

House Bill 2142

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Attorney General Hardy Myers for Department of Justice)

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**.

Provides that unlawfully distributed tobacco products and instrumentalities of unlawful distribution of tobacco products are subject to forfeiture.

A BILL FOR AN ACT

1
2 Relating to criminal forfeiture; amending ORS 131.602 and 323.632.

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

4 **SECTION 1.** ORS 323.632 is amended to read:

5 323.632. (1) A person commits the crime of unlawful distribution of tobacco products if the per-
6 son knowingly sells or distributes, possesses or transports for sale or distribution or imports for sale
7 or distribution tobacco products that do not comply with ORS 323.500 to 323.645.

8 (2) The offense of unlawful distribution of tobacco products is classified as follows:

9 (a) If the amount of tobacco products tax avoided in committing the offense over a 90-day period
10 totals less than \$1,000, the offense is a Class A misdemeanor.

11 (b) If the amount of tobacco products tax avoided in committing the offense over a 90-day period
12 totals \$1,000 or more, but less than \$5,000, the offense is a Class C felony classified as crime cate-
13 gory 3 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

14 (c) If the amount of tobacco products tax avoided in committing the offense over a 90-day period
15 totals \$5,000 or more, but less than \$10,000, the offense is a Class C felony classified as crime cat-
16 egory 5 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

17 (d) If the amount of tobacco products tax avoided in committing the offense over a 90-day period
18 totals \$10,000 or more, the offense is a Class B felony classified as crime category 7 of the sen-
19 tencing guidelines grid of the Oregon Criminal Justice Commission.

20 **(3) Tobacco products sold, distributed, possessed, transported or imported in violation of**
21 **subsection (1) of this section are contraband and subject to seizure and forfeiture. If seized**
22 **and forfeited under this subsection, the tobacco products shall be destroyed.**

23 **(4) In addition to any other sentence the court may impose upon a conviction under this**
24 **section, the court may order the forfeiture of the instrumentalities used in violating this**
25 **section and the proceeds resulting from a violation of this section.**

26 [(3)] (5) As used in this section, "tobacco products tax" means the amount of tax due under ORS
27 323.500 to 323.645, if the tax were timely paid upon first distribution of the tobacco products in this
28 state.

29 **SECTION 2.** ORS 131.602 is amended to read:

30 131.602. The crimes to which ORS 131.550 (11)(b) applies are:

31 (1) Bribe giving, as defined in ORS 162.015.

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 (2) Bribe receiving, as defined in ORS 162.025.
- 2 (3) Public investment fraud, as defined in ORS 162.117.
- 3 (4) Bribing a witness, as defined in ORS 162.265.
- 4 (5) Bribe receiving by a witness, as defined in ORS 162.275.
- 5 (6) Simulating legal process, as defined in ORS 162.355.
- 6 (7) Official misconduct in the first degree, as defined in ORS 162.415.
- 7 (8) Custodial interference in the second degree, as defined in ORS 163.245.
- 8 (9) Custodial interference in the first degree, as defined in ORS 163.257.
- 9 (10) Buying or selling a person under 18 years of age, as defined in ORS 163.537.
- 10 (11) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.
- 11 (12) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.
- 12 (13) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.
- 13 (14) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.
- 14 (15) Possession of materials depicting sexually explicit conduct of a child in the first degree, as
15 defined in ORS 163.688.
- 16 (16) Possession of materials depicting sexually explicit conduct of a child in the second degree,
17 as defined in ORS 163.689.
- 18 (17) Theft in the second degree, as defined in ORS 164.045.
- 19 (18) Theft in the first degree, as defined in ORS 164.055.
- 20 (19) Aggravated theft in the first degree, as defined in ORS 164.057.
- 21 (20) Theft by extortion, as defined in ORS 164.075.
- 22 (21) Theft by deception, as defined in ORS 164.085, if it is a felony or a Class A misdemeanor.
- 23 (22) Theft by receiving, as defined in ORS 164.095, if it is a felony or a Class A misdemeanor.
- 24 (23) Theft of services, as defined in ORS 164.125, if it is a felony or a Class A misdemeanor.
- 25 (24) Unauthorized use of a vehicle, as defined in ORS 164.135.
- 26 (25) Mail theft or receipt of stolen mail, as defined in ORS 164.162.
- 27 (26) Laundering a monetary instrument, as defined in ORS 164.170.
- 28 (27) Engaging in a financial transaction in property derived from unlawful activity, as defined
29 in ORS 164.172.
- 30 (28) Burglary in the second degree, as defined in ORS 164.215.
- 31 (29) Burglary in the first degree, as defined in ORS 164.225.
- 32 (30) Possession of a burglary tool or theft device, as defined in ORS 164.235.
- 33 (31) Unlawful entry into a motor vehicle, as defined in ORS 164.272.
- 34 (32) Arson in the second degree, as defined in ORS 164.315.
- 35 (33) Arson in the first degree, as defined in ORS 164.325.
- 36 (34) Computer crime, as defined in ORS 164.377.
- 37 (35) Robbery in the third degree, as defined in ORS 164.395.
- 38 (36) Robbery in the second degree, as defined in ORS 164.405.
- 39 (37) Robbery in the first degree, as defined in ORS 164.415.
- 40 (38) Unlawful labeling of a sound recording, as defined in ORS 164.868.
- 41 (39) Unlawful recording of a live performance, as defined in ORS 164.869.
- 42 (40) Unlawful labeling of a videotape recording, as defined in ORS 164.872.
- 43 (41) A violation of ORS 164.877.
- 44 (42) Endangering aircraft, as defined in ORS 164.885.
- 45 (43) Interference with agricultural operations, as defined in ORS 164.887.

