

A-Engrossed
House Bill 2403

Ordered by the House April 30
Including House Amendments dated April 30

Sponsored by Representative COWAN (at the request of Oregon Narcotics Enforcement Association)

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.

[Authorizes forfeiture of vehicle with hidden compartment if vehicle used or intended for use in commission of criminal offense. Provides that law enforcement agency seizing forfeited vehicle may destroy, sell or use vehicle.]

Requires law enforcement agency that lawfully seizes motor vehicle to disable hidden compartment in vehicle unless vehicle is forfeited and agency either retains vehicle for use or determines that cost of disabling compartment exceeds value of vehicle.

Modifies provisions relating to criminal and civil forfeiture to account for cost of disabling hidden compartment in motor vehicle.

A BILL FOR AN ACT

1
2 Relating to forfeiture; creating new provisions; and amending ORS 131.550, 131.564, 131.588, 131.602,
3 475A.005, 475A.045, 475A.110 and 475A.120.

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

5 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS 131.550 to**
6 **131.600.**

7 **SECTION 2. (1) When a seizing agency lawfully seizes a motor vehicle with a hidden**
8 **compartment, the agency shall disable the hidden compartment, unless the motor vehicle is**
9 **forfeited and the agency:**

10 (a) **Retains the motor vehicle for law enforcement purposes; or**

11 (b) **Determines that the cost of disabling the hidden compartment exceeds the value of**
12 **the motor vehicle.**

13 (2) **Notwithstanding ORS 131.594 or 131.597, if the motor vehicle with a hidden compart-**
14 **ment is forfeited and the seizing agency:**

15 (a) **Retains the motor vehicle for law enforcement purposes, the agency shall deduct the**
16 **cost of disabling the hidden compartment from the value of the motor vehicle before making**
17 **the distribution described in ORS 131.594 or 131.597.**

18 (b) **Does not retain the motor vehicle for law enforcement purposes and determines that**
19 **the cost of disabling the hidden compartment exceeds the value of the motor vehicle, the**
20 **agency shall sell the motor vehicle for scrap or salvage and distribute the proceeds of the**
21 **sale according to ORS 131.594 or 131.597. The seizing agency shall ensure that the person to**
22 **whom the motor vehicle is sold disables the hidden compartment or the motor vehicle.**

23 (3) **If a motor vehicle with a hidden compartment is forfeited and the seizing agency sells**
24 **the motor vehicle, the agency shall deduct the cost of disabling the hidden compartment**
25 **from the proceeds of the sale under ORS 131.594 (1)(a) or 131.597 (1)(a).**

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 **SECTION 3.** ORS 131.588 is amended to read:

2 131.588. (1) If no financial institution has filed the affidavit described in ORS 131.579 (1), and if
3 the court has failed to uphold the claim or affidavit of any other person claiming an interest in the
4 property, the effect of the judgment is that:

5 (a) Title to the property passes to the seizing agency free of any interest or encumbrance
6 thereon in favor of any person who has been given notice;

7 (b) The seizing agency may transfer good and sufficient title to any subsequent purchaser or
8 transferee, and all courts, the state and the departments and agencies of this state, and any political
9 subdivision shall recognize the title. In the case of real property, the seizing agency shall warrant
10 the title against constitutional defect. A warranty under this paragraph is limited to the purchase
11 price of the real property; and

12 (c) Any department, agency or officer of this state or any political subdivision whose official
13 functions include the issuance of certificates or other evidence of title is immune from civil or
14 criminal liability when such issuance is pursuant to a judgment of criminal forfeiture.

15 (2) If an affidavit is filed by a financial institution under ORS 131.579 (1), or if a person files an
16 affidavit under ORS 131.579 (2):

17 (a) The court shall foreclose all security interests, liens and vendor's interests of financial in-
18 stitutions and claimants as to which the court determines that there is a legal or equitable basis for
19 foreclosure; and

20 (b) All other interests applicable to the property that are not foreclosed or otherwise eliminated
21 through a judgment of foreclosure, if and to the extent that they are valid and subsisting, remain
22 in effect and the property remains subject to them upon completion of the criminal forfeiture pro-
23 ceeding.

24 (3) Notwithstanding any other provision of law, if a financial institution or other person has
25 filed an affidavit described in ORS 131.579, or if the court has upheld the claim of any claimant, then
26 as to each item of property seized:

27 (a) If the court has determined that the property should not be forfeited and has not foreclosed
28 the security interests, liens or other interests covering the property, the court shall render judgment
29 in favor of the owner of the property, the property must be returned to the owner and all security
30 interests, liens and other interests applicable to the property remain in effect as though the property
31 had never been seized. **If the property is a motor vehicle with a hidden compartment, the**
32 **seizing agency is not liable for any diminution in the value of the property as a result of**
33 **disabling the compartment.** Upon the return of the property to the owner, the seizing agency shall
34 pay all costs and expenses relating to towing and storage of the property and shall cause to be
35 discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have
36 attached to the property since the seizure.

37 (b) If the court has determined that the property should not be forfeited and has foreclosed one
38 or more interests covering the property, including security interests or liens covering the property
39 or contracts for the transfer or conveyance of the property, the seizing agency shall pay all costs
40 and expenses relating to towing and storage of the property and shall cause to be discharged any
41 possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to
42 the property since the seizure, and the court shall order the property sold pursuant to a sheriff's
43 sale or other sale authorized by the court within such time as may be prescribed by the court fol-
44 lowing entry of the judgment. If any interests covering the property have not been foreclosed, in-
45 cluding any liens or security interests of a claimant whose claim has been upheld, or of a financial

1 institution that has filed the affidavit described in ORS 131.579, the property must be sold subject
2 to those interests. The judgment shall order the proceeds of the sale applied in the following order:

3 (A) To the payment of the costs of the sale;

4 **(B) If the property is a motor vehicle with a hidden compartment, to reimburse the**
5 **seizing agency for the cost of disabling the hidden compartment;**

6 ~~[(B)]~~ (C) To the satisfaction of the foreclosed liens, security interests and contracts in order of
7 their priority; and

8 ~~[(C)]~~ (D) The excess, if any, to the owner of the property.

9 (c) If the court has determined that the property should be forfeited and has foreclosed one or
10 more security interests, liens, contracts or other interests covering the property, the seizing agency
11 shall pay all costs and expenses relating to towing and storage of the property and shall cause to
12 be discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that
13 have attached to the property since the seizure, and the court shall order the property sold pursuant
14 to a sheriff's sale or other sale authorized by the court. If any interest in the property was claimed
15 by a financial institution or other claimant and the interest was upheld but not foreclosed, the
16 property must be sold subject to the interest. The sale of the property must be held within such time
17 as may be prescribed by the court following entry of the judgment. The judgment shall also order
18 the proceeds of such sale applied in the following order:

19 (A) To the payment of the costs of the sale;

20 **(B) If the property is a motor vehicle with a hidden compartment, to reimburse the**
21 **seizing agency for the cost of disabling the hidden compartment;**

22 ~~[(B)]~~ (C) To the satisfaction of the foreclosed liens, security interests and contracts in the order
23 of their priority; and

24 ~~[(C)]~~ (D) The excess, if any, to the seizing agency to be disposed of as provided in ORS 131.594
25 or 131.597.

