawful possessor; or**

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

11 **SECTION 7. Sections 1 to 6 of this 2009 Act do not apply to activities conducted in the**
 12 **ordinary course of business by:**

13 (1) **A person in possession of a vehicle dealer certificate issued under ORS 822.020;**

14 (2) **A person in possession of a dismantler certificate issued under ORS 822.110;**

15 (3) **A person in possession of a towing business certificate issued under ORS 822.205; or**

16 (4) **A person engaged in the business of buying or selling used or empty food and beverage**
 17 **containers, including containers made of metal.**

18 **SECTION 8. (1) As used in this section, “prosecuting attorney” means the Attorney**
 19 **General or the district attorney of the county in which a violation of section 2, 3 or 5 of this**
 20 **2009 Act is alleged to have occurred.**

21 (2) **A prosecuting attorney who has probable cause to believe that a person has violated,**
 22 **is violating or is about to violate a provision of section 2, 3 or 5 of this 2009 Act may bring**
 23 **suit in the name of the State of Oregon in an appropriate court to restrain the person from**
 24 **engaging in the violation and to enforce compliance with the provisions of section 2, 3 or 5**
 25 **of this 2009 Act. Upon a proper showing, the court shall grant an injunction or restraining**
 26 **order.**

27 (3) **If the court finds that a person violated a provision of section 2, 3 or 5 of this 2009**
 28 **Act and the violation is not otherwise subject to a criminal penalty under ORS 165.107, the**
 29 **court, in addition to any order the court may issue under subsection (2) of this section, may**
 30 **impose a fine of not more than \$1,000 for each violation. The fine shall be entered as a**
 31 **judgment and paid to the State Treasury to the credit of the General Fund. Each violation**
 32 **is a separate offense.**

33 (4) **If a court finds that a person has violated a provision of section 2, 3 or 5 of this 2009**
 34 **Act within two years after a court found a violation under subsection (3) of this section and**
 35 **the violation is not otherwise subject to a criminal penalty under ORS 165.107, the court may**
 36 **issue an injunction or restraining order under subsection (2) of this section and may impose**
 37 **a fine of not more than \$2,000 for each violation found under this subsection and for all**
 38 **subsequent violations. The fine shall be entered and paid as provided in subsection (3) of this**
 39 **section.**

40 (5) **In addition to any order the court may issue or any fine the court may impose under**
 41 **subsections (2) to (4) of this section, the court may impose an additional fine as restitution**
 42 **to the owner or lawful possessor of stolen metal property in an amount not to exceed the**
 43 **cost of:**

44 (a) **Replacing metal property stolen from the owner or lawful possessor;**

45 (b) **Restoring metal property to the condition the metal property was in before the theft;**

1 or

2 (c) **Repairing damage caused by or related to the theft of metal property.**

3 **SECTION 9. (1) As used in this section, “owner” means a person, including a tenant,**
 4 **lessee, occupant or other person, that possesses an interest in land, including but not limited**
 5 **to a possession of a fee title.**

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

8 (a) **Theft or attempted theft of metal property as defined in section 1 of this 2009 Act**
 9 **from the owner’s land; or**

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

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

14 (a) **Public and private land;**

15 (b) **Roads, bodies of water, watercourses, rights of way, buildings and fixtures or struc-**
 16 **tures on the owner’s land; and**

17 (c) **Machinery or equipment on the owner’s land.**

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

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

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

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

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

33 **SECTION 11. ORS 165.107 is amended to read:**

34 165.107. *[(1) A scrap metal dealer commits the offense of failing to maintain a metal purchase re-*
 35 *cord if the scrap metal dealer knowingly buys or otherwise obtains new, used or secondhand nonferrous*
 36 *metals or alloys thereof without keeping a record of all such articles purchased or obtained.]*

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

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

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

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

45 *[(c) A photocopy of a current, valid driver license, passport or state identification card of the*

1 *seller.]*

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

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

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

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

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

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

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

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

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

21 *[(6)(a) A scrap metal dealer that violates this section shall pay a fine of \$1,000.]*

22 *[(b) Notwithstanding paragraph (a) of this subsection, a scrap metal dealer that violates this section*
 23 *shall pay a fine of \$5,000 if the scrap metal dealer has at least three previous convictions for violations*
 24 *of this section.]*

25 **(1) As used in this section:**

26 **(a) "Commercial metal property" has the meaning given that term in section 1 of this**
 27 **2009 Act.**

28 **(b) "Commercial seller" has the meaning given that term in section 1 of this 2009 Act.**

29 **(c) "Metal property" has the meaning given that term in section 1 of this 2009 Act.**

30 **(d) "Metal property record" means information required under section 2 (1) or 3 of this**
 31 **2009 Act.**

32 **(e) "Nonferrous metal property" has the meaning given that term in section 1 of this 2009**
 33 **Act.**

