

Senate Bill 343

Sponsored by Senator PROZANSKI (at the request of Oregon Liquor Control Commission) (Pre-session filed.)

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 Oregon Liquor Control Commission inspector or investigators are peace officers for purposes of certain laws relating to law enforcement.

A BILL FOR AN ACT

1
2 Relating to peace officers; amending ORS 131.550, 131.561, 131.570, 133.005, 133.525, 133.545, 133.555,
3 133.575, 153.005, 161.015, 165.657, 165.663, 165.669, 166.725, 471.675, 475A.005 and 475A.035.

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

5 **SECTION 1.** ORS 133.005 is amended to read:

6 133.005. As used in ORS [*131.655 and*] 133.005 to 133.381 and 133.410 to 133.450, unless the
7 context requires otherwise:

8 (1) "Arrest" means to place a person under actual or constructive restraint or to take a person
9 into custody for the purpose of charging that person with an offense. A "stop" as authorized under
10 ORS 131.605 to 131.625 is not an arrest.

11 (2) "Federal officer" means a special agent or law enforcement officer employed by a federal
12 agency and who is empowered to effect an arrest with or without a warrant for violations of the
13 United States Code and who is authorized to carry firearms in the performance of duty.

14 (3) "Peace officer" means a member of the Oregon State Police or a sheriff, constable, marshal,
15 municipal police officer, investigator of a district attorney's office if the investigator is or has been
16 certified as a peace officer in this or any other state, **an Oregon Liquor Control Commission in-**
17 **pector or investigator**, or an investigator of the Criminal Justice Division of the Department of
18 Justice of the State of Oregon.

19 **SECTION 2.** ORS 133.525 is amended to read:

20 133.525. As used in ORS 133.525 to 133.703, unless the context requires otherwise:

21 (1) "Judge" means any judge of the circuit court, the Court of Appeals, the Supreme Court, any
22 justice of the peace or municipal judge authorized to exercise the powers and perform the duties
23 of a justice of the peace.

24 [(2) "*Police officer*" means a sheriff, municipal police officer, member of the Oregon State Police,
25 investigator of a district attorney's office if the investigator is or has been certified as a peace officer
26 in this or any other state, or an investigator of the Criminal Justice Division of the Department of
27 Justice.]

28 **(2) "Peace officer" has the meaning given that term in ORS 133.005.**

29 **SECTION 3.** ORS 133.545 is amended to read:

30 133.545. (1) A search warrant may be issued only by a judge. A search warrant issued by a
31 judge of the Supreme Court or the Court of Appeals may be executed anywhere in the state. Except

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 as otherwise provided in subsection (2) of this section, a search warrant issued by a judge of a cir-
2 cuit court may only be executed within the judicial district in which the court is located. A search
3 warrant issued by a justice of the peace may only be executed within the county in which the justice
4 court is located. A search warrant issued by a municipal judge authorized to exercise the powers
5 and perform the duties of a justice of the peace may only be executed in the municipality in which
6 the court is located.

7 (2) Notwithstanding subsection (1) of this section, a circuit court judge may authorize execution
8 of a search warrant outside of the judicial district in which the court is located, if the judge finds
9 from the application that one or more of the objects of the search relate to an offense committed
10 or triable within the judicial district in which the court is located. If the warrant authorizes the
11 installation or tracking of a mobile tracking device, the officer may track the device in any county
12 to which it is transported.

13 (3) Application for a search warrant may be made only by a district attorney or by any [*police*]
14 **peace** officer.

15 (4) The application shall consist of a proposed warrant in conformance with ORS 133.565, and
16 shall be supported by one or more affidavits particularly setting forth the facts and circumstances
17 tending to show that the objects of the search are in the places, or in the possession of the indi-
18 viduals, to be searched. If an affidavit is based in whole or in part on hearsay, the affiant shall set
19 forth facts bearing on any unnamed informant's reliability and shall disclose, as far as possible, the
20 means by which the information was obtained.

21 (5) Instead of the written affidavit described in subsection (4) of this section, the judge may take
22 an oral statement under oath. The oral statement shall be recorded and transcribed. The transcribed
23 statement shall be considered to be an affidavit for the purposes of this section. In such cases, the
24 recording of the sworn oral statement and the transcribed statement shall be certified by the judge
25 receiving it and shall be retained as a part of the record of proceedings for the issuance of the
26 warrant.

27 (6)(a) In addition to the procedure set out in subsection (5) of this section, the proposed warrant
28 and the affidavit may be sent to the court by facsimile transmission or any similar electronic
29 transmission that delivers a complete printable image of the signed and acknowledged affidavit and
30 proposed warrant.

31 (b) When a court issues a warrant upon an application made under paragraph (a) of this sub-
32 section:

33 (A) The court may transmit the signed warrant to the district attorney or [*police*] **peace** officer
34 by means of facsimile transmission or similar electronic transmission, as described in paragraph (a)
35 of this subsection. The court shall file the original signed warrant and a printed image of the district
36 attorney's or [*police*] **peace** officer's application with the return.

37 (B) The district attorney or [*police*] **peace** officer shall deliver the original signed and acknowl-
38 edged affidavit to the court with the return.

39 **SECTION 4.** ORS 133.555 is amended to read:

40 133.555. (1) Before acting on the application, the judge may examine on oath the affiants, and
41 the applicant and any witnesses the applicant may produce, and may call such witnesses as the
42 judge considers necessary to a decision. The judge shall make and keep a record of any testimony
43 taken before the judge. The record shall be admissible as evidence on any motion to suppress.