26 (d) If the court has determined that the property should be forfeited and has not foreclosed the
27 interests of any party in the property, the seizing agency shall pay all costs and expenses relating
28 to towing and storage of the property and shall cause to be discharged any possessory chattel liens
29 on the property arising under ORS 87.152 to 87.162 that have attached to the property since the
30 seizure. The court shall enter a judgment awarding the property to the seizing agency, subject to
31 the interests of any claimants whose claims or affidavits were upheld by the court, and subject to
32 the interests of any financial institutions that filed affidavits under ORS 131.579 (1), that remain in
33 full force and effect. **If the property is a motor vehicle with a hidden compartment, the in-**
34 **terests of any claimants or financial institutions shall be reduced on a pro rata basis by the**
35 **cost of disabling the hidden compartment.**

36 (4) The court may include in the judgment of criminal forfeiture an order that directs the seizing
37 agency to distribute to the victim of the crime of conviction a portion of any proceeds from property
38 received by the seizing agency if:

39 (a) The crime of conviction was a person felony or person Class A misdemeanor as those terms
40 are defined by rule of the Oregon Criminal Justice Commission; and

41 (b) The court included an order of restitution in the criminal judgment.

42 (5) The seizing agency is not liable to any person as a consequence of obedience to a judgment
43 directing conveyance to a financial institution.

44 (6) The forfeiture counsel shall send a copy of the judgment to the Asset Forfeiture Oversight
45 Advisory Committee.

1 (7)(a) On entry of judgment for a claimant in any proceeding to forfeit property under ORS
2 131.550 to 131.600, unless the court has foreclosed one or more security interests, liens or other in-
3 terests covering the property, the property or interest in property must be returned or conveyed
4 immediately to the claimant designated by the court.

5 (b) If it appears that there was reasonable suspicion that the property was subject to criminal
6 forfeiture, the court shall cause a finding to be entered and no claimant or financial institution is
7 entitled to damages nor is the person who made the seizure, the seizing agency or forfeiture counsel
8 liable to suit or judgment on account of the seizure or action. An order directing seizure issued
9 under ORS 131.561 constitutes a finding of reasonable suspicion that the property was subject to
10 criminal forfeiture.

11 (8) **Except for deficiencies resulting from disabling a hidden compartment in a motor ve-**
12 **hicle with a hidden compartment**, nothing in this section prevents a claimant or financial insti-
13 tution from obtaining any deficiency to which the claimant or financial institution would otherwise
14 be entitled.

15 (9) Nothing in this section or in ORS 131.564 prevents a seizing agency from entering into an
16 agreement with a claimant or other person for the reimbursement of the seizing agency for the costs
17 and expenses relating to towing and storage of property or the cost of discharging any possessory
18 chattel lien on the property arising under ORS 87.152 to 87.162 that attached to the property in the
19 period between the seizure of the property and the release or criminal forfeiture of the property.

20 **SECTION 4.** ORS 131.564 is amended to read:

21 131.564. (1)(a) Except as otherwise provided in ORS 131.550 to 131.600, property seized for
22 criminal forfeiture is not subject to replevin, conveyance, sequestration or attachment. The seizure
23 of property or the commencement of a criminal forfeiture proceeding under ORS 131.550 to 131.600
24 does not abate, impede or in any way delay the initiation or prosecution of a suit or action by a
25 financial institution for the possession of seized property in which the financial institution has or
26 purports to have a lien or security interest or for the foreclosure of such lien or security interest.
27 A financial institution may proceed with any suit or action involving property in which it has a lien
28 or security interest even though a seizure has occurred and criminal forfeiture proceedings have
29 been or will be commenced. If property that may be subject to criminal forfeiture is sold prior to
30 the conclusion of the forfeiture proceedings, the sheriff, trustee or other person who is conducting
31 the sale and who has actual notice of the forfeiture proceedings shall distribute the sale proceeds
32 as follows:

33 (A) To the expenses of the sale;

34 **(B) If the property is a motor vehicle with a hidden compartment, to reimburse the**
35 **seizing agency for the cost of disabling the hidden compartment;**

36 ~~[(B)]~~ (C) To the payment of the obligations owed to the foreclosing financial institution that are
37 secured by the property and to any other person whose lien or security interest in the property has
38 been foreclosed in the suit or action in the order determined by the court; and

39 ~~[(C)]~~ (D) The surplus, if any, shall be distributed to the seizing agency, or to the court in which
40 the forfeiture proceedings are pending.

41 (b) The sheriff, trustee or other person who distributes the sale proceeds as provided in this
42 subsection is not liable to any person who has or asserts an interest in the property.

43 (2) Within 30 days following seizure of property for criminal forfeiture, the seizing agency, in
44 consultation with the district attorney of the county in which the property was seized for forfeiture,
45 shall determine whether it will seek the forfeiture of the property. If the seizing agency elects not

1 to seek forfeiture, it shall pay all costs and expenses relating to towing and storage of the property,
 2 and shall cause to be discharged any possessory chattel liens arising under ORS 87.152 to 87.162
 3 that have attached to the property since its seizure and release the property. The property may be
 4 released to a person other than the person from whose custody or control the property was taken
 5 if the seizing agency or forfeiture counsel first mails to the last-known addresses of all persons
 6 known to have an interest in the property a notice of intent to release the property. The notice must
 7 specify the person to whom the property is to be released and must detail the time and place of the
 8 release. An agency that complies with the provisions of this subsection by paying costs and expenses
 9 of towing and storage, discharging possessory liens, mailing any required notices and releasing the
 10 property is not liable for its actions under this subsection or for any consequences thereof. **If the**
 11 **property is a motor vehicle with a hidden compartment, the seizing agency is not liable for**
 12 **any diminution in the value of the property as a result of disabling the compartment.**

13 (3) A seizing agency shall, pending criminal forfeiture and final disposition and subject to the
 14 need to retain the property in any criminal proceeding, provide that property in the physical custody
 15 of the seizing agency be serviced or maintained as may be reasonably appropriate to preserve the
 16 value of the property.

17 (4) A seizing agency may, pending criminal forfeiture and final disposition and subject to the
 18 need to retain seized property in any criminal proceeding:

19 (a) Provide that the seized property be transferred for criminal forfeiture to any city, county,
 20 state or federal agency with criminal forfeiture authority, provided that no such transfer may have
 21 the effect of diminishing or reducing the rights of any third party under ORS 131.550 to 131.600.

22 (b) Apply to the court for an order providing that the seized property may be sold, leased, rented
 23 or operated in the manner and on the terms that may be specified in the court's order. The court
 24 shall deny any application unless the sale, lease, rental or operation of the property will be con-
 25 ducted in a commercially reasonable manner and will not result in a material reduction of the
 26 property's value. The court may enter an order only:

27 (A) After notice and opportunity to be heard is provided to all persons known to have or to
 28 claim an interest in the property; and

29 (B) With the consent of all persons holding security interests of record in the property.

30 (c) Provide that the seized property be removed to a storage area for safekeeping.

31 (5) Unless otherwise ordered by the court, the seizing agency shall hold the proceeds of the sale,
 32 leasing, renting or operation under subsection (4) of this section and the rights of holders of security
 33 interests of record in the property attach to the proceeds of the sale, leasing, renting or operation
 34 in the same order of priority as interests attached to the property.

35 (6)(a) Except as provided in paragraph (b) of this subsection and except for currency with ap-
 36 parent or known intrinsic collector value, all cash seized for criminal forfeiture, together with all
 37 cash received from the sale, leasing, renting or operation of the property, must be immediately de-
 38 posited in an insured interest-bearing forfeiture trust account or accounts maintained by the seizing
 39 agency exclusively for this purpose. Cash may be retained as evidence in a criminal proceeding but
 40 must be deposited immediately when the need to retain it as evidence is discharged.

41 (b) Notwithstanding paragraph (a) of this subsection, all cash seized for criminal forfeiture that
 42 at the time of seizure is deposited in any form of account in a financial institution may remain in
 43 the account in the financial institution. From the time of seizure until the criminal forfeiture pro-
 44 ceeding is abandoned, or until a court ultimately enters a judgment granting or denying criminal
 45 forfeiture or enters a judgment of dismissal, all deposits except the deposit of interest by the finan-

1 cial institution, withdrawals or other transactions involving the account are prohibited, unless ap-
2 proved by the court.

