

## Enrolled

# Senate Joint Resolution 18

Sponsored by Senator PROZANSKI, Representative OLSON; Representatives BERGER, BOQUIST, BRUUN, BURLEY, BUTLER, DALLUM, ESQUIVEL, GARRARD, GILLIAM, GIROD, KRIEGER, KRUMMEL, MAURER, MINNIS, SCOTT, G SMITH, THATCHER, WHISNANT

### Be It Resolved by the Legislative Assembly of the State of Oregon:

**PARAGRAPH 1.** Section 10, Article XV of the Constitution of the State of Oregon, is amended to read:

**Sec. 10. The Oregon Property Protection Act of 2000.** (1) This section may be known and shall be cited as the "Oregon Property Protection Act of 2000."

(2) Statement of principles. The People, in the exercise of the power reserved to them under the Constitution of the State of Oregon, declare that:

(a) A basic tenet of a democratic society is that a person is presumed innocent and should not be punished until proven guilty;

(b) The property of a person **generally** should not be forfeited in a forfeiture proceeding by government unless and until that person is convicted of a crime involving the property;

(c) The value of property forfeited should be proportional to the specific conduct for which the owner of the property has been convicted; and

(d) Proceeds from forfeited property should be used for treatment of drug abuse unless otherwise specified by law for another purpose.

(3) Forfeitures prohibited without conviction. *[No]* **Except as provided in this section, a judgment of forfeiture of property in a civil forfeiture proceeding by the State or any of its political subdivisions *[shall be allowed or]* may not be entered until and unless the *[owner of]* person **claiming** the property is convicted of a crime in Oregon or another jurisdiction and the property *[is found by clear and convincing evidence to have been instrumental in committing or facilitating the crime or to be proceeds of that crime.]*:**

(a) **Constitutes proceeds of the crime for which the claimant has been convicted;**

(b) **Was instrumental in committing or facilitating the crime for which the claimant has been convicted;**

(c) **Constitutes proceeds of one or more other crimes similar to the crime for which the claimant was convicted; or**

(d) **Was instrumental in committing or facilitating one or more other crimes similar to the crime for which the claimant was convicted.**

(4) **Forfeiture based on similar crimes. Property may be forfeited under paragraph (c) or (d) of subsection (3) of this section only if the claimant is notified in writing of the other crime or crimes claimed to be similar to the crime for which the claimant was convicted. The notice must be given at the time the claimant is given notice of the seizure of the property for forfeiture, and the claimant must have an opportunity to challenge the seizure and forfeiture of the property.**

(5) **Forfeiture without conviction of claimant. The property of a claimant who has not been convicted of a crime may be forfeited in a civil forfeiture proceeding only if the claimant consents to the forfeiture of the property or the forfeiting agency proves the property constitutes proceeds or an instrumentality of crime committed by another person as described in subsection (3) of this section and:**

(a) The claimant took the property with the intent to defeat forfeiture of the property;  
(b) The claimant knew or should have known that the property constituted proceeds or an instrumentality of criminal conduct; or

(c) The claimant acquiesced in the criminal conduct. A person shall be considered to have acquiesced in criminal conduct if the person knew of the criminal conduct and failed to take reasonable action under the circumstances to terminate the criminal conduct or prevent use of the property to commit or facilitate the criminal conduct.

(6) Standard of proof. (a) Except as provided in paragraph (b) of this subsection, if the property to be forfeited in a civil forfeiture action is personal property, the forfeiting agency must prove the elements specified in subsection (3) or (5) of this section by a preponderance of the evidence. If the property to be forfeited in a civil forfeiture action is real property, the forfeiting agency must prove the elements specified in subsection (3) or (5) of this section by clear and convincing evidence.

(b) If a forfeiting agency establishes in a forfeiture proceeding that cash, weapons or negotiable instruments were found in close proximity to controlled substances or to instrumentalities of criminal conduct, the burden is on any person claiming the cash, weapons or negotiable instruments to prove by a preponderance of the evidence that the cash, weapons or negotiable instruments are not proceeds of criminal conduct or an instrumentality of criminal conduct.

(7) Value of property forfeited. The value of the property forfeited under the provisions of this [subsection shall] section may not be excessive and shall be substantially proportional to the specific conduct for which the owner of the property has been convicted. For purposes of this section, "property" means any interest in anything of value, including the whole of any lot or tract of land and tangible and intangible personal property, including currency, instruments or securities or any other kind of privilege, interest, claim or right whether due or to become due. Nothing in this section shall prohibit a person from voluntarily giving a judgment of forfeiture.

