

Enrolled
Senate Bill 430

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CHAPTER

AN ACT

Relating to civil forfeiture; creating new provisions; amending ORS 131A.005 and 131A.360; and declaring an emergency.

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

SECTION 1. ORS 131A.005 is amended to read:

131A.005. As used in this chapter:

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

- (a) Any person who filed a notice of interest for seized property with any public office, in the manner required or permitted by law, before the property was seized for forfeiture;
- (b) Any person from whose custody property is seized for forfeiture; and
- (c) Any person who has an interest in property seized for forfeiture, including all owners and occupants of the property, whose identity and address is known or is ascertainable upon diligent inquiry and whose rights and interest in the property may be affected by the action.

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

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

- (a) A financial institution or trust company, as those terms are defined in ORS 706.008;
- (b) A consumer finance company subject to the provisions of ORS chapter 725;
- (c) A mortgage banker or a mortgage broker as those terms are defined in ORS 86A.100, a mortgage servicing company or other mortgage company;

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

- (A) The Secretary of Housing and Urban Development;
- (B) The Federal Housing Administration;
- (C) The United States Department of Veterans Affairs;
- (D) Rural Development and the Farm Service Agency of the United States Department of Agriculture;
- (E) The Federal National Mortgage Association;
- (F) The Government National Mortgage Administration;
- (G) The Federal Home Loan Mortgage Corporation;
- (H) The Federal Agricultural Mortgage Corporation; and
- (I) The Small Business Administration;

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

- (A) The Housing and Community Services Department;

- (B) The Department of Veterans' Affairs; and
 - (C) The Public Employees Retirement System;
 - (f) An agency, department or instrumentality of any local government, as defined by ORS 174.116, or special government body, as defined by ORS 174.117, including but not limited to such agencies as the Portland Development Commission;
 - (g) An insurer as defined in ORS 731.106;
 - (h) A private mortgage insurance company;
 - (i) A pension plan or fund or other retirement plan; and
 - (j) A broker-dealer or investment adviser as defined in ORS 59.015.
- (4) "Forfeiting agency" means a public body that is seeking forfeiture of property under this chapter.
- (5) "Forfeiture counsel" means an attorney designated by a forfeiting agency to represent the forfeiting agency in forfeiture proceedings.
- (6) "Forfeiture proceeds" means all property that has been forfeited in a proceeding under this chapter, including money, earnings from forfeited property and amounts realized from the sale of forfeited property.
- (7) "Instrumentality" has the meaning given in ORS 131.550.
- (8) "Law enforcement agency" means any agency that employs police officers or prosecutes criminal cases.
- (9) "Motor vehicle with a hidden compartment" means a motor vehicle as defined in ORS 801.360 that has had the vehicle's original design modified by a person other than the manufacturer to create a container, space or enclosure for the purpose of concealing, hiding or otherwise preventing discovery of its contents and that is used or intended to be used to facilitate the commission of a criminal offense.
- (10) "Police officer" has the meaning given that term in ORS 133.525.
- (11) "Proceeds of prohibited conduct" means property derived directly or indirectly from prohibited conduct, or maintained by or realized through prohibited conduct. "Proceeds of prohibited conduct" includes any benefit, interest or property of any kind, without reduction for expenses of acquiring or maintaining the property.
- (12) "Prohibited conduct" means:
- (a) Violation of, solicitation to violate, attempt to violate or conspiracy to violate a provision of ORS 475.005 to 475.285 and 475.805 to 475.980 when the conduct constitutes the commission of a crime as described in ORS 161.515;
 - (b) **Violation of, solicitation to violate, attempt to violate or conspiracy to violate a provision of ORS 163.263, 163.264, 163.266 or 167.017;** and
- [*b*] (c) Other conduct that constitutes the commission of a crime as described in ORS 161.515, that provides for civil forfeiture of proceeds or instrumentalities of the conduct and that is made subject to the provisions of this chapter under ORS 131A.010 (4) or other law.
- (13) "Property" means any interest in anything of value, including the whole of any lot or tract of land and tangible and intangible personal property, including currency, instruments or securities or any other kind of privilege, interest, claim or right whether due or to become due.
- (14) "Public body" has the meaning given in ORS 174.109.
- (15) "Seizing agency" means a law enforcement agency that has seized property for forfeiture.
- (16) "Weapon" means any instrument of offensive or defensive combat or anything used, or designed to be used, in destroying, defeating or injuring a person.

SECTION 2. ORS 131A.360 is amended to read:

131A.360. (1) The provisions of this section apply only to a forfeiting agency other than the state, and apply only to forfeiture proceeds arising out of prohibited conduct as defined by ORS 131A.005 (12)(a).

(2) If the forfeiting agency is not a county, the forfeiting agency shall enter into an agreement, under ORS chapter 190, with the county in which the property was seized to provide a portion of the forfeiture proceeds to the county.

(3) After entry of a judgment of forfeiture, a forfeiting agency shall first pay from the forfeiture proceeds the costs incurred by seizing and forfeiting agencies in investigating and prosecuting the case, including costs, disbursements and attorney fees as defined in ORCP 68 A, special expenses such as the provision of currency for undercover law enforcement operations, the cost of disabling a hidden compartment in a motor vehicle and the expenses of maintaining the seized property. The forfeiting agency may not pay expenditures made in connection with the ordinary maintenance and operation of a seizing or forfeiting agency under this subsection.

(4) After payment of costs under subsection (3) of this section, the forfeiting agency shall:

(a) Deduct an amount equal to five percent of the forfeiture proceeds and deposit that amount in the Illegal Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS 475.495 (5) and (6);

(b) Deduct an amount equal to 2.5 percent of the forfeiture proceeds and deposit that amount in the Asset Forfeiture Oversight Account;

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

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

(5) If the forfeiting agency has entered into an agreement with a county under subsection (2) of this section, after paying costs under subsection (3) of this section and making the deductions required by subsection (4) of this section, the forfeiting agency shall pay the county the amounts required by the agreement.

(6) After making all payments and deductions required by subsections (3), (4) and (5) of this section, the forfeiting agency may use the remaining forfeiture proceeds, including amounts received by a county under subsection (5) of this section or by a any other public body under an intergovernmental agreement entered into under ORS 131A.355, only for:

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

(b) Currency for undercover law enforcement operations;

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

(d) The expenses of a forfeiting agency in operating joint narcotic operations with other forfeiting agencies pursuant to the terms of an intergovernmental agreement, including paying for rental space, utilities and office equipment; *[and]*

(e) Expenses of a district attorney in criminal prosecutions for unlawful delivery, distribution, manufacture or possession of controlled substances, as determined through intergovernmental agreement between the forfeiting agency and the district attorney; **and**

(f) A Court Appointed Special Advocate Volunteer Program.

(7) Notwithstanding subsection (6) of this section, growing equipment and laboratory equipment seized by a forfeiting agency that was used, or intended for use, in the manufacturing of controlled substances may be donated to a public school, community college or institution of higher education.

(8) A forfeiting agency shall sell as much property as may be needed to make the distributions required by this section. Distributions required under subsection (4) of this section must be made once every three months and are due within 20 days of the end of each quarter. No interest shall accrue on amounts that are paid within the period specified by this subsection.

SECTION 3. The amendments to ORS 131A.005 by section 1 of this 2011 Act apply to conduct occurring on or after the effective date of this 2011 Act.

SECTION 4. 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 April 13, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 31, 2011

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

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

Approved:

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

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

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

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Kate Brown, Secretary of State