3 (c) Subject to any court order, interest earned upon cash deposited in a forfeiture trust account
4 or held in an account in a financial institution under this subsection must be disbursed as follows:

5 (A) If the criminal forfeiture proceeding is abandoned, or if the court ultimately enters a judg-
6 ment denying criminal forfeiture or a judgment of dismissal, the seizing agency shall pay any inter-
7 est earned, together with the cash deposited in the forfeiture trust account in connection with the
8 seizure in question, to the person from whom it was seized, and the seizing agency shall release any
9 interest earned, together with the cash deposited in an account in a financial institution, to the
10 person from whom it was seized.

11 (B) If a judgment of criminal forfeiture is entered, but parties other than the seizing agency es-
12 tablish rights to portions of the amount that are in the aggregate larger than or equal to the cash
13 on deposit plus interest earned thereon, the seizing agency shall disburse the interest, together with
14 the cash on deposit, to the parties in the order of their priority.

15 (C) If a judgment of criminal forfeiture is entered and the total amount arising out of the seizure
16 that is on deposit in the forfeiture trust account or in an account in a financial institution, including
17 interest earned on moneys deposited, is greater than the aggregate amount needed to satisfy the
18 established interests of security interest holders, lienholders and other claimants, the seizing agency
19 shall retain the balance remaining after payment by the seizing agency to parties.

20 (7) If the property seized for criminal forfeiture consists of stocks, bonds, promissory notes or
21 other security or evidence of indebtedness, and the property is held in some form of account in a
22 financial institution, the property may remain in the account pending a final decision in the criminal
23 forfeiture proceedings. Unless otherwise allowed by order of the court, no transactions involving
24 the account may be permitted other than the deposit or reinvestment of dividends or other normally
25 recurring payments on the property. Any accrual to the value of the property during the pendency
26 of criminal forfeiture proceedings must be disbursed in the manner provided for the disbursement
27 of interest under subsection (6) of this section.

28 (8) When property has been seized for criminal forfeiture or a notice of criminal forfeiture has
29 been filed, an owner of or interest holder in the property may file a motion seeking an order to show
30 cause. The motion must be filed no later than 15 days after the owner or interest holder received
31 notice or actual knowledge of the seizure, whichever is earlier. At the time a person files a motion
32 under this subsection, the person must serve a copy of the motion on the forfeiture counsel and the
33 defendant, if any. When a motion is filed under this subsection, the court shall issue an order to
34 show cause to the seizing agency for a hearing on the sole issue of whether probable cause for
35 criminal forfeiture of the property exists. If the court finds that there is no probable cause for
36 criminal forfeiture of the property, the property seized for criminal forfeiture or subjected to the
37 notice of criminal forfeiture must be released pending the outcome of a judicial proceeding under
38 ORS 131.582. As used in this subsection, "owner" or "interest holder" does not include the defend-
39 ant.

40 **SECTION 5.** ORS 131.550 is amended to read:

41 131.550. As used in ORS 131.550 to 131.600:

42 (1) "Acquiesce in prohibited conduct" means that a person knew of the prohibited conduct and
43 knowingly failed to take reasonable action under the circumstances to terminate or avoid the use
44 of the property in the course of prohibited conduct. For purposes of this subsection, "reasonable
45 action under the circumstances" includes, but is not limited to:

- 1 (a) Reporting the prohibited conduct to a law enforcement agency;
2 (b) Commencing action that will assert the rights of the affiant as to the property interest;
3 (c) Terminating a rental agreement; or
4 (d) Seeking an abatement order under the provisions of ORS 105.505 to 105.520 or 105.550 to
5 105.600 or under any ordinance or regulation allowing abatement of nuisances.
- 6 (2) "All persons known to have an interest" means:
7 (a) Any person who has, prior to the time the property is seized for criminal forfeiture, filed
8 notice of interest with any public office as may be required or permitted by law to be filed with
9 respect to the property that has been seized for criminal forfeiture;
10 (b) Any person from whose custody the property was seized; or
11 (c) Any person who has an interest in the property, including all owners and occupants of the
12 property, whose identity and address is known or is ascertainable upon diligent inquiry and whose
13 rights and interest in the property may be affected by the action.
- 14 (3) "Attorney fees" has the meaning given that term in ORCP 68 A.
15 (4) "Financial institution" means any person lawfully conducting business as:
16 (a) A financial institution or trust company, as those terms are defined in ORS 706.008;
17 (b) A consumer finance company subject to the provisions of ORS chapter 725;
18 (c) A mortgage banker or a mortgage broker as those terms are defined in ORS 59.840, a mort-
19 gage servicing company or other mortgage company;
20 (d) An officer, agency, department or instrumentality of the federal government, including but
21 not limited to:
22 (A) The Secretary of Housing and Urban Development;
23 (B) The Federal Housing Administration;
24 (C) The United States Department of Veterans Affairs;
25 (D) Rural Development and the Farm Service Agency of the United States Department of Agri-
26 culture;
27 (E) The Federal National Mortgage Association;
28 (F) The Government National Mortgage Association;
29 (G) The Federal Home Loan Mortgage Corporation;
30 (H) The Federal Agricultural Mortgage Corporation; and
31 (I) The Small Business Administration;
32 (e) An agency, department or instrumentality of this state, including but not limited to:
33 (A) The Housing and Community Services Department;
34 (B) The Department of Veterans' Affairs; and
35 (C) The Public Employees Retirement System;
36 (f) An agency, department or instrumentality of any municipality in this state, including but not
37 limited to such agencies as the Portland Development Commission;
38 (g) An insurer as defined in ORS 731.106;
39 (h) A private mortgage insurance company;
40 (i) A pension plan or fund or other retirement plan; and
41 (j) A broker-dealer or investment adviser representative as defined in ORS 59.015.
- 42 (5) "Forfeiture counsel" means an attorney designated to represent a seizing agency in criminal
43 forfeiture actions or proceedings.
- 44 (6) "Instrumentality" means property that is used or intended for use in prohibited conduct or
45 that facilitates prohibited conduct.

1 (7) "Law enforcement agency" means any agency that employs police officers or prosecutes
2 criminal cases.

3 (8) "**Motor vehicle with a hidden compartment**" means a motor vehicle as defined in ORS
4 801.360 that has had the vehicle's original design modified by a person other than the man-
5 ufacturer to create a container, space or enclosure for the purpose of concealing, hiding or
6 otherwise preventing discovery of its contents and that is used or intended to be used to
7 facilitate the commission of a criminal offense.

8 [(8)] (9) "Official law enforcement use" means a use that may reasonably be expected to result
9 in the identification, apprehension or conviction of criminal offenders.

10 [(9)] (10) "Police officer" has the meaning given that term in ORS 133.525.

11 [(10)] (11) "Proceeds of prohibited conduct" means property derived directly or indirectly from,
12 maintained by or realized through an act or omission that constitutes prohibited conduct, and in-
13 cludes any benefit, interest or property of any kind without reduction for expenses of acquiring or
14 maintaining it or incurred for any other reason.

15 [(11)] (12) "Prohibited conduct" means:

16 (a) For purposes of proceeds, a felony or a Class A misdemeanor.

17 (b) For purposes of instrumentalities, any crime listed in ORS 131.602.

18 [(12)] (13) "Property" means any interest in anything of value, including the whole of any lot
19 or tract of land and tangible and intangible personal property, including currency, instruments or
20 securities or any other kind of privilege, interest, claim or right whether due or to become due.

21 [(13)] (14) "Seizing agency" means a law enforcement agency that has seized property for crim-
22 inal forfeiture.