[(4)] (8) [Protection of innocent property owners.] **Financial institutions.** In a civil forfeiture proceeding, if a financial institution claiming an interest in the property demonstrates that it holds an interest, [its] the financial institution's interest [shall] is not [be] subject to forfeiture.

[In a civil forfeiture proceeding if a person claiming an interest in the property, other than a financial institution or a defendant who has been charged with or convicted of a crime involving that property, demonstrates that the person has an interest in the property, that person's interest shall not be subject to forfeiture unless:]

[(a) The forfeiting agency proves by clear and convincing evidence that the person took the property or the interest with the intent to defeat the forfeiture; or]

[(b) A conviction under subsection (3) is later obtained against the person.]

[(5)] (9) Exception for unclaimed property and contraband. Notwithstanding the provisions of subsection (3) of this section, if, following notice to all persons known to have an interest or who may have an interest, no person claims an interest in the seized property or if the property is contraband, a judgment of forfeiture may be allowed and entered without a criminal conviction. For purposes of this subsection, "contraband" means personal property, articles or things, including but not limited to controlled substances or drug paraphernalia, that a person is prohibited by Oregon statute or local ordinance from producing, obtaining or possessing.

(10) Exception for forfeiture of animals. This section does not apply to the forfeiture of animals that have been abused, neglected or abandoned.

[(6)] (11) Law enforcement seizures unaffected. Nothing in this section shall be construed to affect the temporary seizure of property for evidentiary, forfeiture, or protective purposes, or to alter the power of the Governor to remit fines or forfeitures under Article V, Section 14, of this Constitution.

[(7)] (12) Disposition of property [and proceeds] to drug treatment. Any sale of forfeited property shall be conducted in a commercially reasonable manner. Property [or proceeds] forfeited [under

*subsections (3), (5), or (8) of this section shall not be used for law enforcement purposes but] in a civil forfeiture proceeding shall be distributed or applied in the following order:*

(a) To the satisfaction of any foreclosed liens, security interests and contracts in the order of their priority;

(b) To the State or any of its political subdivisions for actual and reasonable expenses related to the costs of the forfeiture proceeding, including attorney fees, storage, maintenance, management, and disposition of the property incurred in connection with the sale of any forfeited property [*in an amount not to exceed twenty-five percent of the total proceeds in any single forfeiture*]; **and**

(c) To the State or any of its political subdivisions to be used exclusively for drug treatment, unless another disposition is specially provided by law.

*[(8) State and federal sharing. The State of Oregon or any of its political subdivisions shall take all necessary steps to obtain shared property or proceeds from the United States Department of Justice resulting from a forfeiture. Any property or proceeds received from the United States Department of Justice by the State of Oregon or any of its political subdivisions shall be applied as provided in subsection (7) of this section.]*

*[(9) (13) Restrictions on State transfers. Neither the State of Oregon, its political subdivisions, nor any forfeiting agency shall transfer forfeiture proceedings to the federal government unless a state court has affirmatively found that:*

(a) The activity giving rise to the forfeiture is interstate in nature and sufficiently complex to justify the transfer;

(b) The seized property may only be forfeited under federal law; or

(c) Pursuing forfeiture under state law would unduly burden the state forfeiting agencies.

*[(10) (14) Penalty for violations. Any person acting under color of law, official title or position who takes any action intending to conceal, transfer, withhold, retain, divert or otherwise prevent any [proceeds] moneys, conveyances, real property, or any things of value forfeited under the law of this State or the United States from being applied, deposited or used in accordance with [subsections (7), (8) or (9)] the requirements of this section shall be subject to a civil penalty in an amount treble the value of the forfeited property concealed, transferred, withheld, retained or diverted. Nothing in this subsection shall be construed to impair judicial immunity if otherwise applicable.*

*[(11) (15) Reporting requirement. All forfeiting agencies shall report the nature and disposition of all property [and proceeds] seized for forfeiture or forfeited to a State asset forfeiture oversight committee that is independent of any forfeiting agency. The asset forfeiture oversight committee shall generate and make available to the public an annual report of the information collected. The asset forfeiture oversight committee shall also make recommendations to ensure that asset forfeiture proceedings are handled in a manner that is fair to innocent property owners and interest holders.*

*[(12) (16) Severability. If any part of this section or its application to any person or circumstance is held to be invalid for any reason, then the remaining parts or applications to any persons or circumstances shall not be affected but shall remain in full force and effect.*

**PARAGRAPH 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at a special election held throughout this state on the same date as the next primary election.**

Adopted by Senate May 11, 2007

Readopted by Senate June 21, 2007

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Secretary of Senate

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President of Senate

Adopted by House June 19, 2007

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Speaker of House