

# Senate Bill 28

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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**.

Authorizes publishing notice of criminal forfeiture, civil forfeiture and intent to dispose of unclaimed property on Internet.

Directs Oregon Criminal Justice Commission to maintain website and post notices for at least 30 days.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to publishing notice on the Internet; creating new provisions; amending ORS 98.245,  
3 131.570, 131A.150 and 131A.230; and declaring an emergency.

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

5 **SECTION 1. (1) The Oregon Criminal Justice Commission shall maintain a website for the**  
6 **purpose of providing notice to interested parties of:**

7 (a) **The seizure of property for criminal forfeiture under ORS 131.570;**

8 (b) **The seizure of property for civil forfeiture under ORS 131A.150;**

9 (c) **The commencement of a civil forfeiture action under ORS 131A.230; and**

10 (d) **The intent to dispose of unclaimed property under ORS 98.245.**

11 (2) **When the commission receives a notice described in subsection (1) of this section**  
12 **from a seizing agency, forfeiting agency or removing authority, the commission shall post a**  
13 **copy of the notice on the website for at least 30 consecutive days.**

14 (3) **The commission may adopt rules to carry out the provisions of this section.**

15 (4) **As used in this section:**

16 (a) **"Forfeiting agency" has the meaning given that term in ORS 131A.005.**

17 (b) **"Removing authority" has the meaning given that term in ORS 98.245.**

18 (c) **"Seizing agency" has the meaning given that term in ORS 131.550.**

19 **SECTION 2. ORS 131A.150 is amended to read:**

20 131A.150. (1) A forfeiture notice must contain:

21 (a) A copy of the inventory prepared by the police officer under ORS 131A.055, with any  
22 amendments made under ORS 131A.055 (3);

23 (b) The name of the person from whom the property was seized;

24 (c) The name, address and telephone number of the seizing agency;

25 (d) The address and telephone number of the office or other place where further information  
26 concerning the seizure may be obtained; and

27 (e) A statement in substantially the following form:  
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**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.

NOTICE OF SEIZURE FOR FORFEITURE

Notice to Potential Claimant -

Read These Papers Carefully ! !

If you have any interest in the seized property described in these papers, you must claim that interest or you will automatically lose that interest. If you do not file a claim for the property, the property may be forfeited even if you are not convicted of any crime. To claim an interest, you must file a written claim with the forfeiture counsel named below. The written claim must be signed by you, under penalty of perjury, and state: (a) Your true name; (b) The address at which you will accept future mailings from the court and forfeiture counsel; and (c) A statement that you have an interest in the seized property. Your deadline for filing the claim document is 21 days from the day this form is given to you. If you have any questions, you should see an attorney immediately.

(2) A police officer who seizes property for forfeiture may serve a forfeiture notice on the person from whose possession the property is taken, or on the person in apparent control of the property, at the time the property is seized.

(3) If a police officer seizes property for forfeiture and does not serve a forfeiture notice under subsection (2) of this section, the forfeiting agency shall issue the forfeiture notice not more than 15 days after the seizure.

(4)(a) Except as provided in subsections (5) and (6) of this section, a forfeiting agency shall make reasonable efforts to serve a forfeiture notice on all persons known to have an interest in the seized property.

(b) A person may be served as provided in ORCP 7 D except that summons must include information regarding the right to file a claim as provided by ORS 131A.165, if applicable, and the deadline for filing the claim.

(c) If the property is cash in the amount of \$1,000 or less, or if the fair market value of the property is \$1,000 or less, the forfeiting agency may publish [*notice of seizure for forfeiture*] **the forfeiture notice:**

(A) In a newspaper as provided in ORCP 7 D(6)(b) to (d); or

(B) **On the website maintained by the Oregon Criminal Justice Commission under section 1 of this 2013 Act.**

(d) [*In all other cases,*] **If the property is cash in an amount of more than \$1,000, or if the fair market value of the property is more than \$1,000,** the forfeiting agency shall publish [*notice of seizure for forfeiture*] **the forfeiture notice:**

(A) In a newspaper as provided in ORCP 7 D(6)(b) to (d); or

(B) **On the website maintained by the Oregon Criminal Justice Commission under section 1 of this 2013 Act.**

(e) A copy of the **forfeiture** notice [*and inventory*] shall be provided to the forfeiting agency's forfeiture counsel.