23 [(14)] (15) "Weapon" means any instrument of offensive or defensive combat or anything used,
24 or designed to be used, to destroy, defeat or injure a person.

25 **SECTION 6. Section 7 of this 2009 Act is added to and made a part of ORS chapter 475A.**

26 **SECTION 7. (1) When a seizing agency lawfully seizes a motor vehicle with a hidden**
27 **compartment, the agency shall disable the hidden compartment, unless the motor vehicle is**
28 **forfeited and the agency:**

29 (a) **Retains the motor vehicle for law enforcement purposes; or**

30 (b) **Determines that the cost of disabling the hidden compartment exceeds the value of**
31 **the motor vehicle.**

32 (2) **Notwithstanding ORS 475A.120 or 475A.126, if the motor vehicle with a hidden com-**
33 **partment is forfeited and the seizing agency:**

34 (a) **Retains the motor vehicle for law enforcement purposes, the agency shall deduct the**
35 **cost of disabling the hidden compartment from the value of the motor vehicle before making**
36 **the distribution described in ORS 475A.120 or 475A.126.**

37 (b) **Does not retain the motor vehicle for law enforcement purposes and determines that**
38 **the cost of disabling the hidden compartment exceeds the value of the motor vehicle, the**
39 **agency shall sell the motor vehicle for scrap or salvage and distribute the proceeds of the**
40 **sale according to ORS 475A.120 or 475A.126. The seizing agency shall ensure that the person**
41 **to whom the motor vehicle is sold disables the hidden compartment or the motor vehicle.**

42 (3) **If a motor vehicle with a hidden compartment is forfeited and the seizing agency sells**
43 **the motor vehicle, the agency shall deduct the cost of disabling the hidden compartment**
44 **from the proceeds of the sale under ORS 475A.120 (4)(a) or 475A.126 (3)(a).**

45 **SECTION 8. ORS 475A.110 is amended to read:**

1 475A.110. (1) A judgment of forfeiture shall recite the basis for the judgment.

2 (2) If no financial institutions have filed the affidavit described in ORS 475A.075 (2)(b), and if the
3 court has failed to uphold the claim or affidavit of any other claimant, the effect of the judgment
4 shall be that:

5 (a) Title to the property shall pass to the forfeiting agency free of any interest or encumbrance
6 thereon in favor of any person who has been given notice;

7 (b) The forfeiting agency may transfer good and sufficient title to any subsequent purchaser or
8 transferee, and the title shall be recognized by all courts, by the state, by the departments and
9 agencies of the state, and by any political subdivision. In the case of real property, the forfeiting
10 agency shall warrant the title against constitutional defect. A warranty under this section is limited
11 to the purchase price of the real property; and

12 (c) Any department, agency or officer of the state or any political subdivision whose official
13 functions include the issuance of certificates or other evidence of title shall be immune from civil
14 or criminal liability when such issuance is pursuant to a judgment of forfeiture.

15 (3) If any affidavits are filed by financial institutions as provided in ORS 475A.075 (2)(b), or if
16 any claimants file an appearance, claim and bond as provided in ORS 475A.075 (2)(a) or an affidavit
17 as provided in ORS 475A.075 (2)(c):

18 (a) The court shall foreclose all security interests, liens and vendor's interests of financial in-
19 stitutions and claimants as to which the court determines that there is a legal or equitable basis for
20 foreclosure; and

21 (b) All other interests applicable to the property, which are not foreclosed or otherwise elimi-
22 nated through a judgment of foreclosure, shall, if and to the extent that they are valid and subsist-
23 ing, remain in effect, and the property shall remain subject to them upon completion of the forfeiture
24 proceeding.

25 (4) Notwithstanding the provisions of this chapter or other law, if a financial institution or other
26 person has filed an affidavit described in ORS 475A.075, or if the court has upheld the claim of any
27 claimant, then as to each item of property seized:

28 (a) If the court has determined that the property should not be forfeited and has not foreclosed
29 the security interests, liens or other interests covering the property, the court shall render judgment
30 in favor of the owner of the property, the property shall be returned to the owner and all security
31 interests, liens and other interests applicable to the property shall remain in effect as though the
32 property had never been seized. **If the property is a motor vehicle with a hidden compartment,**
33 **the seizing agency is not liable for any diminution in the value of the property as a result**
34 **of disabling the compartment.** Upon the return of the property to the owner, the seizing agency
35 shall pay all costs and expenses relating to towing and storage of the property, and shall cause to
36 be discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that
37 have attached to the property since the seizure.

38 (b) If the court has determined that the property should not be forfeited and has foreclosed one
39 or more interests covering the property, including security interests or liens covering the property
40 or contracts for the transfer or conveyance of the property, the seizing agency shall pay all costs
41 and expenses relating to towing and storage of the property, and shall cause to be discharged any
42 possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to
43 the property since the seizure and the court shall order the property sold pursuant to a sheriff's sale
44 or other sale authorized by the court within such time as may be prescribed by the court following
45 entry of the judgment. If any interests covering the property have not been foreclosed, including any

1 liens or security interests of a claimant whose claim has been upheld, or of a financial institution
2 that has filed the affidavit described in ORS 475A.075, the property shall be sold subject to those
3 interests. The judgment shall also order the proceeds of such sale applied in the following order:

4 (A) To the payment of the costs of the sale;

5 **(B) If the property is a motor vehicle with a hidden compartment, to reimburse the**
6 **seizing agency for the cost of disabling the compartment;**

7 [(B)] (C) To the satisfaction of the foreclosed liens, security interests and contracts in order of
8 their priority; and

9 [(C)] (D) The excess, if any, to the owner of the property.

10 (c) If the court has determined that the property should be forfeited and has foreclosed one or
11 more security interests, liens, contracts or other interests covering the property, the seizing agency
12 shall pay all costs and expenses relating to towing and storage of the property, and shall cause to
13 be discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that
14 have attached to the property since the seizure and the court shall order the property sold pursuant
15 to a sheriff's sale or other sale authorized by the court. If any interest in the property was claimed
16 by a financial institution or other claimant and the interest was upheld but not foreclosed, the
17 property shall be sold subject to the interest. The sale of the property shall be held within such time
18 as may be prescribed by the court following entry of the judgment. The judgment shall also order
19 the proceeds of such sale applied in the following order:

20 (A) To the payment of the costs of the sale;

21 **(B) If the property is a motor vehicle with a hidden compartment, to reimburse the**
22 **seizing agency for the cost of disabling the hidden compartment;**

23 [(B)] (C) To the satisfaction of the foreclosed liens, security interests and contracts in the order
24 of their priority; and

25 [(C)] (D) The excess, if any, to the forfeiting agency to be disposed of as provided in ORS
26 475A.120.

27 (d) If the court has determined that the property should be forfeited and has not foreclosed the
28 interests of any party in the property, the seizing agency shall pay all costs and expenses relating
29 to towing and storage of the property and shall cause to be discharged any possessory chattel liens
30 on the property arising under ORS 87.152 to 87.162 that have attached to the property since the
31 seizure, and the court shall enter a judgment awarding the property to the forfeiting agency, subject
32 to the interests of any claimants whose claims or affidavits were upheld by the court, and subject
33 to the interests of any financial institutions that filed affidavits under ORS 475A.075 (2)(b), which
34 shall remain in full force and effect. **If the property is a motor vehicle with a hidden compart-**
35 **ment, the interests of any claimants or financial institutions shall be reduced on a pro rata**
36 **basis by the cost of disabling the hidden compartment.**

37 (5) The forfeiting agency shall not be liable to any person as a consequence of obedience to a
38 judgment directing conveyance to a financial institution.

39 (6) A copy of the judgment, including any judgment entered under the provisions of ORS
40 475A.055 (4), shall be sent by forfeiture counsel to the Asset Forfeiture Oversight Advisory Com-
41 mittee.