34 **(f) "Private metal property" has the meaning given that term in section 1 of this 2009**
 35 **Act.**

36 **(g) "Scrap metal business" has the meaning given that term in section 1 of this 2009 Act.**

37 **(h) "Transaction" has the meaning given that term in section 1 of this 2009 Act.**

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

43 **(3) A person commits the offense of making a false statement on a metal property record**
 44 **if the person:**

45 **(a) Knowingly makes, causes or allows to be made a false entry or misstatement of ma-**

1 **terial fact in a metal property record; or**

2 **(b) Signs a declaration under section 2 (1) of this 2009 Act knowing that the nonferrous**
 3 **metal property or private metal property that is the subject of a transaction is stolen.**

4 **(4) A scrap metal business commits the offense of unlawfully purchasing or receiving**
 5 **metal property if the scrap metal business:**

6 **(a) Purchases or receives metal property from a person whom the scrap metal business**
 7 **knows or reasonably suspects:**

8 **(A) Is under 18 years of age;**

9 **(B) Is under the influence of intoxicating liquor or a narcotic drug or controlled sub-**
 10 **stance; or**

11 **(C) Has, according to information provided to the scrap metal business by a peace officer**
 12 **or law enforcement agency, been convicted within the past 10 years, as a principal, agent or**
 13 **accessory of a crime involving:**

14 **(i) Drugs;**

15 **(ii) Burglary, robbery or theft;**

16 **(iii) Possession or receipt of stolen property;**

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

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

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

23 **(vii) Possession of anhydrous ammonia with intent to manufacture methamphetamine;**
 24 **or**

25 **(b) Purchases or receives metal property that the scrap metal business knows or rea-**
 26 **sonably suspects has been unlawfully altered as described in subsection (2) of this section.**

27 **(5) A scrap metal business commits the offense of unlawfully possessing metal property**
 28 **if the scrap metal business possesses metal property:**

29 **(a) As a consequence of a transaction conducted in violation of section 2 of this 2009 Act;**
 30 **or**

31 **(b) As a consequence of a purchase or receipt that violated section 3 of this 2009 Act.**

32 **(6) Violation of a provision of subsections (2) to (5) of this section is a Class A**
 33 **misdemeanor.**

34 **SECTION 12.** ORS 161.005 is amended to read:

35 161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290
 36 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,
 37 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to
 38 162.425, 162.465, 163.005, 163.115, 163.125 to 163.145, 163.149, 163.160 to 163.208, 163.215 to 163.257,
 39 163.261, 163.263, 163.264, 163.266, 163.275, 163.285, 163.305 to 163.467, 163.432, 163.433, 163.505 to
 40 163.575, 163.665 to 163.693, 164.005, 164.015 to 164.135, 164.138, 164.140, 164.205 to 164.270, 164.305
 41 to 164.377, 164.395 to 164.415, 164.805, 164.886, 165.002 to 165.102, **165.107**, 165.109, 165.805, 166.005
 42 to 166.095, 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.054, 167.057, 167.060 to 167.100,
 43 167.117, 167.122 to 167.162, 167.203 to 167.252, 167.310 to 167.340 and 167.350, 167.810 and 167.820
 44 shall be known and may be cited as Oregon Criminal Code of 1971.

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

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

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

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

8 (2) If the goods described in subsection (1) of this section are **private metal property or are**
 9 **constructed of or contain parts made of nonferrous metal property** as *[that term is defined in ORS*
 10 *165.107]* **those terms are defined in section 1 of this 2009 Act**, in addition to the requirements
 11 of subsection (1) of this section, **the person shall comply with and is subject to the penalty**
 12 **provided for violating a provision of section 2, 3 or 5 of this 2009 Act that is applicable to a**
 13 **scrap metal business as defined in section 1 of this 2009 Act.** *[the records shall contain the fol-*
 14 *lowing:]*

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

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

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

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

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

25 (3)*[(a)]* The person shall make all records required to be maintained *[by subsections (1) and (2)]*
 26 **under subsection (1)** of this section available to law enforcement personnel conducting an investi-
 27 gation.

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

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

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

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

37 646A.062. *[(1)]* A person that violates ORS 646A.060 (1) commits a Class B violation.

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

39 *[(b) Notwithstanding paragraph (a) of this subsection, a person that violates ORS 646A.060 (2)*
 40 *shall pay a fine of \$5,000 if the person has at least three previous convictions for violations of ORS*
 41 *646A.060 (2).]*

42 **SECTION 15.** Sections 1 to 10 of this 2009 Act and the amendments to ORS 161.005,
 43 165.107, 646A.060 and 646A.062 by sections 11 to 14 of this 2009 Act apply to offenses com-
 44 mitted and transactions conducted on or after the effective date of this 2009 Act.