44 (2) If the judge finds that the application meets the requirements of ORS 133.535 and that, on
45 the basis of the record made before the judge, there is probable cause to believe that the search

1 will discover things specified in the application and subject to seizure under ORS 133.535, the judge
 2 shall issue a search warrant based on the finding of the judge and in accordance with the require-
 3 ments of ORS 133.545 to 133.615. If the judge does not so find, the judge shall deny the application.

4 (3) The judge may orally authorize a [*police*] **peace** officer or a district attorney to sign the
 5 judge's name on a duplicate original warrant. A duplicate original warrant shall be a search warrant
 6 for the purposes of ORS 133.535 to 133.615, and it shall be returned to the judge as provided in ORS
 7 133.615. In such cases a judge shall enter on the face of the original warrant the exact time of the
 8 issuance of the warrant and shall sign and file the original warrant in the manner provided by law.

9 (4) Until the warrant is executed, the proceedings upon application for a search warrant shall
 10 be conducted with secrecy appropriate to the circumstances.

11 **SECTION 5.** ORS 133.575 is amended to read:

12 133.575. (1) A search warrant may be executed only within the period and at the times author-
 13 ized by the warrant and only by a [*police*] **peace** officer. A [*police*] **peace** officer charged with its
 14 execution may be accompanied by such other persons as may be reasonably necessary for the suc-
 15 cessful execution of the warrant with all practicable safety.

16 (2) The executing officer shall, before entering the premises, give appropriate notice of the
 17 identity, authority and purpose of the officer to the person to be searched, or to the person in ap-
 18 parent control of the premises to be searched, as the case may be.

19 (3) Except as provided in ORS 133.619, before undertaking any search or seizure pursuant to the
 20 warrant, the executing officer shall read and give a copy of the warrant to the person to be
 21 searched, or to the person in apparent control of the premises to be searched. If the premises are
 22 unoccupied or there is no one in apparent control, the officer shall leave a copy of the warrant
 23 suitably affixed to the premises.

24 **SECTION 6.** ORS 153.005 is amended to read:

25 153.005. As used in this chapter:

26 (1) "Enforcement officer" means:

27 (a) A member of the Oregon State Police.

28 (b) A sheriff or deputy sheriff.

29 (c) A city marshal or a member of the police of a city, municipal or quasi-municipal corporation.

30 (d) An investigator of a district attorney's office if the investigator is or has been certified as
 31 a peace officer in this or any other state.

32 (e) An investigator of the Criminal Justice Division of the Department of Justice of the State
 33 of Oregon.

34 **(f) An Oregon Liquor Control Commission inspector or investigator.**

35 [*f*] **(g)** Any other person specifically authorized by law to issue citations for the commission
 36 of violations.

37 (2) "Violation" means an offense described ORS 153.008.

38 (3) "Violation proceeding" means a judicial proceeding initiated by issuance of a citation that
 39 charges a person with commission of a violation.

40 (4) "Traffic offense" has the meaning given that term in ORS 801.555.

41 **SECTION 7.** ORS 161.015 is amended to read:

42 161.015. As used in chapter 743, Oregon Laws 1971, and ORS 166.635, unless the context requires
 43 otherwise:

44 (1) "Dangerous weapon" means any weapon, device, instrument, material or substance which
 45 under the circumstances in which it is used, attempted to be used or threatened to be used, is

1 readily capable of causing death or serious physical injury.

2 (2) “Deadly weapon” means any instrument, article or substance specifically designed for and
3 presently capable of causing death or serious physical injury.

4 (3) “Deadly physical force” means physical force that under the circumstances in which it is
5 used is readily capable of causing death or serious physical injury.

6 (4) “Peace officer” means a sheriff, constable, marshal, municipal police officer, member of the
7 Oregon State Police, investigator of the Criminal Justice Division of the Department of Justice or
8 investigator of a district attorney’s office, **an Oregon Liquor Control Commission inspector or**
9 **investigator** and such other persons as may be designated by law.

10 (5) “Person” means a human being and, where appropriate, a public or private corporation, an
11 unincorporated association, a partnership, a government or a governmental instrumentality.

12 (6) “Physical force” includes, but is not limited to, the use of an electrical stun gun, tear gas
13 or mace.

14 (7) “Physical injury” means impairment of physical condition or substantial pain.

15 (8) “Serious physical injury” means physical injury which creates a substantial risk of death or
16 which causes serious and protracted disfigurement, protracted impairment of health or protracted
17 loss or impairment of the function of any bodily organ.

18 (9) “Possess” means to have physical possession or otherwise to exercise dominion or control
19 over property.

20 (10) “Public place” means a place to which the general public has access and includes, but is
21 not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting
22 rooms or apartments designed for actual residence, and highways, streets, schools, places of
23 amusement, parks, playgrounds and premises used in connection with public passenger transporta-
24 tion.

25 **SECTION 8.** ORS 131.550 is amended to read:

26 131.550. As used in ORS 131.550 to 131.600:

27 (1) “Acquiesce in prohibited conduct” means that a person knew of the prohibited conduct and
28 knowingly failed to take reasonable action under the circumstances to terminate or avoid the use
29 of the property in the course of prohibited conduct. For purposes of this subsection, “reasonable
30 action under the circumstances” includes, but is not limited to:

- 31 (a) Reporting the prohibited conduct to a law enforcement agency;
- 32 (b) Commencing action that will assert the rights of the affiant as to the property interest;
- 33 (c) Terminating a rental agreement; or
- 34 (d) Seeking an abatement order under the provisions of ORS 105.505 to 105.520 or 105.550 to
35 105.600, or under any ordinance or regulation allowing abatement of nuisances.