42 (7)(a) On entry of judgment for a claimant in any proceeding to forfeit property under this
43 chapter, unless the court has foreclosed one or more security interests, liens or other interests
44 covering the property, such property or interest in property shall be returned or conveyed imme-
45 diately to the claimant designated by the court. The court, in the manner provided by ORCP 68,

1 shall award costs, disbursements and attorney fees to the prevailing claimants and financial insti-
2 tutions, to be paid by the forfeiting agency.

3 (b) If it appears that there was reasonable suspicion that the property was subject to forfeiture,
4 the court shall cause a finding to be entered, and no claimant or financial institution shall be enti-
5 tled to damages, nor is the person who made the seizure, the seizing or forfeiting agency or forfei-
6 ture counsel liable to suit or judgment on account of such seizure or action. An order directing
7 seizure issued under ORS 475A.035 (4) shall constitute a finding of reasonable suspicion that the
8 property was subject to forfeiture.

9 (8) **Except for deficiencies resulting from disabling a hidden compartment in a motor ve-**
10 **hicle with a hidden compartment,** nothing contained in this section shall prevent a claimant or
11 financial institution from obtaining any deficiency to which such claimant or financial institution
12 would otherwise be entitled.

13 (9) Nothing in this section or in ORS 475A.045 shall prevent a seizing agency from entering into
14 an agreement with a claimant or other person for the reimbursement of the seizing agency for the
15 costs and expenses relating to towing and storage of property or the cost of discharging any
16 possessory chattel lien on the property arising under ORS 87.152 to 87.162 that attached to the
17 property between seizure of the property and release or forfeiture of the property.

18 **SECTION 9.** ORS 475A.045 is amended to read:

19 475A.045. (1)(a) Except as otherwise provided in this chapter, property seized for forfeiture is
20 not subject to replevin, conveyance, sequestration or attachment, nor is it subject to a motion or
21 order to return under ORS chapter 133. The seizure of property or the commencement of a forfeiture
22 proceeding pursuant to this chapter shall not abate, impede or in any way delay the initiation or
23 prosecution of a suit or action by a financial institution for the possession of seized property in
24 which the financial institution has or purports to have a lien or security interest or for the fore-
25 closure of such lien or security interest. A financial institution may proceed with any suit or action
26 involving property in which it has a lien or security interest even though a seizure has occurred
27 and forfeiture proceedings have been or will be commenced. Any such suit or action may be con-
28 solidated with the forfeiture proceeding for the purpose of trial. If property which may be subject
29 to forfeiture is sold prior to the conclusion of the forfeiture proceedings, the sheriff, trustee or other
30 person conducting the sale and who has actual notice of the forfeiture proceedings shall distribute
31 the sale proceeds as follows:

32 (A) To the expenses of the sale;

33 **(B) If the property is a motor vehicle with a hidden compartment, to reimburse the**
34 **seizing agency for the cost of disabling the hidden compartment;**

35 ~~[(B)]~~ (C) To the payment of the obligations owed to the foreclosing financial institution that are
36 secured by the property and to any other person whose lien or security interest in the property has
37 been foreclosed in the suit or action in the order determined by the court; and

38 ~~[(C)]~~ (D) The surplus, if any, shall be distributed to the seizing or forfeiting agency, or to the
39 court in which the forfeiture proceedings are pending.

40 (b) The sheriff, trustee or other person who distributes the sale proceeds as provided shall not
41 be liable to any person who has or asserts an interest in the property.

42 (2) Within 30 days following seizure of property for forfeiture, the seizing agency, in consultation
43 with the district attorney of the county in which the property was seized for forfeiture, shall de-
44 termine whether it will seek the forfeiture of the property. If the seizing agency elects not to seek
45 forfeiture, it shall pay all costs and expenses relating to towing and storage of the property, and

1 shall cause to be discharged any possessory chattel liens arising under ORS 87.152 to 87.162 that
2 have attached to the property since its seizure and release the property. The property may be re-
3 leased to a person other than the person from whose custody or control the property was taken if
4 the seizing agency, forfeiting agency or forfeiture counsel first mails to the last-known addresses of
5 all persons known to have an interest in the property a notice of intent to release the property. The
6 notice shall specify the person to whom the property is to be released and shall detail the time and
7 place of the release. An agency that complies with the provisions of this subsection by paying costs
8 and expenses of towing and storage, discharging possessory liens, mailing any required notices and
9 releasing the property shall not be liable for its actions under this subsection or for any conse-
10 quences thereof. **If the property is a motor vehicle with a hidden compartment, the seizing**
11 **agency is not liable for any diminution in the value of the property as a result of disabling**
12 **the hidden compartment.**

13 (3) A forfeiting agency shall, pending forfeiture and final disposition and subject to the need to
14 retain it in any criminal proceeding, provide that property in the physical custody of the seizing or
15 forfeiting agency be serviced or maintained as may be reasonably appropriate to preserve the value
16 of the property.

17 (4) A forfeiting agency may, pending forfeiture and final disposition and subject to the need to
18 retain seized property in any criminal proceeding:

19 (a) Provide that the seized property be transferred for forfeiture to any city, county, state or
20 federal agency with forfeiture authority, provided that no such transfer shall have the effect of di-
21 minishing or reducing the rights of any third party under this chapter.

22 (b) Apply to the court for an order providing that the seized property may be sold, leased, rented
23 or operated in the manner and on the terms that may be specified in the court's order. The court
24 shall deny any application unless the sale, lease, rental or operation of the property will be con-
25 ducted in a commercially reasonable manner and shall not result in a material reduction of the
26 property's value. An order shall only be entered:

27 (A) After notice and opportunity to be heard is provided to all persons known to have or to
28 claim an interest in the property; and

29 (B) With the consent of all persons holding security interests of record in the property.

30 (c) Provide that the seized property be removed to a storage area for safekeeping.

31 (5) Unless otherwise ordered by the court, the proceeds of the sale, leasing, renting or operation
32 under subsection (4) of this section shall be held by the forfeiting agency, and the rights of holders
33 of security interests of record in the property shall attach to the proceeds of the sale, leasing,
34 renting or operation in the same order of priority as interests attached to the property.

35 (6)(a) Except as provided in paragraph (b) of this subsection and except for currency with ap-
36 parent or known intrinsic collector value, all cash seized for forfeiture, together with all cash re-
37 ceived from the sale, leasing, renting or operation of the property, shall be immediately deposited
38 in an insured interest-bearing forfeiture trust account or accounts maintained by the seizing or for-
39 feiting agency exclusively for this purpose. Cash may be retained as evidence in a criminal pro-
40 ceeding but shall be deposited immediately when the need to retain it as evidence is discharged.

41 (b) Notwithstanding paragraph (a) of this subsection, all cash seized for forfeiture which at the
42 time of seizure is deposited in any form of account in a financial institution may remain in the ac-
43 count in the financial institution. From the time of seizure until the forfeiture proceeding is aban-
44 doned, or until a court ultimately enters or fails to enter a judgment of forfeiture, all deposits except
45 the deposit of interest by the financial institution, withdrawals or other transactions involving the

1 account are prohibited, unless approved by the court.

2 (c) Subject to any court order, interest earned upon cash deposited in a forfeiture trust account
3 or held in an account in a financial institution under this subsection shall be disbursed as follows:

4 (A) If the forfeiture proceeding is abandoned, or if the court ultimately fails to enter a judgment
5 of forfeiture or foreclosure, any interest earned, together with the cash deposited in the forfeiture
6 trust account in connection with the seizure in question, shall be paid by the seizing or forfeiting
7 agency to the person from whom it was seized and any interest earned, together with the cash de-
8 posited in an account in a financial institution shall be released by the seizing or forfeiting agency
9 to the person from whom it was seized.