(5) If a forfeiting agency publishes forfeiture notice under subsection (4) of this section, the agency may include [*in a single publication*] as many forfeiture notices as the agency considers convenient. The publication may contain a single statement of matters from the forfeiture notices that are common to all of the notices and that would otherwise result in needless repetition. The publication must contain for each forfeiture notice a separate copy of the inventory and a separate

1 statement of the identity of the person from whose custody the property was seized.

2 (6) A forfeiture notice need not be served on a person who has received a receipt under ORS  
3 131A.055 if:

4 (a) The receipt contains an estimate of the value of the property seized;

5 (b) The seizing agency has not amended the inventory under ORS 131A.055 (3); and

6 (c) The receipt contains information regarding the right to file a claim as described in ORS  
7 131A.165 and the deadline for filing the claim.

8 (7) If a person received a receipt as described in subsection (6) of this section, but the person  
9 must be served with a forfeiture notice because the seizing agency has amended the inventory under  
10 ORS 131A.055 (3), the seizing agency may serve a forfeiture notice on the person by mailing a true  
11 copy of the notice to the person by certified mail, return receipt requested.

12 **SECTION 3.** ORS 131A.230 is amended to read:

13 131A.230. (1) Upon commencement of a forfeiture action, the forfeiting agency must serve the  
14 summons and complaint on all persons known to have an interest in the property in the manner  
15 provided by ORCP 5 and 7 D. [*In addition, notice of the action must be published as provided in*  
16 *ORCP 7 D(6)(b) to (d)*] Unless the forfeiture notice for the property was previously published in the  
17 manner provided in ORS 131A.150 (4), **the forfeiting agency must also publish notice of the**  
18 **action:**

19 (a) **In a newspaper as provided in ORCP 7 D(6)(b) to (d); or**

20 (b) **On the website maintained by the Oregon Criminal Justice Commission under section**  
21 **1 of this 2013 Act.**

22 (2) If the property to be forfeited in a forfeiture action is a vehicle, and [*substitute*] **substituted**  
23 service on the claimant is required because personal service cannot be reasonably accomplished,  
24 service in the manner provided by ORCP 7 D(4) is sufficient to establish jurisdiction over a regis-  
25 tered owner or operator of a vehicle.

26 (3) If the property to be forfeited in a forfeiture action is in whole or part a manufactured  
27 dwelling as defined in ORS 446.003 or a floating home as defined in ORS 830.700, the forfeiting  
28 agency must record a notice of seizure containing a description of the manufactured dwelling or  
29 floating home in all public offices maintaining records that impart constructive notice of matters  
30 relating to manufactured dwellings or floating homes.

31 **SECTION 4.** ORS 131.570 is amended to read:

32 131.570. (1)(a) As soon as practicable after seizure for criminal forfeiture, the seizing agency  
33 shall review the inventory prepared by the police officer under ORS 131.561. Within 30 days after  
34 seizure for criminal forfeiture, the forfeiture counsel shall file a criminal information or an  
35 indictment alleging facts sufficient to establish that the property is subject to criminal forfeiture.  
36 Within 30 days after seizure for criminal forfeiture, the seizing agency or forfeiture counsel shall  
37 prepare a notice of seizure for criminal forfeiture containing a copy of the inventory prepared pur-  
38 suant to ORS 131.561, the identity of the person from whom the property was seized, the name, ad-  
39 dress and telephone number of the seizing agency and the address and telephone number of the  
40 office or other place where further information concerning the seizure and criminal forfeiture may  
41 be obtained, and shall make reasonable efforts to serve the notice of seizure for criminal forfeiture  
42 on all persons, other than the defendant, known to have an interest in the seized property.