36 (2) “All persons known to have an interest” means:

37 (a) Any person who has, prior to the time the property is seized for criminal forfeiture, filed
38 notice of interest with any public office as may be required or permitted by law to be filed with
39 respect to the property that has been seized for criminal forfeiture;

40 (b) Any person from whose custody the property was seized; or

41 (c) Any person who has an interest in the property, including all owners and occupants of the
42 property, whose identity and address is known or is ascertainable upon diligent inquiry and whose
43 rights and interest in the property may be affected by the action.

44 (3) “Attorney fees” has the meaning given that term in ORCP 68 A.

45 (4) “Financial institution” means any person lawfully conducting business as:

- 1 (a) A financial institution or trust company, as those terms are defined in ORS 706.008;
- 2 (b) A consumer finance company subject to the provisions of ORS chapter 725;
- 3 (c) A mortgage banker or a mortgage broker as those terms are defined in ORS 59.840, a mort-
- 4 gage servicing company or other mortgage company;
- 5 (d) An officer, agency, department or instrumentality of the federal government, including but
- 6 not limited to:
- 7 (A) The Secretary of Housing and Urban Development;
- 8 (B) The Federal Housing Administration;
- 9 (C) The United States Department of Veterans Affairs;
- 10 (D) The Farmers Home Administration;
- 11 (E) The Federal National Mortgage Association;
- 12 (F) The Government National Mortgage Association;
- 13 (G) The Federal Home Loan Mortgage Association;
- 14 (H) The Federal Agricultural Mortgage Corporation; and
- 15 (I) The Small Business Administration;
- 16 (e) An agency, department or instrumentality of this state, including but not limited to:
- 17 (A) The Housing and Community Services Department;
- 18 (B) The Department of Veterans' Affairs; and
- 19 (C) The Public Employees Retirement System;
- 20 (f) An agency, department or instrumentality of any municipality in this state, including but not
- 21 limited to such agencies as the Portland Development Commission;
- 22 (g) An insurer as defined in ORS 731.106;
- 23 (h) A private mortgage insurance company;
- 24 (i) A pension plan or fund or other retirement plan; and
- 25 (j) A broker-dealer or investment adviser representative as defined in ORS 59.015.
- 26 (5) "Forfeiture counsel" means an attorney designated to represent a seizing agency in criminal
- 27 forfeiture actions or proceedings.
- 28 (6) "Instrumentality" means property that is used or intended for use in prohibited conduct or
- 29 that facilitates prohibited conduct.
- 30 (7) "Law enforcement agency" means any agency that employs [*police*] **peace** officers or prose-
- 31 cutes criminal cases.
- 32 (8) "Official law enforcement use" means a use that may reasonably be expected to result in the
- 33 identification, apprehension or conviction of criminal offenders.
- 34 (9) "[*Police*] **Peace** officer" has the meaning given that term in ORS 133.525.
- 35 (10) "Proceeds of prohibited conduct" means property derived directly or indirectly from, main-
- 36 tained by or realized through an act or omission that constitutes prohibited conduct, and includes
- 37 any benefit, interest or property of any kind without reduction for expenses of acquiring or main-
- 38 taining it or incurred for any other reason.
- 39 (11) "Prohibited conduct" means:
- 40 (a) For purposes of proceeds, a felony or a Class A misdemeanor.
- 41 (b) For purposes of instrumentalities, any crime listed in ORS 131.602.
- 42 (12) "Property" means any interest in anything of value, including the whole of any lot or tract
- 43 of land and tangible and intangible personal property, including currency, instruments or securities
- 44 or any other kind of privilege, interest, claim or right whether due or to become due.
- 45 (13) "Seizing agency" means a law enforcement agency that has seized property for criminal

1 forfeiture.

2 (14) "Weapon" means any instrument of offensive or defensive combat or anything used, or de-
3 signed to be used, to destroy, defeat or injure a person.

4 **SECTION 9.** ORS 131.561 is amended to read:

5 131.561. (1) A person who delivers property in obedience to an order or direction to deliver the
6 property under this section is not liable:

7 (a) To any person on account of obedience to the order or direction; or

8 (b) For any costs incurred on account of any contamination of the delivered property. This in-
9 cludes, but is not limited to, any disposal costs for any property forfeited under ORS 131.558, any
10 hazardous waste or material, any contraband or any other contamination contained in property
11 seized under this section.

12 (2) In addition to seizures authorized by ORS 133.535, a [*police*] **peace** officer may seize property
13 without a court order if the [*police*] **peace** officer has probable cause to believe that the property
14 is subject to criminal forfeiture.

15 (3) Except as provided in ORS 131.564, with regard to cash or other assets that at the time of
16 seizure are held in any form of account in a financial institution, if the property is in whole or in
17 part intangible, the person having control or custody of the property shall deliver the same over to
18 the [*police*] **peace** officer.

19 (4)(a) A [*police*] **peace** officer may seize property pursuant to an order of the court. Forfeiture
20 counsel or a seizing agency may apply for an ex parte order directing seizure of specified property.

21 (b) Application may be made to any judge as defined in ORS 133.525. The application must be
22 supported by one or more affidavits setting forth the facts and circumstances tending to show where
23 the objects of the seizure are to be found. The court shall issue the order upon a finding of probable
24 cause to believe that the described property is subject to criminal forfeiture. The order may be set
25 out on the face of a search warrant.

26 (c) Except as provided in ORS 131.564, with regard to cash or other assets that at the time of
27 seizure are held in any form of account in a financial institution, if the property is in whole or in
28 part intangible, the order shall direct any person having control or custody of the property to de-
29 liver the same over to the seizing agency or to the court to abide judgment.