10 (B) If a judgment of forfeiture is entered, but parties other than the forfeiting agency establish
11 rights to portions of the amount deposited in the forfeiture trust account or the account held in a
12 financial institution which are in the aggregate larger than or equal to the cash on deposit plus
13 interest earned thereon, the interest, together with the cash on deposit, shall be disbursed by the
14 forfeiting agency to the parties in the order of their priority.

15 (C) If a judgment of forfeiture is entered, and the total amount arising out of the seizure which
16 is on deposit in the forfeiture trust account or in an account in a financial institution, including
17 interest earned on moneys deposited, is greater than the aggregate amount needed to satisfy the
18 established interests of security interest holders, lienholders and other claimants, then the balance
19 remaining after payment by the forfeiting agency to parties shall be retained by the forfeiting
20 agency.

21 (7) If the property seized for forfeiture consists of stocks, bonds, promissory notes, or other se-
22 curity or evidence of indebtedness, and the property is held in some form of account in a financial
23 institution, the property may remain in the account pending a final decision in the forfeiture pro-
24 ceedings. Unless otherwise allowed by order of the court, no transactions involving the account
25 shall be permitted other than the deposit or reinvestment of dividends or other normally recurring
26 payments on the property. Any accrual to the value of the property during the pendency of forfei-
27 ture proceedings shall be disbursed in the manner provided for the disbursement of interest under
28 subsection (6) of this section.

29 (8) If property is seized for forfeiture or if a notice of forfeiture is filed without a prior judicial
30 determination of probable cause, a court, on application filed by an owner of or interest holder in
31 the property within 15 days after notice of its seizure for forfeiture, or actual knowledge of it,
32 whichever is earlier, may, after five days' written notice to the forfeiture counsel, issue an order to
33 show cause to the forfeiting agency, for a hearing on the sole issue of whether probable cause for
34 forfeiture of the property then exists. If the court finds that there is no probable cause for forfeiture
35 of the property, the property seized for forfeiture from the applicant or subjected to the notice of
36 forfeiture shall be released from its seizure for forfeiture or lien pending the outcome of a judicial
37 proceeding under ORS 475A.075.

38 **SECTION 10.** ORS 475A.005 is amended to read:

39 475A.005. As used in this chapter, unless the context requires otherwise:

40 (1) "All persons known to have an interest" means:

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

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

45 (c) Any person who has an interest in the property, including all owners and occupants of the

1 property, whose identity and address is known or is ascertainable upon diligent inquiry and whose
2 rights and interest in the property may be affected by the action.

3 (2) "Attorney fees" has the meaning given that term in ORCP 68 A.

4 (3) "Costs and disbursements" are those expenditures set forth in ORCP 68 A.

5 (4) "Financial institution" means any person lawfully conducting business as:

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

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

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

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

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

13 (B) The Federal Housing Administration;

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

15 (D) Rural Development and the Farm Service Agency of the United States Department of Agri-
16 culture;

17 (E) The Federal National Mortgage Association;

18 (F) The Government National Mortgage Administration;

19 (G) The Federal Home Loan Mortgage Corporation;

20 (H) The Federal Agricultural Mortgage Corporation; and

21 (I) The Small Business Administration;

22 (e) An agency, department or instrumentality of the state, including but not limited to:

23 (A) The Housing Agency;

24 (B) The Department of Veterans' Affairs; and

25 (C) The Public Employees Retirement System;

26 (f) An agency, department or instrumentality of any municipality in the state, including but not
27 limited to such agencies as the Portland Development Commission;

28 (g) An insurer as defined in ORS 731.106;

29 (h) A private mortgage insurance company;

30 (i) A pension plan or fund or other retirement plan; and

31 (j) A broker-dealer or investment adviser as defined in ORS 59.015.

32 (5) "Forfeiting agency" means the State of Oregon or a political subdivision thereof that has
33 accepted for forfeiture property seized by a seizing agency or that is processing a forfeiture case.

34 (6) "Forfeiture counsel" means an attorney designated to represent a forfeiting agency in
35 forfeiture actions or proceedings.

36 (7) "Law enforcement agency" means any agency that employs police officers or prosecutes
37 criminal cases.

38 **(8) "Motor vehicle with a hidden compartment" means a motor vehicle as defined in ORS**
39 **801.360 that has had the vehicle's original design modified by a person other than the man-**
40 **ufacturer to create a container, space or enclosure for the purpose of concealing, hiding or**
41 **otherwise preventing discovery of its contents and that is used or intended to be used to**
42 **facilitate the commission of a criminal offense.**

43 [(8)] (9) "Official law enforcement use" or "official law enforcement activity" means uses or
44 activities that may reasonably be expected to result in the identification, apprehension or conviction
45 of criminal offenders.

1 [(9)] (10) "Police officer" has the meaning given that term in ORS 133.525.

2 [(10)] (11) "Proceeds of prohibited conduct" means property derived directly or indirectly from,
3 maintained by or realized through an act or omission, and includes any benefit, interest or property
4 of any kind without reduction for expenses of acquiring or maintaining it or incurred for any other
5 reason.

6 [(11)] (12) "Prohibited conduct" includes violation of, solicitation to violate, attempt to violate
7 or conspiracy to violate any provisions of ORS 475.005 to 475.285 and 475.805 to 475.980 when the
8 conduct constitutes either a felony or misdemeanor as those terms are defined in ORS 161.525 and
9 161.545.

10 [(12)] (13) "Property" means any interest in anything of value, including the whole of any lot
11 or tract of land and tangible and intangible personal property, including currency, instruments or
12 securities or any other kind of privilege, interest, claim or right whether due or to become due.

13 [(13)] (14) "Seizing agency" means a law enforcement agency that has seized property for
14 forfeiture.

15 [(14)] (15) "Weapon" means any instrument of offensive or defensive combat or anything used,
16 or designed to be used, in destroying, defeating or injuring a person.

17 **SECTION 11.** ORS 131.602 is amended to read:

18 131.602. The crimes to which ORS 131.550 [(11)(b)] (12)(b) applies are:

- 19 (1) Bribe giving, as defined in ORS 162.015.
- 20 (2) Bribe receiving, as defined in ORS 162.025.
- 21 (3) Public investment fraud, as defined in ORS 162.117.
- 22 (4) Bribing a witness, as defined in ORS 162.265.
- 23 (5) Bribe receiving by a witness, as defined in ORS 162.275.
- 24 (6) Simulating legal process, as defined in ORS 162.355.
- 25 (7) Official misconduct in the first degree, as defined in ORS 162.415.
- 26 (8) Custodial interference in the second degree, as defined in ORS 163.245.
- 27 (9) Custodial interference in the first degree, as defined in ORS 163.257.
- 28 (10) Buying or selling a person under 18 years of age, as defined in ORS 163.537.
- 29 (11) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.
- 30 (12) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.
- 31 (13) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.
- 32 (14) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.
- 33 (15) Possession of materials depicting sexually explicit conduct of a child in the first degree, as
34 defined in ORS 163.688.
- 35 (16) Possession of materials depicting sexually explicit conduct of a child in the second degree,
36 as defined in ORS 163.689.
- 37 (17) Theft in the second degree, as defined in ORS 164.045.
- 38 (18) Theft in the first degree, as defined in ORS 164.055.
- 39 (19) Aggravated theft in the first degree, as defined in ORS 164.057.
- 40 (20) Theft by extortion, as defined in ORS 164.075.
- 41 (21) Theft by deception, as defined in ORS 164.085, if it is a felony or a Class A misdemeanor.
- 42 (22) Theft by receiving, as defined in ORS 164.095, if it is a felony or a Class A misdemeanor.
- 43 (23) Theft of services, as defined in ORS 164.125, if it is a felony or a Class A misdemeanor.
- 44 (24) Unauthorized use of a vehicle, as defined in ORS 164.135.
- 45 (25) Mail theft or receipt of stolen mail, as defined in ORS 164.162.