43 (b) A person may be served as provided in ORCP 7 D except that the notice must also include  
44 information regarding the right to file a claim under subsection (2) of this section, if applicable, and  
45 the deadline for filing the claim.

1 (c) If the property is cash in the amount of \$1,000 or less, or if the fair market value of the  
 2 property is \$1,000 or less, the seizing agency may publish **the** notice of seizure for criminal forfei-  
 3 ture:

4 (A) In a newspaper as provided in ORCP 7 D(6)(b) to D(6)(d); **or**

5 (B) **On the website maintained by the Oregon Criminal Justice Commission under section**  
 6 **1 of this 2013 Act.**

7 (d) [*In all other cases,*] **If the property is cash in an amount of more than \$1,000, or if the**  
 8 **fair market value of the property is more than \$1,000,** the seizing agency shall publish **the** no-  
 9 tice of seizure for criminal forfeiture:

10 (A) In a newspaper as provided in ORCP 7 D(6)(b) to D(6)(d); **or**

11 (B) **On the website maintained by the Oregon Criminal Justice Commission under section**  
 12 **1 of this 2013 Act.**

13 (e) The seizing agency shall provide a copy of the notice[, *inventory*] **of seizure for criminal**  
 14 **forfeiture** and estimate of value to the forfeiture counsel.

15 (2) Except as otherwise provided in ORS 131.579 (1) to (3), if notice of seizure for criminal  
 16 forfeiture:

17 (a) Is given in a manner other than by publication, any person, other than the defendant,  
 18 claiming an interest in the property must file a claim with the forfeiture counsel within 21 days after  
 19 service of notice of seizure for criminal forfeiture.

20 (b) Is published, any person, other than the defendant, claiming an interest in the property must  
 21 file a claim with the forfeiture counsel within 21 days after the last publication date.

22 (3) An extension for the filing of a claim under subsection (2) of this section may not be granted.  
 23 The claim must be signed by the claimant under penalty of perjury and must set forth all of the  
 24 following:

25 (a) The true name of the claimant;

26 (b) The address at which the claimant will accept future mailings from the court or the forfei-  
 27 ture counsel; and

28 (c) A statement that the claimant has an interest in the seized property.

29 (4) If a seizing agency publishes notice of seizure for criminal forfeiture [*in a newspaper*] in the  
 30 manner provided by subsection (1) of this section, the agency may include [*in a single publication*]  
 31 as many notices of **seizure for** criminal forfeiture as the agency considers convenient. The publi-  
 32 cation may contain a single statement of matters from the notices of **seizure for** criminal forfeiture  
 33 that are common to all of the notices and that would otherwise result in needless repetition. The  
 34 publication must contain for each notice of **seizure for** criminal forfeiture a separate copy of the  
 35 inventory prepared pursuant to ORS 131.561, and a separate statement of the identity of the person  
 36 from whose custody the property was seized. The published inventory need not contain estimates  
 37 of value for the property seized.

38 **SECTION 5.** ORS 98.245 is amended to read:

39 98.245. (1) As used in this section:

40 (a) “Removing authority” means a sheriff’s office, a municipal police department, a state police  
 41 office, a law enforcement agency created by intergovernmental agreement or a port as defined in  
 42 ORS 777.005 or 778.005.

43 (b) “Unclaimed property” means personal property that was seized by a removing authority as  
 44 evidence, abandoned property, found property or stolen property, and that has remained in the  
 45 physical possession of that removing authority for a period of more than 60 days following conclu-

1 sion of all criminal actions related to the seizure of the evidence, abandoned property, found prop-  
 2 erty or stolen property, or conclusion of the investigation if no criminal action is filed.