30 (5) Property may be constructively seized by posting notice of seizure for criminal forfeiture on
31 it or by filing notice of seizure for criminal forfeiture or notice of pending criminal forfeiture in the
32 public records that impart constructive notice of matters relating to such property. A notice that
33 is filed must include a description of the property that is the subject of the seizure. Real property,
34 including interests arising out of land sale contracts, may be seized only upon recording a notice
35 of seizure containing a legal description of the property in the mortgage records of the county in
36 which the real property is located.

37 (6) Promptly upon seizure, the officer who seized the property shall make an inventory of the
38 property seized and shall deliver a receipt embodying the inventory to the person from whose pos-
39 session the property is taken or to the person in apparent control of the property at the time it is
40 seized. If the property is unoccupied or there is no one present in apparent control, the officer shall
41 leave the receipt suitably affixed to the property. If the property is physically removed from the
42 location of seizure and it is unoccupied or there is no one present in apparent control, then the of-
43 ficer shall promptly file the receipt in the public records of the seizing agency. Every receipt pre-
44 pared under this subsection shall contain, in addition to an inventory of the property seized, the
45 following information:

1 (a) The identity of the seizing agency; and

2 (b) The address and telephone number of the office or other place where the person may obtain
3 further information concerning the criminal forfeiture.

4 (7) In the event that property is seized from the possession of a person who asserts a possessory
5 lien over such property pursuant to applicable law, notwithstanding any other provision of law, any
6 lien of the person from whom the property was seized remains in effect and is enforceable as fully
7 as though the person had retained possession of the property.

8 **SECTION 10.** ORS 131.570 is amended to read:

9 131.570. (1) As soon as practicable after seizure for criminal forfeiture, the seizing agency shall
10 review the inventory prepared by the [*police*] **peace** officer under ORS 131.561. Within 30 days after
11 seizure for criminal forfeiture, the forfeiture counsel shall file a criminal information or an
12 indictment alleging facts sufficient to establish that the property is subject to criminal forfeiture.
13 Within 30 days after seizure for criminal forfeiture, the seizing agency or forfeiture counsel shall
14 prepare a notice of seizure for criminal forfeiture containing a copy of the inventory prepared pur-
15 suant to ORS 131.561, the identity of the person from whom the property was seized, the name, ad-
16 dress and telephone number of the seizing agency and the address and telephone number of the
17 office or other place where further information concerning the seizure and criminal forfeiture may
18 be obtained, and shall make reasonable efforts to serve the notice of seizure for criminal forfeiture
19 on all persons, other than the defendant, known to have an interest in the seized property. A person
20 may be served as provided in ORCP 7 D except that the notice must also include information re-
21 garding the right to file a claim under subsection (2) of this section, if applicable, and the deadline
22 for filing the claim. If the property is cash in the amount of \$1,000 or less or if the fair market value
23 of the property is \$1,000 or less, the seizing agency may publish notice of seizure for criminal
24 forfeiture in a newspaper as provided in ORCP 7 D(6)(b) to D(6)(d). In all other cases, the seizing
25 agency shall publish notice of seizure for criminal forfeiture in a newspaper as provided in ORCP
26 7 D(6)(b) to D(6)(d). The seizing agency shall provide a copy of the notice, inventory and estimate
27 of value to the forfeiture counsel.

28 (2) Except as otherwise provided in ORS 131.579 (1) to (3), if notice of seizure for criminal
29 forfeiture:

30 (a) Is given in a manner other than by publication, any person, other than the defendant,
31 claiming an interest in the property must file a claim with the forfeiture counsel within 21 days after
32 service of notice of seizure for criminal forfeiture.

33 (b) Is published, any person, other than the defendant, claiming an interest in the property must
34 file a claim with the forfeiture counsel within 21 days after the last publication date.

35 (3) An extension for the filing of a claim under subsection (2) of this section may not be granted.
36 The claim must be signed by the claimant under penalty of perjury and must set forth all of the
37 following:

38 (a) The true name of the claimant;

39 (b) The address at which the claimant will accept future mailings from the court or the forfei-
40 ture counsel; and

41 (c) A statement that the claimant has an interest in the seized property.

42 (4) If a seizing agency publishes notice of seizure for criminal forfeiture in a newspaper in the
43 manner provided by subsection (1) of this section, the agency may include in a single publication
44 as many notices of criminal forfeiture as the agency considers convenient. The publication may
45 contain a single statement of matters from the notices of criminal forfeiture that are common to all

1 of the notices and that would otherwise result in needless repetition. The publication must contain
 2 for each notice of criminal forfeiture a separate copy of the inventory prepared pursuant to ORS
 3 131.561, and a separate statement of the identity of the person from whose custody the property was
 4 seized. The published inventory need not contain estimates of value for the property seized.

5 **SECTION 11.** ORS 165.657 is amended to read:

6 165.657. As used in ORS 165.659 to 165.669, unless the context requires otherwise:

7 (1) “Electronic communication” has the meaning given **that term** in ORS 133.721.

8 (2) “Pen register” means a device which records or decodes electronic or other impulses which
 9 identify the numbers dialed or otherwise transmitted on the telephone line to which such device is
 10 attached, but does not include any device used by a provider or customer of a provider of electronic
 11 or wire communication service for billing or recording as an incident to billing for communications
 12 services provided by such provider or any device used by a provider or customer of a wire commu-
 13 nication service for cost accounting or other like purposes in the ordinary course of its business.

14 (3) “[*Police*] **Peace officer**” has the meaning given **that term** in ORS 133.525.

15 (4) “Trap and trace device” means a device which captures the incoming electronic or other
 16 impulses which identify the originating number of an instrument or device from which a wire or
 17 electronic communication was transmitted.

18 (5) “Wire communication” has the meaning given **that term** in ORS 133.721.