- 1 (26) Laundering a monetary instrument, as defined in ORS 164.170.
- 2 (27) Engaging in a financial transaction in property derived from unlawful activity, as defined
- 3 in ORS 164.172.
- 4 (28) Burglary in the second degree, as defined in ORS 164.215.
- 5 (29) Burglary in the first degree, as defined in ORS 164.225.
- 6 (30) Possession of a burglary tool or theft device, as defined in ORS 164.235.
- 7 (31) Unlawful entry into a motor vehicle, as defined in ORS 164.272.
- 8 (32) Arson in the second degree, as defined in ORS 164.315.
- 9 (33) Arson in the first degree, as defined in ORS 164.325.
- 10 (34) Computer crime, as defined in ORS 164.377.
- 11 (35) Robbery in the third degree, as defined in ORS 164.395.
- 12 (36) Robbery in the second degree, as defined in ORS 164.405.
- 13 (37) Robbery in the first degree, as defined in ORS 164.415.
- 14 (38) Unlawful labeling of a sound recording, as defined in ORS 164.868.
- 15 (39) Unlawful recording of a live performance, as defined in ORS 164.869.
- 16 (40) Unlawful labeling of a videotape recording, as defined in ORS 164.872.
- 17 (41) A violation of ORS 164.886.
- 18 (42) Endangering aircraft, as defined in ORS 164.885.
- 19 (43) Interference with agricultural operations, as defined in ORS 164.887.
- 20 (44) Forgery in the second degree, as defined in ORS 165.007.
- 21 (45) Forgery in the first degree, as defined in ORS 165.013.
- 22 (46) Criminal possession of a forged instrument in the second degree, as defined in ORS 165.017.
- 23 (47) Criminal possession of a forged instrument in the first degree, as defined in ORS 165.022.
- 24 (48) Criminal possession of a forgery device, as defined in ORS 165.032.
- 25 (49) Criminal simulation, as defined in ORS 165.037.
- 26 (50) Fraudulently obtaining a signature, as defined in ORS 165.042.
- 27 (51) Fraudulent use of a credit card, as defined in ORS 165.055.
- 28 (52) Negotiating a bad check, as defined in ORS 165.065.
- 29 (53) Possessing a fraudulent communications device, as defined in ORS 165.070.
- 30 (54) Unlawful factoring of a payment card transaction, as defined in ORS 165.074.
- 31 (55) Falsifying business records, as defined in ORS 165.080.
- 32 (56) Sports bribery, as defined in ORS 165.085.
- 33 (57) Sports bribe receiving, as defined in ORS 165.090.
- 34 (58) Misapplication of entrusted property, as defined in ORS 165.095.
- 35 (59) Issuing a false financial statement, as defined in ORS 165.100.
- 36 (60) Obtaining execution of documents by deception, as defined in ORS 165.102.
- 37 (61) A violation of ORS 165.543.
- 38 (62) Cellular counterfeiting in the third degree, as defined in ORS 165.577.
- 39 (63) Cellular counterfeiting in the second degree, as defined in ORS 165.579.
- 40 (64) Cellular counterfeiting in the first degree, as defined in ORS 165.581.
- 41 (65) Identity theft, as defined in ORS 165.800.
- 42 (66) A violation of ORS 166.190.
- 43 (67) Unlawful use of a weapon, as defined in ORS 166.220.
- 44 (68) A violation of ORS 166.240.
- 45 (69) Unlawful possession of a firearm, as defined in ORS 166.250.

- 1 (70) A violation of ORS 166.270.
- 2 (71) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or
3 firearms silencer, as defined in ORS 166.272.
- 4 (72) A violation of ORS 166.275.
- 5 (73) Unlawful possession of armor piercing ammunition, as defined in ORS 166.350.
- 6 (74) A violation of ORS 166.370.
- 7 (75) Unlawful possession of a destructive device, as defined in ORS 166.382.
- 8 (76) Unlawful manufacture of a destructive device, as defined in ORS 166.384.
- 9 (77) Possession of a hoax destructive device, as defined in ORS 166.385.
- 10 (78) A violation of ORS 166.410.
- 11 (79) Providing false information in connection with a transfer of a firearm, as defined in ORS
12 166.416.
- 13 (80) Improperly transferring a firearm, as defined in ORS 166.418.
- 14 (81) Unlawfully purchasing a firearm, as defined in ORS 166.425.
- 15 (82) A violation of ORS 166.429.
- 16 (83) A violation of ORS 166.470.
- 17 (84) A violation of ORS 166.480.
- 18 (85) A violation of ORS 166.635.
- 19 (86) A violation of ORS 166.638.
- 20 (87) Unlawful paramilitary activity, as defined in ORS 166.660.
- 21 (88) A violation of ORS 166.720.
- 22 (89) Prostitution, as defined in ORS 167.007.
- 23 (90) Promoting prostitution, as defined in ORS 167.012.
- 24 (91) Compelling prostitution, as defined in ORS 167.017.
- 25 (92) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- 26 (93) Unlawful gambling in the second degree, as defined in ORS 167.122.
- 27 (94) Unlawful gambling in the first degree, as defined in ORS 167.127.
- 28 (95) Possession of gambling records in the second degree, as defined in ORS 167.132.
- 29 (96) Possession of gambling records in the first degree, as defined in ORS 167.137.
- 30 (97) Possession of a gambling device, as defined in ORS 167.147.
- 31 (98) Possession of a gray machine, as defined in ORS 167.164.
- 32 (99) Cheating, as defined in ORS 167.167.
- 33 (100) Tampering with drug records, as defined in ORS 167.212.
- 34 (101) A violation of ORS 167.262.
- 35 (102) Research and animal interference, as defined in ORS 167.312.
- 36 (103) Animal abuse in the first degree, as defined in ORS 167.320.
- 37 (104) Aggravated animal abuse in the first degree, as defined in ORS 167.322.
- 38 (105) Animal neglect in the first degree, as defined in ORS 167.330.
- 39 (106) Interfering with an assistance, a search and rescue or a therapy animal, as defined in ORS
40 167.352.
- 41 (107) Involvement in animal fighting, as defined in ORS 167.355.
- 42 (108) Dogfighting, as defined in ORS 167.365.
- 43 (109) Participation in dogfighting, as defined in ORS 167.370.
- 44 (110) Unauthorized use of a livestock animal, as defined in ORS 167.385.
- 45 (111) Interference with livestock production, as defined in ORS 167.388.

