

Senate Bill 373

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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**.

Directs forfeiture counsel to report certain information to Asset Forfeiture Oversight Advisory Committee electronically.

Eliminates obligation of forfeiture counsel to provide committee with copy of forfeiture judgment.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to forfeiture; amending ORS 131.588, 131.600, 131A.300 and 131A.450; and declaring an
3 emergency.

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

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

6 131.600. (1) A seizing agency and any agency that receives forfeited property or proceeds from
7 the sale of forfeited property under ORS 131.550 to 131.600 shall maintain written documentation
8 of each sale, decision to retain, transfer or other disposition of forfeited property.

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

13 **The report shall be filed with the committee electronically, in accordance with rules adopted**
14 **by the Oregon Criminal Justice Commission.**

15 (3) Law enforcement agencies shall supply to forfeiture counsel all information requested by
16 forfeiture counsel necessary for the preparation of the report required by subsection (2) of this
17 section.

18 (4) Political subdivisions of this state that receive forfeiture proceeds under ORS 131.594 shall
19 submit a report to the committee for any year in which those proceeds are received. The committee
20 shall develop and make available forms for the purpose of those reports. The forms must require the
21 political subdivision to report how proceeds received by the political subdivision have been or will
22 be used and any other information requested by the committee. A political subdivision shall submit
23 a report required by this subsection by December 15 for the last ending fiscal year of the political
24 subdivision.

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

26 131A.450. (1) All forfeiting agencies shall maintain written documentation of each seizure for
27 forfeiture made under the provisions of this chapter, sale of seized or forfeited property under this
28 chapter, decision to retain property forfeited under the provisions of this chapter, transfer of prop-

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 erty forfeited under this chapter and other dispositions of property seized for forfeiture or forfeited
2 under the provisions of this chapter.

3 (2) Forfeiture counsel shall report each seizure for forfeiture and each forfeiture under the
4 provisions of this chapter to the Asset Forfeiture Oversight Advisory Committee as soon as rea-
5 sonably possible after the conclusion of forfeiture proceedings. *[The committee shall develop and*
6 *make available forms for the purpose of reporting forfeitures.]* **The report shall be filed with the**
7 **committee electronically, in accordance with rules adopted by the Oregon Criminal Justice**
8 **Commission.**

9 (3) Law enforcement agencies shall supply to forfeiture counsel all information requested by
10 forfeiture counsel necessary for the preparation of the report required by subsection (2) of this
11 section.

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

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

20 131.588. (1) If no financial institution has filed the affidavit described in ORS 131.579 (1), and if
21 the court has failed to uphold the claim or affidavit of any other person claiming an interest in the
22 property, the effect of the judgment is that:

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

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

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

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

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

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

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

45 (a) If the court has determined that the property should not be forfeited and has not foreclosed

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

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

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

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

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

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

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

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

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

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

42 (D) The excess, if any, to the seizing agency to be disposed of as provided in ORS 131.594 or
43 131.597.

44 (d) If the court has determined that the property should be forfeited and has not foreclosed the
45 interests of any party in the property, the seizing agency shall pay all costs and expenses relating

1 to towing and storage of the property and shall cause to be discharged any possessory chattel liens
2 on the property arising under ORS 87.152 to 87.162 that have attached to the property since the
3 seizure. The court shall enter a judgment awarding the property to the seizing agency, subject to
4 the interests of any claimants whose claims or affidavits were upheld by the court, and subject to
5 the interests of any financial institutions that filed affidavits under ORS 131.579 (1), that remain in
6 full force and effect. If the property is a motor vehicle with a hidden compartment, the interests of
7 any claimants or financial institutions shall be reduced on a pro rata basis by the cost of disabling
8 the hidden compartment.

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

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

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

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

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

27 *[(8)]* **(7)** Except for deficiencies resulting from disabling a hidden compartment in a motor vehicle
28 with a hidden compartment, nothing in this section prevents a claimant or financial institution from
29 obtaining any deficiency to which the claimant or financial institution would otherwise be entitled.

30 *[(9)]* **(8)** Nothing in this section or in ORS 131.564 prevents a seizing agency from entering into
31 an agreement with a claimant or other person for the reimbursement of the seizing agency for the
32 costs and expenses relating to towing and storage of property or the cost of discharging any
33 possessory chattel lien on the property arising under ORS 87.152 to 87.162 that attached to the
34 property in the period between the seizure of the property and the release or criminal forfeiture of
35 the property.

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

37 131A.300. (1) A judgment forfeiting property shall recite the basis for the judgment.

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

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

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

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

7 **SECTION 5. This 2011 Act being necessary for the immediate preservation of the public**
8 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
9 **on its passage.**

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