19 **SECTION 12.** ORS 165.663 is amended to read:

20 165.663. Any [*police*] **peace officer** may apply to the circuit court in which judicial district the
 21 targeted telephone is located for an ex parte order or extension of an order authorizing the instal-
 22 lation and use of a pen register or a trap and trace device. The application shall:

23 (1) Be in writing under oath;

24 (2) Include the identity of the applicant and the identity of the law enforcement agency con-
 25 ducting the investigation;

26 (3) Contain a statement demonstrating that there is probable cause to believe that an individual
 27 is committing, has committed or is about to commit:

28 (a) A particular felony of murder, kidnapping, arson, robbery, bribery, extortion or other crime
 29 dangerous to life and punishable as a felony;

30 (b) A crime punishable as a felony under ORS 475.840, 475.846 to 475.894 or 475.906;

31 (c) A crime under ORS 166.720 that includes as part of the pattern of racketeering activity at
 32 least one incident of conduct that constitutes a felony; or

33 (d) Any conspiracy to commit a crime described in paragraphs (a) to (c) of this subsection; and

34 (4) Contain a statement demonstrating that use of a pen register or trap and trace device will
 35 yield evidence relevant to the crime.

36 **SECTION 13.** ORS 165.669 is amended to read:

37 165.669. (1) Upon service of an order issued under ORS 133.545, 133.575, 133.595, 133.617, 133.619,
 38 133.721, 133.724, 133.729, 133.731, 133.735, 133.737, 133.739, 165.540 and 165.657 to 165.673, a provider
 39 of wire or electronic communication service, landlord, custodian or other person shall furnish the
 40 investigating law enforcement agency forthwith with all information, facilities and technical assist-
 41 ance necessary to accomplish the installation of the pen register unobtrusively and with a minimum
 42 of interference with the services that the person so ordered by the court accords the party with
 43 respect to whom the installation and use is to take place, if such assistance is directed by the order.

44 (2) Under service of an order issued under ORS 133.545, 133.575, 133.595, 133.617, 133.619,
 45 133.721, 133.724, 133.729, 133.731, 133.735, 133.737, 133.739, 165.540 and 165.657 to 165.673, a provider

1 of wire or electronic communication service, landlord, custodian or other person shall furnish the
 2 investigating law enforcement agency forthwith with all information, facilities and technical assist-
 3 ance necessary to accomplish the installation of the trap and trace device unobtrusively and with
 4 a minimum of interference with the services that the person so ordered by the court accords the
 5 party with respect to whom the installation and use is to take place, if such assistance is directed
 6 by the order. Unless otherwise ordered by the court, the results of the trap and trace device shall
 7 be furnished to the [police] **peace** officer designated in the order at reasonable intervals during
 8 regular business hours for the duration of the order.

9 (3) A provider of wire or electronic communication service, landlord, custodian or other person
 10 who furnishes facilities or technical assistance pursuant to ORS 133.545, 133.575, 133.595, 133.617,
 11 133.619, 133.721, 133.724, 133.729, 133.731, 133.735, 133.737, 133.739, 165.540 and 165.657 to 165.673
 12 shall be reasonably compensated for such reasonable expenses incurred in providing such facilities
 13 and assistance.

14 (4) No cause of action shall lie in any court against any provider of wire or electronic commu-
 15 nication service, its officers, employees, agents or other specified persons for providing information,
 16 facilities or assistance in accordance with the terms of a court order under ORS 133.545, 133.575,
 17 133.595, 133.617, 133.619, 133.721, 133.724, 133.729, 133.731, 133.735, 133.737, 133.739, 165.540 and
 18 165.657 to 165.673.

19 **SECTION 14.** ORS 166.725 is amended to read:

20 166.725. (1) Any circuit court may, after making due provision for the rights of innocent persons,
 21 enjoin violations of the provisions of ORS 166.720 (1) to (4) by issuing appropriate orders and judg-
 22 ments, including, but not limited to:

23 (a) Ordering a divestiture by the defendant of any interest in any enterprise, including real
 24 property.

25 (b) Imposing reasonable restrictions upon the future activities or investments of any defendant,
 26 including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor
 27 as the enterprise in which the defendant was engaged in violation of the provisions of ORS 166.720
 28 (1) to (4).

29 (c) Ordering the dissolution or reorganization of any enterprise.

30 (d) Ordering the suspension or revocation of a license, permit or prior approval granted to any
 31 enterprise by any agency of the state.

32 (e) Ordering the forfeiture of the charter of a corporation organized under the laws of this state,
 33 or the revocation of a certificate of authority authorizing a foreign corporation to conduct business
 34 within this state, upon finding that the board of directors or a managerial agent acting on behalf
 35 of the corporation, in conducting the affairs of the corporation, has authorized or engaged in con-
 36 duct in violation of ORS 166.720 (1) to (4) and that, for the prevention of future criminal activity,
 37 the public interest requires the charter of the corporation forfeited and the corporation dissolved
 38 or the certificate of authority revoked.

39 (2) All property, real or personal, including money, used in the course of, derived from or real-
 40 ized through conduct in violation of a provision of ORS 166.715 to 166.735 is subject to civil forfei-
 41 ture to the state. The state shall dispose of all forfeited property as soon as commercially feasible.
 42 If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures
 43 or dispositions under this section shall be made with due provision for the rights of innocent per-
 44 sons. Forfeited property shall be distributed as follows:

45 (a)(A) All moneys and the clear proceeds of all other property forfeited shall be deposited with

1 the State Treasurer to the credit of the Common School Fund.

