

# Enrolled Senate Bill 373

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CHAPTER .....

AN ACT

Relating to forfeiture; amending ORS 131.588, 131.600, 131A.300, 131A.450 and 131A.460; and declaring an emergency.

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

**SECTION 1.** ORS 131.600 is amended to read:

131.600. (1) A seizing agency and any agency that receives forfeited property or proceeds from the sale of forfeited property under ORS 131.550 to 131.600 shall maintain written documentation of each sale, decision to retain, transfer or other disposition of forfeited property.

*[(2) Forfeiture counsel shall report each criminal forfeiture to the Asset Forfeiture Oversight Advisory Committee as soon as reasonably possible after the conclusion of criminal forfeiture proceedings, whether or not the forfeiture results in an entry of judgment under ORS 131.588. The committee shall develop and make available forms for the purpose of reporting criminal forfeitures.]*

**(2)(a) As soon as practicable following the seizure of property for criminal forfeiture, forfeiture counsel shall file with the Asset Forfeiture Oversight Advisory Committee an electronic report that describes the property seized and the circumstances of the seizure.**

**(b) As soon as practicable following entry of judgment under ORS 131.588, forfeiture counsel shall file with the committee an electronic report describing the judgment and the manner in which any forfeited property and the proceeds from any sales of forfeited property were distributed.**

(3) Law enforcement agencies shall supply to forfeiture counsel all information requested by forfeiture counsel **that is** necessary for the preparation of the *[report]* **electronic reports** required by subsection (2) of this section.

(4) Political subdivisions of this state that receive forfeiture proceeds under ORS 131.594 shall submit *[a]* **an electronic** report to the committee for any year in which those proceeds are received. *[The committee shall develop and make available forms for the purpose of those reports. The forms must require the political subdivision to report]* **The report must describe** how proceeds received by the political subdivision have been or will be used *[and any other information requested by the committee. A political subdivision shall submit a report required by this subsection by]*. **Reports shall be submitted each** December 15 for the *[last ending]* **preceding** fiscal year of the political subdivision.

**(5) The committee may require forfeiture counsel or a political subdivision to include in the electronic reports any additional information requested by the committee. The commit-**

tee shall develop and make available electronic forms for the purposes of the reports described in this section.

**SECTION 2.** ORS 131A.450 is amended to read:

131A.450. (1) All forfeiting agencies shall maintain written documentation of each seizure for forfeiture made under the provisions of this chapter, sale of seized or forfeited property under this chapter, decision to retain property forfeited under the provisions of this chapter, transfer of property forfeited under this chapter and other dispositions of property seized for forfeiture or forfeited under the provisions of this chapter.

*[(2) Forfeiture counsel shall report each seizure for forfeiture and each forfeiture under the provisions of this chapter to the Asset Forfeiture Oversight Advisory Committee as soon as reasonably possible after the conclusion of forfeiture proceedings. The committee shall develop and make available forms for the purpose of reporting forfeitures.]*

**(2)(a) As soon as practicable following the seizure of property for civil forfeiture, forfeiture counsel shall file with the Asset Forfeiture Oversight Advisory Committee an electronic report that describes the property seized and the circumstances of the seizure.**

**(b) As soon as practicable following the entry of judgment under this chapter, forfeiture counsel shall file with the committee an electronic report describing the judgment and the manner in which any forfeited property and the proceeds from any sales of forfeited property were distributed.**

(3) Law enforcement agencies shall supply to forfeiture counsel all information requested by forfeiture counsel **that is** necessary for the preparation of the *[report]* **electronic reports** required by subsection (2) of this section.

(4) Public bodies that receive forfeiture proceeds under ORS 131A.360 (2) and 131A.365 (4) shall submit *[a]* **an electronic** report to the *[Asset Forfeiture Oversight Advisory]* committee for any year in which those proceeds are received. *[The committee shall develop and make available forms for the purpose of those reports. The forms shall require the public body to report on]* **The report must describe** how proceeds received by the public body have been or will be used, *and such other information as may be requested by the committee*. Reports shall be submitted each December 15 for the preceding fiscal year of the public body.

