

Senate Joint Resolution 18

Sponsored by Senator PROZANSKI

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**.

Proposes amendment to Oregon Constitution modifying provisions governing civil forfeitures. Allows civil forfeiture of property without conviction of crime under certain circumstances. Specifies standards of proof in civil forfeiture proceedings. Allows use of forfeited property for law enforcement purposes.

Refers proposed amendment to people for their approval or rejection at next regular general election.

JOINT RESOLUTION

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.**

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

5 (a) The claimant took the property with the intent to defeat forfeiture of the property;

6 (b) The claimant knew or should have known that the property constituted proceeds or
7 an instrumentality of criminal conduct; or

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

12 (5) **Standard of proof.** (a) Except as provided in paragraph (b) of this subsection, if the
13 property to be forfeited in a civil forfeiture action is personal property, the forfeiting agency
14 must prove the elements specified in subsection (3) or (4) of this section by a preponderance
15 of the evidence. If the property to be forfeited in a civil forfeiture action is real property, the
16 forfeiting agency must prove the elements specified in subsection (3) or (4) of this section
17 by clear and convincing evidence.

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

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

31 [(4)] (7) [*Protection of innocent property owners.*] **Financial institutions.** In a civil forfeiture
32 proceeding, if a financial institution claiming an interest in the property demonstrates that it holds
33 an interest, [*its*] **the financial institution’s** interest [*shall*] **is** not [*be*] subject to forfeiture.

34 [*In a civil forfeiture proceeding if a person claiming an interest in the property, other than a fi-*
35 *nancial institution or a defendant who has been charged with or convicted of a crime involving that*
36 *property, demonstrates that the person has an interest in the property, that person’s interest shall not*
37 *be subject to forfeiture unless:*]

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

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

41 [(5)] (8) **Exception for unclaimed property and contraband.** Notwithstanding the provisions of
42 subsection (3) of this section, if, following notice to all persons known to have an interest or who
43 may have an interest, no person claims an interest in the seized property or if the property is
44 contraband, a judgment of forfeiture may be allowed and entered without a criminal conviction. For
45 purposes of this subsection, “contraband” means personal property, articles or things, including but

1 not limited to controlled substances or drug paraphernalia, that a person is prohibited by Oregon
2 statute or local ordinance from producing, obtaining or possessing.

3 **(9) Exception for fugitives. A judgment of forfeiture may be entered without a criminal**
4 **conviction against a claimant who is a fugitive and in default in civil forfeiture proceedings.**
5 **The judgment of forfeiture may be entered against the claimant if the claimant has appeared**
6 **in the civil forfeiture proceeding, the claimant is not confined or held in custody by another**
7 **jurisdiction, and the claimant, after notice or knowledge of the fact that a warrant has been**
8 **issued for the claimant:**

9 **(a) Purposely left the state to avoid prosecution;**

10 **(b) Declines to return to the state and allow execution of the warrant; or**

11 **(c) Otherwise evades the jurisdiction of the court issuing the warrant.**

12 [(6)] **(10) Law enforcement seizures unaffected.** Nothing in this section shall be construed to af-
13 fect the temporary seizure of property for evidentiary, forfeiture, or protective purposes, or to alter
14 the power of the Governor to remit fines or forfeitures under Article V, Section 14, of this Consti-
15 tution.

16 [(7)] **(11) Disposition of property [and proceeds] to drug treatment.** Any sale of forfeited property
17 shall be conducted in a commercially reasonable manner. Property [or proceeds] forfeited [under
18 subsections (3), (5), or (8) of this section shall not be used for law enforcement purposes but] **in a civil**
19 **forfeiture proceeding** shall be distributed or applied in the following order:

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

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

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

28 [(8)] **(12) State and federal sharing.** The State of Oregon or any of its political subdivisions shall
29 take all necessary steps to obtain shared property [or proceeds] from the United States Department
30 of Justice resulting from a forfeiture. Any property [or proceeds] received from the United States
31 Department of Justice by the State of Oregon or any of its political subdivisions shall be applied
32 as provided in subsection [(7)] **(11)** of this section.

33 [(9)] **(13) Restrictions on State transfers.** Neither the State of Oregon, its political subdivisions,
34 nor any forfeiting agency shall transfer forfeiture proceedings to the federal government unless a
35 state court has affirmatively found that:

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

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

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

40 [(10)] **(14) Penalty for violations.** Any person acting under color of law, official title or position
41 who takes any action intending to conceal, transfer, withhold, retain, divert or otherwise prevent
42 any [proceeds] **moneys**, conveyances, real property, or any things of value forfeited under the law
43 of this State or the United States from being applied, deposited or used in accordance with [sub-
44 sections (7), (8) or (9)] **the requirements** of this section shall be subject to a civil penalty in an
45 amount treble the value of the forfeited property concealed, transferred, withheld, retained or di-

1 verted. Nothing in this subsection shall be construed to impair judicial immunity if otherwise ap-
2 plicable.

3 [(11)] (15) Reporting requirement. All forfeiting agencies shall report the nature and disposition
4 of all property [*and proceeds*] seized for forfeiture or forfeited to a State asset forfeiture oversight
5 committee that is independent of any forfeiting agency. The asset forfeiture oversight committee
6 shall generate and make available to the public an annual report of the information collected. The
7 asset forfeiture oversight committee shall also make recommendations to ensure that asset forfeiture
8 proceedings are handled in a manner that is fair to innocent property owners and interest holders.

9 [(12)] (16) Severability. If any part of this section or its application to any person or circum-
10 stance is held to be invalid for any reason, then the remaining parts or applications to any persons
11 or circumstances shall not be affected but shall remain in full force and effect.

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13 **PARAGRAPH 2. The amendment proposed by this resolution shall be submitted to the**
14 **people for their approval or rejection at the next regular general election held throughout**
15 **this state.**

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