2 (B) For purposes of subparagraph (A) of this paragraph, “clear proceeds” means proceeds of
3 forfeited property less costs of maintaining and preserving property pending its sale or other dispo-
4 sition, less costs of sale or disposition and, if the Department of Justice has not otherwise recovered
5 its costs and expenses of the investigation and prosecution leading to the forfeiture, less 30 percent
6 of the remaining proceeds of the property which is awarded to the department as reasonable re-
7 imbursement for costs of such investigation and prosecution.

8 (b) Any amounts awarded to the Department of Justice pursuant to paragraph (a) of this sub-
9 section shall be deposited in the Criminal Justice Revolving Account in the State Treasury.

10 (3) Property subject to forfeiture under this section may be seized by a [*police*] **peace** officer,
11 as defined in ORS 133.525 (2), upon court process. Seizure without process may be made if:

12 (a) The seizure is incident to a lawful arrest or search or an inspection under an administrative
13 inspection warrant; or

14 (b) The property subject to seizure has been the subject of a prior judgment in favor of the state
15 in a forfeiture proceeding based upon this section.

16 (4) In the event of a seizure under subsection (3) of this section, a forfeiture proceeding shall
17 be instituted promptly. Property taken or detained under this section shall not be subject to
18 replevin, but is deemed to be in the custody of the [*police*] **peace** officer making the seizure, subject
19 only to the order of the court. When property is seized under this section, pending forfeiture and
20 final disposition, the [*police*] **peace** officer may:

21 (a) Place the property under seal;

22 (b) Remove the property to a place designated by the court; or

23 (c) Require another agency authorized by law to take custody of the property and remove it to
24 an appropriate location.

25 (5) The Attorney General, any district attorney or any state agency having jurisdiction over
26 conduct in violation of a provision of ORS 166.715 to 166.735 may institute civil proceedings under
27 this section. In any action brought under this section, the circuit court shall give priority to the
28 hearing and determination. Pending final determination, the circuit court may at any time enter
29 such injunctions, prohibitions or restraining orders, or take such actions, including the acceptance
30 of satisfactory performance bonds, as the court may deem proper. The Attorney General, district
31 attorney or state agency bringing an action under this section may be awarded, upon entry of a
32 judgment in favor of the state, costs of investigation and litigation, reasonably incurred. Amounts
33 recovered may include costs and expenses of state and local governmental departments and agencies
34 incurred in connection with the investigation or litigation.

35 (6)(a) Any aggrieved person may institute a proceeding under subsection (1) of this section:

36 (A) If the proceeding is based upon racketeering activity for which a criminal conviction has
37 been obtained, any rights of appeal have expired and the action is against the individual convicted
38 of the racketeering activity; or

39 (B) If the person is entitled to pursue a cause of action under subsection (7)(a)(B) of this section.

40 (b) In such proceeding, relief shall be granted in conformity with the principles that govern the
41 granting of injunctive relief from threatened loss or damage in other civil cases, except that no
42 showing of special or irreparable damage to the person shall have to be made. Upon the execution
43 of proper bond against damages for an injunction improvidently granted and a showing of immediate
44 danger of significant loss or damage, a temporary restraining order and a preliminary injunction
45 may be issued in any such action before a final determination on the merits.

1 (7)(a) Any person who is injured by reason of any violation of the provisions of ORS 166.720 (1)
2 to (4) shall have a cause of action for three-fold the actual damages sustained and, when appropriate,
3 punitive damages:

4 (A) If a criminal conviction for the racketeering activity that is the basis of the violation has
5 been obtained, any rights of appeal have expired and the action is against the individual convicted
6 of the racketeering activity; or

7 (B) If the violation is based on racketeering activity as defined in ORS 166.715 (6)(a)(B) to (J),
8 (K) as it relates to burglary and criminal trespass, (L) to (P), (S), (T) except for claims arising under
9 ORS 167.087, (U), (V), (X) to (Z), (AA) to (DD), (KK), (LL) or (OO) to (VV).

10 (b) The defendant or any injured person may demand a trial by jury in any civil action brought
11 pursuant to this subsection.

12 (c) Any injured person shall have a right or claim to forfeited property or to the proceeds de-
13 rived therefrom superior to any right or claim the state has in the same property or proceeds.

14 (8) An investigative agency may bring an action for civil penalties for any violation of ORS
15 166.720 (1) to (4). Upon proof of any such violation, the court shall impose a civil penalty of not more
16 than \$250,000.

17 (9) A judgment rendered in favor of the state in any criminal proceeding under ORS 166.715 to
18 166.735 shall estop the defendant in any subsequent civil action or proceeding brought by the state
19 or any other person as to all matters as to which such judgment would be an estoppel as between
20 the state and the defendant.

21 (10) The Attorney General may, upon timely application, intervene in any civil action or pro-
22 ceeding brought under subsection (6) or (7) of this section if the Attorney General certifies that, in
23 the opinion of the Attorney General, the action or proceeding is of general public importance. In
24 such action or proceeding, the state shall be entitled to the same relief as if the Attorney General
25 instituted the action or proceeding.

26 (11)(a) Notwithstanding any other provision of law, a criminal or civil action or proceeding un-
27 der ORS 166.715 to 166.735 may be commenced at any time within five years after the conduct in
28 violation of a provision of ORS 166.715 to 166.735 terminates or the cause of action accrues. If a
29 criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish,
30 prevent or restrain any violation of the provisions of ORS 166.715 to 166.735, the running of the
31 period of limitations prescribed by this section with respect to any cause of action arising under
32 subsection (6) or (7) of this section which is based in whole or in part upon any matter complained
33 of in any such prosecution, action or proceeding shall be suspended during the pendency of such
34 prosecution, action or proceeding and for two years following its termination.