**(5) The committee may require forfeiture counsel or a political subdivision to include in the electronic reports any additional information requested by the committee. The committee shall develop and make available electronic forms for the purposes of the reports described in this section.**

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

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

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

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

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

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

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

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

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

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

(b) If the court has determined that the property should not be forfeited and has foreclosed one or more interests covering the property, including security interests or liens covering the property or contracts for the transfer or conveyance of the property, the seizing agency shall pay all costs and expenses relating to towing and storage of the property and shall cause to be discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to the property since the seizure, and the court shall order the property sold pursuant to a sheriff's sale or other sale authorized by the court within such time as may be prescribed by the court following entry of the judgment. If any interests covering the property have not been foreclosed, including any liens or security interests of a claimant whose claim has been upheld, or of a financial institution that has filed the affidavit described in ORS 131.579, the property must be sold subject to those interests. The judgment shall order the proceeds of the sale applied in the following order:

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

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

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

(D) The excess, if any, to the owner of the property.

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

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

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

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

(D) The excess, if any, to the seizing agency to be disposed of as provided in ORS 131.594 or 131.597.

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

(4) Upon motion of the state, the court may include in the judgment of criminal forfeiture an order that directs the seizing agency to distribute to the victim of the crime of conviction a portion of any proceeds from property received by the seizing agency if the court included an order of restitution in the criminal judgment.

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

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

*[(7)(a)]* **(6)(a)** On entry of judgment for a claimant in any proceeding to forfeit property under ORS 131.550 to 131.600, unless the court has foreclosed one or more security interests, liens or other interests covering the property, the property or interest in property must be returned or conveyed immediately to the claimant designated by the court.

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

*[(8)]* **(7)** Except for deficiencies resulting from disabling a hidden compartment in a motor vehicle with a hidden compartment, nothing in this section prevents a claimant or financial institution from obtaining any deficiency to which the claimant or financial institution would otherwise be entitled.

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

**SECTION 4.** ORS 131A.300 is amended to read:

131A.300. (1) A judgment forfeiting property shall recite the basis for the judgment.

(2) After entry of a judgment forfeiting property, the forfeiting agency may transfer good and sufficient title for the property to purchasers and other transferees, and the title shall be recognized by all courts and public bodies. Any public body whose official functions include the issuance of certificates of title or other evidence of title is immune from civil or criminal liability if the issuance is pursuant to a judgment of forfeiture.

(3) If real property is forfeited under a judgment forfeiting property, the forfeiting agency shall warrant the title of the property against constitutional defect. A warranty under this section is limited to the purchase price of the real property.

*[(4) Forfeiture counsel shall send a copy of each judgment entered in forfeiture proceedings, including ex parte judgments entered under ORS 131A.200, to the Asset Forfeiture Oversight Advisory Committee.]*

[(5)] (4) A forfeiting agency may apply to any circuit court judge for a writ of assistance directing the sheriff of the county to assist the forfeiting agency in seizing property identified in a judgment forfeiting property.

**SECTION 5.** ORS 131A.460 is amended to read:

131A.460. (1) The Asset Forfeiture Oversight Account is established in the State Treasury, separate and distinct from the General Fund.

(2) The following moneys shall be deposited into the State Treasury and credited to the Asset Forfeiture Oversight Account:

(a) Moneys received from a public body under the provisions of ORS 131A.360 and 131A.365; and

(b) Any other moneys appropriated to the Asset Forfeiture Oversight Account.

(3) The State Treasurer may invest and reinvest moneys in the Asset Forfeiture Oversight Account in the manner provided by law. Interest earned by the account shall be credited to the account.

(4) The moneys in the Asset Forfeiture Oversight Account are continuously appropriated to the Oregon Criminal Justice Commission to be used for the expenses of the Asset Forfeiture Oversight Advisory Committee.

*[(5) If, at the end of a biennium, the Asset Forfeiture Oversight Account has received amounts under the provisions of ORS 131A.360 and 131A.365 that are in excess of 115 percent of the biennial expenditure limitation established for expenditures from the account, the Oregon Criminal Justice Commission shall refund to each public body that made payment into the account during the biennium a pro rata share of the amounts that are in excess of 115 percent of the expenditure limitation for the account, based on the amount of forfeiture proceeds paid into the account by the public body. The commission is not required to issue any refund under this subsection if the amount of the refund is less than \$25.]*

**SECTION 6.** This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

**Passed by Senate March 1, 2011**

**Received by Governor:**

**Repassed by Senate May 13, 2011**

.....M.,....., 2011

**Approved:**

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Robert Taylor, Secretary of Senate

.....M.,....., 2011

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Peter Courtney, President of Senate

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John Kitzhaber, Governor

**Passed by House June 7, 2011**

**Filed in Office of Secretary of State:**

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Bruce Hanna, Speaker of House

.....M.,....., 2011

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Arnie Roblan, Speaker of House

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Kate Brown, Secretary of State