3 (2) Notwithstanding ORS 98.302 to 98.436, and in addition to any other method provided by law,  
 4 a removing authority may dispose of unclaimed property as follows:

5 (a) **The removing authority shall prepare a notice of the intent to dispose of the un-**  
 6 **claimed property. The notice must include** an inventory describing the unclaimed property, [*shall*  
 7 *be prepared by the removing authority.*]

8 [*(b) The removing authority shall publish a notice of intent to dispose of the unclaimed property*  
 9 *described in the inventory prepared pursuant to paragraph (a) of this subsection. The notice shall be*  
 10 *posted in three public places in the jurisdiction of the removing authority, and shall also be published*  
 11 *in a newspaper of general circulation in the jurisdiction of the removing authority. The notice shall*  
 12 *include a description of the unclaimed property as provided in the inventory,*] the address and tele-  
 13 phone number of the removing authority and a statement in substantially the following form:

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 16 NOTICE

17 The (removing authority) has in its physical possession the unclaimed personal property de-  
 18 scribed below. If you have [*any*] **an** ownership interest in any of that unclaimed property, you must  
 19 file a claim with the (removing authority) within 30 days from (the date of publication of this  
 20 notice), or you will lose your interest in that property.

21  
 22  
 23 **(b) The removing authority shall:**

24 **(A) Publish the notice on the website maintained by the Oregon Criminal Justice Com-**  
 25 **mission under section 1 of this 2013 Act; or**

26 **(B)(i) Publish the notice in a newspaper of general circulation in the jurisdiction of the**  
 27 **removing authority; and**

28 **(ii) Post the notice in three public places in the jurisdiction of the removing authority.**

29 (c) **The removing authority shall send** a copy of the notice [*described in paragraph (b) of this*  
 30 *subsection shall also be sent*] to any person that the removing authority has reason to believe has  
 31 an ownership or security interest in any of the unclaimed property described in the notice. A notice  
 32 sent pursuant to this paragraph shall be sent by regular mail to the last known address of the per-  
 33 son.

34 (d) Prior to the expiration of the time period stated in [*a notice issued pursuant to this section*]  
 35 **the notice**, a person may file a claim that presents proof satisfactory to the removing authority is-  
 36 suing the notice that the person is the lawful owner or security interest holder of any property de-  
 37 scribed in that notice. The removing authority shall then return the property to that person.

38 (e) If a removing authority fails to return property to a person that has timely filed a claim  
 39 pursuant to paragraph (d) of this subsection, the person may file, within 30 days of the date of the  
 40 failure to return the property, a petition seeking return of the property to the person. The petition  
 41 shall be filed in the circuit court for the county in which the removing authority is located. If one  
 42 or more petitions are filed, the removing authority shall hold the property pending receipt of an  
 43 order of the court directing disposition of the property or dismissing the petition or petitions with  
 44 prejudice. If the court grants the petition, the removing authority shall turn the unclaimed property  
 45 over to the petitioner in accordance with the order.

1 (f) Unless the removing authority or court upholds the claim or petition under paragraph (d) or  
2 (e) of this subsection, title to all unclaimed property described in a notice issued pursuant to this  
3 section shall pass to the removing authority free of any interest or encumbrance thereon in favor  
4 of any person who has:

5 (A) A security interest in the property and to whom the removing authority mailed a copy of  
6 the notice described in paragraph [(b)] (a) of this subsection in accordance with paragraph (c) of this  
7 subsection; or

8 (B) Any ownership interest in the property.

9 (g) The removing authority may transfer good and sufficient title to any subsequent purchaser  
10 or transferee, and the title shall be recognized by all courts and governmental agencies. Any de-  
11 partment, agency or officer of the state or any political subdivision whose official functions include  
12 the issuance of certificates or other evidence of title shall be immune from civil or criminal liability  
13 when such issuance is pursuant to a bill of sale issued by the removing authority.

14 **SECTION 6. This 2013 Act being necessary for the immediate preservation of the public**  
15 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
16 **on its passage.**

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