35 (b) A cause of action arising under subsection (6)(a)(A) or (7)(a)(A) of this section accrues when
36 the criminal conviction for the underlying activity is obtained. In addition to any suspension of the
37 running of the period of limitations provided for in paragraph (a) of this subsection, the period of
38 limitations prescribed by paragraph (a) of this subsection is suspended during any appeal from the
39 criminal conviction for the underlying activity.

40 (12) The application of one civil remedy under any provision of ORS 166.715 to 166.735 shall not
41 preclude the application of any other remedy, civil or criminal, under ORS 166.715 to 166.735 or any
42 other provision of law. Civil remedies under ORS 166.715 to 166.735 are supplemental and not mu-
43 tually exclusive.

44 (13) Notwithstanding subsection (6) or (7) of this section, a person may not institute a proceed-
45 ing under subsection (6) of this section and does not have a cause of action under subsection (7) of

1 this section if the conduct that is the basis of the proceeding or action could also be the basis of
 2 a claim of discrimination because of sex that constitutes sexual harassment.

3 (14) In an action brought under the provisions of this section by a person other than the At-
 4 torney General, a district attorney or a state agency, the court may award reasonable attorney fees
 5 to the prevailing party. In a civil action brought under the provisions of this section by the Attorney
 6 General, a district attorney or a state agency:

7 (a) The court may award reasonable attorney fees to the Attorney General, district attorney or
 8 state agency if the Attorney General, district attorney or state agency prevails in the action; and

9 (b) The court may award reasonable attorney fees to a defendant who prevails in an action un-
 10 der this section if the court determines that the Attorney General, district attorney or state agency
 11 had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an
 12 adverse decision of the trial court.

13 **SECTION 15.** ORS 471.675 is amended to read:

14 471.675. No person shall forcibly resist lawful arrest, or by physical contact recklessly interfere
 15 with an investigation of any infringement of the Liquor Control Act [*or the Oregon Distilled Liquor*
 16 *Control Act*] or with any lawful search or seizure being made by an officer, [*or*] inspector **or in-**
 17 **vestigator** of the Oregon Liquor Control Commission, when [*such*] **the** person knows or should know
 18 that [*such*] **the** acts are being performed by an officer, [*or*] inspector **or investigator** of the com-
 19 mission.

20 **SECTION 16.** ORS 475A.005 is amended to read:

21 475A.005. As used in this chapter, unless the context requires otherwise:

22 (1) “All persons known to have an interest” means:

23 (a) Any person who has, prior to the time the property is seized for forfeiture, filed notice of
 24 interest with any public office as may be required or permitted by law to be filed with respect to
 25 the property which has been seized for forfeiture;

26 (b) Any person from whose custody the property was seized; or

27 (c) Any person who has an interest in the property, including all owners and occupants of the
 28 property, whose identity and address is known or is ascertainable upon diligent inquiry and whose
 29 rights and interest in the property may be affected by the action.

30 (2) “Attorney fees” has the meaning given that term in ORCP 68 A.

31 (3) “Costs and disbursements” are those expenditures set forth in ORCP 68 A.

32 (4) “Financial institution” means any person lawfully conducting business as:

33 (a) A financial institution or trust company, as those terms are defined in ORS 706.008;

34 (b) A consumer finance company subject to the provisions of ORS chapter 725;

35 (c) A mortgage banker or a mortgage broker as those terms are defined in ORS 59.840, a mort-
 36 gage servicing company or other mortgage company;

37 (d) An officer, agency, department or instrumentality of the federal government, including but
 38 not limited to:

39 (A) The Secretary of Housing and Urban Development;

40 (B) The Federal Housing Administration;

41 (C) The United States Department of Veterans Affairs;

42 (D) The Farmers Home Administration;

43 (E) The Federal National Mortgage Association;

44 (F) The Government National Mortgage Administration;

45 (G) The Federal Home Loan Mortgage Association;

- 1 (H) The Federal Agricultural Mortgage Corporation; and
 2 (I) The Small Business Administration;
 3 (e) An agency, department or instrumentality of the state, including but not limited to:
 4 (A) The Housing Agency;
 5 (B) The Department of Veterans' Affairs; and
 6 (C) The Public Employees Retirement System;
 7 (f) An agency, department or instrumentality of any municipality in the state, including but not
 8 limited to such agencies as the Portland Development Commission;
 9 (g) An insurer as defined in ORS 731.106;
 10 (h) A private mortgage insurance company;
 11 (i) A pension plan or fund or other retirement plan; and
 12 (j) A broker-dealer or investment adviser as defined in ORS 59.015.
 13 (5) "Forfeiting agency" means the State of Oregon or a political subdivision thereof that has
 14 accepted for forfeiture property seized by a seizing agency or that is processing a forfeiture case.
 15 (6) "Forfeiture counsel" means an attorney designated to represent a forfeiting agency in
 16 forfeiture actions or proceedings.
 17 (7) "Law enforcement agency" means any agency which employs [*police*] **peace** officers or pros-
 18 ecutes criminal cases.
 19 (8) "Official law enforcement use" or "official law enforcement activity" means uses or activities
 20 which may reasonably be expected to result in the identification, apprehension or conviction of
 21 criminal offenders.
 22 (9) "[*Police*] **Peace** officer" has the meaning given that term in ORS 133.525.
 23 (10) "Proceeds of prohibited conduct" means property derived directly or indirectly from, main-
 24 tained by or realized through an act or omission, and includes any benefit, interest or property of
 25 any kind without reduction for expenses of acquiring or maintaining it or incurred for any other
 26 reason.
 27 (11) "Prohibited conduct" includes violation of, solicitation to violate, attempt to violate or
 28 conspiracy to violate any provisions of ORS 475.005 to 475.285 and 475.805 to 475.980 when the
 29 conduct constitutes either a felony or misdemeanor as those terms are defined in ORS 161.525 and
 30 161.545.
 31 (12) "Property" means any interest in anything of value, including the whole of any lot or tract
 32 of land and tangible and intangible personal property, including currency, instruments or securities
 33 or any other kind of privilege, interest, claim or right whether due or to become due.
 34 (13) "Seizing agency" means a law enforcement agency that has seized property for forfeiture.
 35 (14) "Weapon" means any instrument of offensive or defensive combat or anything used, or de-
 36 signed to be used, in destroying, defeating or injuring a person.
 37 **SECTION 17.** ORS 475A.035 is amended to read:
 38 475A.035. Property may be seized for forfeiture as provided in this section.
 39 (1) Any person who delivers property in obedience to an order or direction to deliver the prop-
 40 erty under this section shall not be liable:
 41 (a) To any person on account of obedience to the order or direction; or
 42 (b) For any costs incurred on account of any contamination of the delivered property. This in-
 43 cludes, but is not limited to, any disposal costs for any property forfeited under ORS 475A.020, any
 44 hazardous waste or material, any contraband or any other contamination contained in property
 45 seized under this section.