- 1 (44) Forgery in the second degree, as defined in ORS 165.007.
- 2 (45) Forgery in the first degree, as defined in ORS 165.013.
- 3 (46) Criminal possession of a forged instrument in the second degree, as defined in ORS 165.017.
- 4 (47) Criminal possession of a forged instrument in the first degree, as defined in ORS 165.022.
- 5 (48) Criminal possession of a forgery device, as defined in ORS 165.032.
- 6 (49) Criminal simulation, as defined in ORS 165.037.
- 7 (50) Fraudulently obtaining a signature, as defined in ORS 165.042.
- 8 (51) Fraudulent use of a credit card, as defined in ORS 165.055.
- 9 (52) Negotiating a bad check, as defined in ORS 165.065.
- 10 (53) Possessing a fraudulent communications device, as defined in ORS 165.070.
- 11 (54) Unlawful factoring of a payment card transaction, as defined in ORS 165.074.
- 12 (55) Falsifying business records, as defined in ORS 165.080.
- 13 (56) Sports bribery, as defined in ORS 165.085.
- 14 (57) Sports bribe receiving, as defined in ORS 165.090.
- 15 (58) Misapplication of entrusted property, as defined in ORS 165.095.
- 16 (59) Issuing a false financial statement, as defined in ORS 165.100.
- 17 (60) Obtaining execution of documents by deception, as defined in ORS 165.102.
- 18 (61) A violation of ORS 165.543.
- 19 (62) Cellular counterfeiting in the third degree, as defined in ORS 165.577.
- 20 (63) Cellular counterfeiting in the second degree, as defined in ORS 165.579.
- 21 (64) Cellular counterfeiting in the first degree, as defined in ORS 165.581.
- 22 (65) Identity theft, as defined in ORS 165.800.
- 23 (66) A violation of ORS 166.190.
- 24 (67) Unlawful use of a weapon, as defined in ORS 166.220.
- 25 (68) A violation of ORS 166.240.
- 26 (69) Unlawful possession of a firearm, as defined in ORS 166.250.
- 27 (70) A violation of ORS 166.270.
- 28 (71) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or
29 firearms silencer, as defined in ORS 166.272.
- 30 (72) A violation of ORS 166.275.
- 31 (73) Unlawful possession of armor piercing ammunition, as defined in ORS 166.350.
- 32 (74) A violation of ORS 166.370.
- 33 (75) Unlawful possession of a destructive device, as defined in ORS 166.382.
- 34 (76) Unlawful manufacture of a destructive device, as defined in ORS 166.384.
- 35 (77) Possession of a hoax destructive device, as defined in ORS 166.385.
- 36 (78) A violation of ORS 166.410.
- 37 (79) Providing false information in connection with a transfer of a firearm, as defined in ORS
38 166.416.
- 39 (80) Improperly transferring a firearm, as defined in ORS 166.418.
- 40 (81) Unlawfully purchasing a firearm, as defined in ORS 166.425.
- 41 (82) A violation of ORS 166.429.
- 42 (83) A violation of ORS 166.470.
- 43 (84) A violation of ORS 166.480.
- 44 (85) A violation of ORS 166.635.
- 45 (86) A violation of ORS 166.638.

