

A-Engrossed
Senate Bill 144

Ordered by the Senate April 21
Including Senate Amendments dated April 21

Sponsored by Senator FERRIOLI, Representative STARK, Senator ROBLAN, Representative MCKEOWN (Presession filed.)

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.

Modifies applicability of certain statutes to person who unintentionally discovers archeological object.

Requires law enforcement agency to provide notice of seizure of contraband items **and copies of all investigatory reports related to violation of certain statutes** to Commission on Indian Services. Requires commission to provide notice **of seizure** to appropriate tribe.

Directs district attorney of county to provide written notice of declination to prosecute violation of certain statutes to Attorney General.

A BILL FOR AN ACT

1
2 Relating to archaeological objects; creating new provisions; and amending ORS 358.915 and 358.924.

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

4 **SECTION 1.** ORS 358.915 is amended to read:

5 358.915. The provisions of ORS 192.005, 192.501 to 192.505, 273.990, 358.905 to 358.961 and
6 390.235 do not apply to a person who unintentionally discovers an archaeological object that has
7 been exposed by the forces of nature on [*public land or*] private property and retains the object for
8 personal use, except for sacred objects, human remains, funerary objects or objects of cultural
9 patrimony.

10 **SECTION 2.** ORS 358.924 is amended to read:

11 358.924. (1) Archaeological objects, funerary objects, human remains, sacred objects and objects
12 of cultural patrimony that are held in violation of the provisions of ORS 358.920 or 390.235 are
13 contraband. A police officer shall seize all items declared to be contraband under the provisions of
14 this section if the police officer has reasonable cause to believe the items are held in violation of
15 the provisions of ORS 358.920 or 390.235.

16 (2) A law enforcement agency employing a police officer who seizes contraband items under this
17 section shall give notice of the seizure to the district attorney for the county in which the items are
18 seized **and the Commission on Indian Services**. The district attorney shall promptly investigate
19 to determine whether any person **or Indian tribe** claims the items seized. **The commission shall**
20 **designate any appropriate Indian tribe and give notice to the tribe of the seizure.**

21 (3) If any person claims items seized under this section, the district attorney shall file a petition
22 with the circuit court for the county for an expedited hearing on the claim. The court shall conduct
23 a hearing for the sole purposes of determining:

24 (a) Whether the items are archaeological objects, funerary objects, human remains, sacred ob-
25 jects or objects of cultural patrimony;

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 (b) Whether any arrowheads seized under this section were collected in compliance with ORS
2 358.920 (1)(b); and

3 (c) Whether a person claiming an item other than an arrowhead can lawfully possess the item
4 under ORS 358.905 to 358.961.

5 (4) If items seized under this section are not claimed by any person, or the circuit court deter-
6 mines that the items may not be returned to the claimant under the provisions of subsection (3) of
7 this section:

8 (a) Archaeological objects shall be delivered to the Oregon State Museum of Anthropology and
9 curated as described in ORS 358.920 (4)(a).

10 (b) Funerary objects, human remains, sacred objects and objects of cultural patrimony shall be
11 returned to the appropriate tribe for reinterment or other disposition as provided in ORS 358.940.

12 **SECTION 3. Section 4 of this 2017 Act is added to and made a part of ORS 358.905 to**
13 **358.961.**

14 **SECTION 4. (1)(a) If a district attorney of a county declines to prosecute a violation of**
15 **ORS 358.920 or 390.235 for a reason other than insufficient admissible evidence, within 30**
16 **days of the declination the district attorney shall give written notice of the declination to the**
17 **Attorney General. The notice must contain the reasons underlying the declination to prose-**
18 **cute. Upon receipt of the notice, the Attorney General may take full charge of any investi-**
19 **gation of, or prosecution for, conduct in violation of ORS 358.920 or 390.235.**

20 (b) The Attorney General may require the aid and assistance of the district attorney in
21 all matters pertaining to any investigation or prosecution authorized under this section and
22 to the duties of the Attorney General in the county in which the district attorney holds of-
23 fice.

24 (2) If the Attorney General chooses to investigate or prosecute under this section, the
25 Attorney General shall have all the powers of a district attorney including:

26 (a) The power to issue subpoenas;

27 (b) The power to prepare charging instruments; and

28 (c) All other powers incidental to an investigation or a prosecution authorized under this
29 section.

30 (3) All costs, fees and other expenses related to the investigation or prosecution author-
31 ized under this section shall be paid by the county in which the investigation or prosecution
32 occurs, to the same extent as if conducted by the district attorney of that county.

33 (4) Except as otherwise provided by law, a local law enforcement agency investigating a
34 violation of ORS 358.920 or 390.235 shall provide copies of all investigatory reports to the
35 Commission on Indian Services.

36 (5) The power granted to the Attorney General by this section does not deprive a district
37 attorney of any authority or relieve a district attorney from any duty to prosecute criminal
38 violations of law and advise the officers of the county in which the district attorney holds
39 office.

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