1 (2) Property may be seized by any [*police*] **peace** officer without a court order if:

2 (a) The property has been the subject of an earlier judgment in favor of any forfeiting agency
3 in an earlier civil in rem proceeding under this chapter;

4 (b) There is probable cause to believe that property is subject to forfeiture, provided that the
5 property may constitutionally be seized without a warrant;

6 (c) The seizure is in the course of a constitutionally valid criminal investigative stop, arrest or
7 search, and there is probable cause to believe that the property is subject to forfeiture;

8 (d) The property is directly or indirectly dangerous to the health or safety of any person; or

9 (e) An owner consents to the seizure.

10 (3) Except as provided in ORS 475A.045, with regard to cash or other assets which at the time
11 of seizure are held in any form of account in a financial institution, if the property is in whole or
12 in part intangible, the person having control or custody of the property shall deliver the same over
13 to the [*police*] **peace** officer.

14 (4)(a) Property may be seized by any [*police*] **peace** officer pursuant to an order of the court.
15 Forfeiture counsel or a seizing agency may apply for an ex parte order directing seizure of specified
16 property.

17 (b) Application shall be made to any judge as defined in ORS 133.525. The application shall be
18 supported by one or more affidavits setting forth the facts and circumstances tending to show where
19 the objects of the seizure are to be found. The court shall issue the order upon a finding of probable
20 cause to believe that the described property is subject to forfeiture. The order may be set out on
21 the face of a search warrant.

22 (c) Except as provided in ORS 475A.045, with regard to cash or other assets which at the time
23 of seizure are held in any form of account in a financial institution, if the property is in whole or
24 in part intangible, the order shall direct any person having control or custody of the property to
25 deliver the same over to the seizing agency or to the court to abide judgment.

26 (5) Property may be constructively seized by posting notice of seizure for forfeiture on it or by
27 filing notice of seizure for forfeiture or notice of pending forfeiture in the public records that impart
28 constructive notice of matters relating to such property. A notice which is filed must include a de-
29 scription of the property that is the subject of the seizure. Real property, including interests arising
30 out of land sale contracts, shall be seized only upon recording notice of seizure containing a legal
31 description of the property in the mortgage records of the county in which the real property is lo-
32 cated.

33 (6) Property which has been unconstitutionally seized may be subject to forfeiture if the basis
34 for forfeiture under this chapter is sustained by evidence which is not the fruit of the unconstitu-
35 tional seizure.

36 (7) Promptly upon seizure, the officer who seized the property shall make an inventory of the
37 property seized and shall deliver a receipt embodying the inventory to the person from whose pos-
38 session they are taken or to the person in apparent control of the property at the time it is seized.
39 The officer may, in addition, provide an estimate of the value of the property seized and information
40 on the right to file a claim under ORS 475A.055 (2), and the deadline for filing that claim. If the
41 property is unoccupied or there is no one present in apparent control, the officer shall leave the
42 receipt suitably affixed to the property. If the property is physically removed from the location of
43 seizure and it is unoccupied or there is no one present in apparent control, then the officer shall
44 promptly file the receipt in the public records of the forfeiting agency. Every receipt prepared under
45 this subsection shall contain, in addition to an inventory of the property seized, the following in-

1 formation:

2 (a) The identity of the seizing agency; and

3 (b) The address and telephone number of the office or other place where the person may obtain
4 further information concerning the forfeiture.

5 (8) A [*police*] **peace** officer has probable cause to believe that cash, weapons or negotiable in-
6 struments are subject to forfeiture if the cash, weapons or negotiable instruments are found in close
7 proximity to controlled substances or to instrumentalities of prohibited conduct. Notwithstanding
8 ORS 475A.080, if the forfeiting agency establishes in a forfeiture action that cash, weapons or ne-
9 gotiable instruments were found in close proximity to controlled substances or to instrumentalities
10 of prohibited conduct, the burden is on any person claiming the cash, weapons or negotiable in-
11 struments to prove by a preponderance of the evidence that the cash, weapons or negotiable in-
12 struments are not proceeds of prohibited conduct or an instrumentality of prohibited conduct.

13 (9) In the event that property is seized from the possession of a person who asserts a possessory
14 lien over such property pursuant to applicable law, notwithstanding any other provision of law, any
15 lien of the person from whom the property was seized shall remain in effect and shall be enforceable
16 as fully as though the person had retained possession of the property.

17