- 1 (112) A violation of ORS 167.390.
- 2 (113) A violation of ORS 471.410.
- 3 (114) Failure to report missing precursor substances, as defined in ORS 475.955.
- 4 (115) Illegally selling drug equipment, as defined in ORS 475.960.
- 5 (116) Providing false information on a precursor substances report, as defined in ORS 475.965.
- 6 (117) Unlawful delivery of an imitation controlled substance, as defined in ORS 475.912.
- 7 (118) A violation of ORS 475.840, if it is a felony or a Class A misdemeanor.
- 8 (119) A violation of ORS 475.914, if it is a felony or a Class A misdemeanor.
- 9 (120) A violation of ORS 475.916.
- 10 (121) A violation of ORS 475.906, if it is a felony or a Class A misdemeanor.
- 11 (122) A violation of ORS 475.904.
- 12 (123) Misuse of an identification card, as defined in ORS 807.430.
- 13 (124) Unlawful production of identification cards, licenses, permits, forms or camera cards, as
14 defined in ORS 807.500.
- 15 (125) Transfer of documents for the purposes of misrepresentation, as defined in ORS 807.510.
- 16 (126) Using an invalid license, as defined in ORS 807.580.
- 17 (127) Permitting misuse of a license, as defined in ORS 807.590.
- 18 (128) Using another's license, as defined in ORS 807.600.
- 19 (129) Criminal driving while suspended or revoked, as defined in ORS 811.182, when it is a fel-
20 ony.
- 21 (130) Driving while under the influence of intoxicants, as defined in ORS 813.010, when it is a
22 felony.
- 23 (131) Unlawful distribution of cigarettes, as defined in ORS 323.482.
- 24 (132) Unlawful distribution of tobacco products, as defined in ORS 323.632.
- 25 (133) A violation of ORS 180.440 (2).
- 26 (134) A violation described in ORS 475.846 to 475.894, if it is a felony.
- 27 (135) Subjecting another person to involuntary servitude in the first degree, as defined in ORS
28 163.264.
- 29 (136) Subjecting another person to involuntary servitude in the second degree, as defined in ORS
30 163.263.
- 31 (137) Trafficking in persons, as defined in ORS 163.266.
- 32 (138) Furnishing sexually explicit material to a child, as defined in ORS 167.054.
- 33 (139) Luring a minor, as defined in ORS 167.057.
- 34 (140) Online sexual corruption of a child in the second degree, as defined in ORS 163.432.
- 35 (141) Online sexual corruption of a child in the first degree, as defined in ORS 163.433.
- 36 (142) An attempt, conspiracy or solicitation to commit a crime in subsections (1) to (141) of this
37 section if the attempt, conspiracy or solicitation is a felony or a Class A misdemeanor.
- 38 **SECTION 12.** ORS 475A.120 is amended to read:
39 475A.120. (1) The provisions of this section apply to a forfeiting agency other than the state.
40 (2) Except as otherwise provided by intergovernmental agreement and this section, a forfeiting
41 agency may:
42 (a) Sell, lease, lend or transfer forfeited property to any federal, state or local law enforcement
43 agency or district attorney.
44 (b) Sell forfeited property by public or other commercially reasonable sale and pay from the
45 proceeds the expenses of keeping and selling the property.

1 (c) Retain forfeited property.

2 (d) With written authorization from the district attorney for the county in which the property
3 was seized, destroy any forfeited firearms or controlled substances.

4 (3) If the forfeiting agency is a political subdivision other than a county, the political subdivision
5 shall enter into an agreement with the county pursuant to ORS chapter 190 to provide a portion of
6 the forfeiture proceeds to the county. Any intergovernmental agreements or ordinances providing
7 for the distribution of forfeiture proceeds in effect on July 24, 1989, shall remain valid unless
8 changed by the parties.

9 (4) A forfeiting agency shall distribute forfeiture proceeds as follows:

10 (a) Costs shall be paid first, including costs, disbursements and attorney fees as defined in ORCP
11 68 A and special expenses, including the provision of lawful currency, incurred by any seizing or
12 forfeiting agency in investigating and prosecuting a specific case. The forfeiting agency may pay
13 expenses of servicing or maintaining the seized property under ORS 475A.045 (3) under the pro-
14 visions of this paragraph. The forfeiting agency may not pay expenditures made in connection with
15 the ordinary maintenance and operation of the seizing or forfeiting agency under the provisions of
16 this paragraph.

17 (b) After payment of costs under paragraph (a) of this subsection, the forfeiting agency shall:

18 (A) Deduct an amount equal to five percent of the proceeds and deposit that amount in the Il-
19 legal Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS 475.495 (5);

20 (B) Deduct an amount equal to 2.5 percent of the proceeds and deposit that amount in the Asset
21 Forfeiture Oversight Account established by ORS 475A.160 for the purposes specified in ORS
22 475A.155;

23 (C) Deduct an amount equal to 20 percent of the proceeds and deposit that amount in the
24 Oregon Criminal Justice Commission Account established under ORS 137.662 for disbursement to
25 drug court programs as described in ORS 3.450; and

26 (D) Deduct an amount equal to 10 percent of the proceeds and deposit that amount in the State
27 Commission on Children and Families Account established by ORS 417.733 for disbursement to relief
28 nurseries as described in ORS 417.788.

29 (c) If the forfeiting agency has entered into an agreement with a county under subsection (3)
30 of this section, after paying costs under paragraph (a) of this subsection and making the deductions
31 required by paragraph (b) of this subsection, the forfeiting agency shall pay the county the amounts
32 required by the agreement.

33 (d) After making all payments and deductions required by paragraphs (a) to (c) of this sub-
34 section, the forfeiting agency may use forfeiture proceeds, including amounts received by a county
35 under paragraph (c) of this subsection and pursuant to an intergovernmental agreement entered into
36 under ORS 475A.115, only for:

37 (A) The purchase of equipment necessary for the enforcement of laws relating to the unlawful
38 delivery, distribution, manufacture or possession of controlled substances;

39 (B) Cash for use in law enforcement activities;

40 (C) Drug awareness and drug education programs offered in middle schools and high schools;

41 (D) The expenses of a forfeiting agency in operating joint narcotic operations with other for-
42 feiting agencies pursuant to the terms of an intergovernmental agreement, including paying for
43 rental space, utilities and office equipment; and

44 (E) Expenses of a district attorney in criminal prosecutions for unlawful delivery, distribution,
45 manufacture or possession of controlled substances, as determined through intergovernmental

1 agreement between the forfeiting agency and the district attorney.

2 (5) Notwithstanding subsection (4) of this section, growing equipment and laboratory equipment
3 seized by a forfeiting agency that was used, or intended for use, in the manufacturing of controlled
4 substances may be donated to a public school, community college or institution of higher education.

5 (6) A political subdivision shall sell as much property as may be needed to make the distrib-
6 utions required by subsection (4) of this section. Distributions required under subsection (4)(b) of this
7 section must be made once every three months and are due within 20 days of the end of each
8 quarter. No interest shall accrue on amounts that are paid within the period specified by this sub-
9 section.

10 (7) The forfeiting agency, and any agency which receives forfeited property or proceeds from the
11 sale of forfeited property, shall maintain written documentation of each sale, decision to retain,
12 transfer or other disposition.

13 (8) Forfeiture counsel shall report each forfeiture to the Asset Forfeiture Oversight Advisory
14 Committee as soon as reasonably possible after the conclusion of forfeiture proceedings, whether or
15 not the forfeiture results in an entry of judgment under ORS 475A.110. The committee shall develop
16 and make available forms for the purpose of reporting forfeitures.

17 (9) Law enforcement agencies shall supply to forfeiture counsel all information requested by
18 forfeiture counsel necessary for the preparation of the report required by subsection (8) of this
19 section.

20 (10) Political subdivisions of the state who receive forfeiture proceeds under this section shall
21 submit a report to the Asset Forfeiture Oversight Advisory Committee for any year in which those
22 proceeds are received. The committee shall develop and make available forms for the purpose of
23 those reports. The forms shall require the political subdivision to report on how proceeds received
24 by the political subdivision have been or will be used, and such other information as may be re-
25 quested by the committee. Reports shall be submitted each December 15 for the last ending fiscal
26 year of the political subdivision.

27 (11) This section applies only to forfeiture proceeds arising out of prohibited conduct as defined
28 by ORS 475A.005 [(11)] (12), and does not apply to proceeds from forfeiture based on other conduct.

29 **SECTION 13. Sections 2 and 7 of this 2009 Act and the amendments to ORS 131.550,**
30 **131.564, 131.588, 475A.005, 475A.045 and 475A.110 by sections 3 to 5 and 8 to 10 of this 2009 Act**
31 **apply to motor vehicles seized on or after the effective date of this 2009 Act.**

32