- 1 (87) Unlawful paramilitary activity, as defined in ORS 166.660.
- 2 (88) A violation of ORS 166.720.
- 3 (89) Prostitution, as defined in ORS 167.007.
- 4 (90) Promoting prostitution, as defined in ORS 167.012.
- 5 (91) Compelling prostitution, as defined in ORS 167.017.
- 6 (92) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- 7 (93) Unlawful gambling in the second degree, as defined in ORS 167.122.
- 8 (94) Unlawful gambling in the first degree, as defined in ORS 167.127.
- 9 (95) Possession of gambling records in the second degree, as defined in ORS 167.132.
- 10 (96) Possession of gambling records in the first degree, as defined in ORS 167.137.
- 11 (97) Possession of a gambling device, as defined in ORS 167.147.
- 12 (98) Possession of a gray machine, as defined in ORS 167.164.
- 13 (99) Cheating, as defined in ORS 167.167.
- 14 (100) Tampering with drug records, as defined in ORS 167.212.
- 15 (101) A violation of ORS 167.262.
- 16 (102) Research and animal interference, as defined in ORS 167.312.
- 17 (103) Animal abuse in the first degree, as defined in ORS 167.320.
- 18 (104) Aggravated animal abuse in the first degree, as defined in ORS 167.322.
- 19 (105) Animal neglect in the first degree, as defined in ORS 167.330.
- 20 (106) Interfering with an assistance, a search and rescue or a therapy animal, as defined in ORS
- 21 167.352.
- 22 (107) Involvement in animal fighting, as defined in ORS 167.355.
- 23 (108) Dogfighting, as defined in ORS 167.365.
- 24 (109) Participation in dogfighting, as defined in ORS 167.370.
- 25 (110) Unauthorized use of a livestock animal, as defined in ORS 167.385.
- 26 (111) Interference with livestock production, as defined in ORS 167.388.
- 27 (112) A violation of ORS 167.390.
- 28 (113) A violation of ORS 471.410.
- 29 (114) Failure to report missing precursor substances, as defined in ORS 475.955.
- 30 (115) Illegally selling drug equipment, as defined in ORS 475.960.
- 31 (116) Providing false information on a precursor substances report, as defined in ORS 475.965.
- 32 (117) Unlawful delivery of an imitation controlled substance, as defined in ORS 475.912.
- 33 (118) A violation of ORS 475.840, if it is a felony or a Class A misdemeanor.
- 34 (119) A violation of ORS 475.914, if it is a felony or a Class A misdemeanor.
- 35 (120) A violation of ORS 475.916.
- 36 (121) A violation of ORS 475.906, if it is a felony or a Class A misdemeanor.
- 37 (122) A violation of ORS 475.904 (2).
- 38 (123) Misuse of an identification card, as defined in ORS 807.430.
- 39 (124) Unlawful production of identification cards, licenses, permits, forms or camera cards, as
- 40 defined in ORS 807.500.
- 41 (125) Transfer of documents for the purposes of misrepresentation, as defined in ORS 807.510.
- 42 (126) Using an invalid license, as defined in ORS 807.580.
- 43 (127) Permitting misuse of a license, as defined in ORS 807.590.
- 44 (128) Using another's license, as defined in ORS 807.600.
- 45 (129) Criminal driving while suspended or revoked, as defined in ORS 811.182, when it is a fel-

1 ony.

2 (130) Driving while under the influence of intoxicants, as defined in ORS 813.010, when it is a
3 felony.

4 (131) Unlawful distribution of cigarettes, as defined in ORS 323.482.

5 **(132) Unlawful distribution of tobacco products, as defined in ORS 323.632.**

6 [(132)] **(133)** A violation of ORS 180.440 (2).

7 [(133)] **(134)** A violation described in ORS 475.846 to 475.894, if it is a felony.

8 [(134)] **(135)** An attempt, conspiracy or solicitation to commit a crime in subsections (1) to
9 [(133)] **(134)** of this section if the attempt, conspiracy or solicitation is a felony or a Class A
10 misdemeanor.

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