

# Senate Bill 42

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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**.

Requires that fine imposed in certain environmental crimes cases be in form of compensatory fine. Directs court to forward payments credited to compensatory fine to Department of Justice for deposit in Department of Justice Protection and Education Revolving Account. Modifies scope of phrase "state and federal environmental laws" for purposes of account.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to environmental crimes; amending ORS 137.101 and 180.095; and declaring an emergency.

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

4 **SECTION 1.** ORS 137.101 is amended to read:

5 137.101. (1) [*Whenever*] **When** the court imposes a fine as penalty for the commission of a crime  
6 resulting in injury for which the person injured by the act constituting the crime has a remedy by  
7 civil action, unless the issue of punitive damages has been previously decided on a civil case arising  
8 out of the same act and transaction, the court may order that the defendant pay any portion of the  
9 fine separately to [*the clerk of*] the court as compensatory fines in the case. The [*clerk*] **court** shall  
10 pay over to the injured victim or victims, as directed in the court's order, moneys paid to the court  
11 as compensatory fines under this subsection. [*This section shall be liberally construed in favor of*  
12 *victims.*]

13 **(2) When the court imposes a fine as penalty for the commission of a crime described in**  
14 **ORS 180.095 (1)(c)(C), the fine shall be in the form of a compensatory fine. The court shall**  
15 **pay to the Department of Justice, for deposit in the Department of Justice Protection and**  
16 **Education Revolving Account, moneys paid to the court as a compensatory fine under this**  
17 **subsection.**

18 [(2)] **(3)** Compensatory fines may be awarded in addition to restitution awarded under ORS  
19 137.103 to 137.109.

20 [(3)] **(4)** Nothing in this section limits or impairs the right of a person injured by a defendant's  
21 criminal acts to sue and recover damages from the defendant in a civil action. Evidence that the  
22 defendant has paid or been ordered to pay compensatory fines under this section may not be intro-  
23 duced in any civil action arising out of the facts or events which were the basis for the  
24 compensatory fine. However, the court in such civil action shall credit any compensatory fine paid  
25 by the defendant to a victim against any judgment for punitive damages in favor of the victim in the  
26 civil action.

27 **(5) This section shall be liberally construed in favor of victims.**

28 **SECTION 2.** ORS 180.095 is amended to read:

**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.

1 180.095. (1) The Department of Justice Protection and Education Revolving Account is created  
 2 in the General Fund. All moneys in the account are continuously appropriated to the Department  
 3 of Justice and may be used to pay for only the following activities:

4 (a) Restitution and refunds in proceedings described in paragraph (c) of this subsection;

5 (b) Consumer and business education relating to the laws governing antitrust, unlawful trade  
 6 practices and the environment; and

7 (c) Personal services, travel, meals, lodging and all other costs and expenses incurred by the  
 8 department in investigating, preparing, commencing and prosecuting the following actions and suits,  
 9 and enforcing judgments, settlements, compromises and assurances of voluntary compliance arising  
 10 out of the following actions and suits:

11 (A) Actions and suits under the state and federal antitrust laws;

12 (B) Actions and suits under ORS 646.605 to 646.656;

13 (C) Criminal prosecutions under state and federal environmental laws, **including but not lim-**  
 14 **ited to prosecutions for conduct made criminal under ORS 164.775, 164.785, 164.805, 273.990,**  
 15 **274.990, 390.995, 448.992, 448.994, 453.990, 459.992, 466.995, 467.990, 468.922, 468.926, 468.929,**  
 16 **468.931, 468.936, 468.939, 468.943, 468.946, 468.951, 468.953, 468.956, 468A.595, 468A.655, 468A.990,**  
 17 **496.992, 498.222, 506.991, 517.990, 520.991, 522.990, 526.990, 527.990, 537.990, 561.990 (2), 564.120,**  
 18 **596.990, 600.990, 609.992, 634.992, 783.990 (8) and 824.992 (7);**

19 (D) Actions commenced under ORS 59.331; and

20 (E) Actions and suits under ORS 180.750 to 180.785.

21 (2) Moneys in the Department of Justice Protection and Education Revolving Account are not  
 22 subject to allotment. Upon request of the Attorney General, the State Treasurer shall create sub-  
 23 accounts within the account for the purposes of managing moneys in the account and allocating  
 24 those moneys to the activities described in subsection (1) of this section.

25 (3) Except as otherwise provided by law, all sums of money received by the Department of Jus-  
 26 tice under a judgment, settlement, compromise or assurance of voluntary compliance, including  
 27 damages, **compensatory fines**, restitution, refunds, attorney fees, costs, disbursements and other  
 28 recoveries, but excluding civil penalties under ORS 646.642, in proceedings described in subsection  
 29 (1)(c) of this section shall, upon receipt, be deposited with the State Treasurer to the credit of the  
 30 Department of Justice Protection and Education Revolving Account. However, if the action or suit  
 31 was based on an expenditure or loss from a public body or a dedicated fund, the amount of such  
 32 expenditure or loss, after deduction of attorney fees and expenses awarded to the department by the  
 33 court or agreed to by the parties, if any, shall be credited to the public body or dedicated fund and  
 34 the remainder thereof credited to the Department of Justice Protection and Education Revolving  
 35 Account.

36 (4) If the Department of Justice recovers restitution or refunds in a proceeding described in  
 37 subsection (1)(c) of this section, and the department cannot determine the persons to whom the  
 38 restitution or refunds should be paid or the amount of the restitution or refund payable to individual  
 39 claimants is de minimis, the restitution or refunds may not be deposited in the Department of Justice  
 40 Protection and Education Revolving Account and shall be deposited in the General Fund.

41 (5) Before April 1 of each odd-numbered year, the Department of Justice shall report to the Joint  
 42 Committee on Ways and Means:

43 (a) The department's projection of the balance in the Department of Justice Protection and Ed-  
 44 ucation Revolving Account at the end of the biennium in which the report is made and at the end  
 45 of the following biennium;

1 (b) The amount of the balance held for restitution and refunds; and

2 (c) An estimate of the department's anticipated costs and expenses under subsection (1)(b) and

3 (c) of this section for the biennium in which the report is made and for the following biennium.

4 (6) The Joint Committee on Ways and Means, after consideration of recommendations made by  
5 the Department of Justice, shall use the information reported under subsection (5) of this section to  
6 determine an appropriate balance for the revolving account.

7 **SECTION 3. 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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