Chapter 131A

2011 EDITION

Civil Forfeiture

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DEFINITIONS

131A.005 Definitions. 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 475.744 to 475.980 when the conduct consti-

tutes 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

(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. [2009 c.78 §1; 2009 c.874 §8; 2011 c.335 §1]

CIVIL FORFEITURE GENERALLY

131A.010 Legislative findings; preemption of local laws; remedy not exclusive. (1) The Legislative Assembly finds that:

(a) Prohibited conduct occurs in the course of criminal activities that result in, and are facilitated by, the acquisition, possession or transfer of property subject to civil forfeiture under this chapter.

(b) Transactions involving property subject to civil forfeiture under this chapter escape taxation.

(c) Governments attempting to respond to prohibited conduct require additional resources.

(d) Proceeds and instrumentalities of prohibited conduct should be forfeited, the rights and interests of affected persons protected, and the laws of this state relating to civil forfeiture of property based on prohibited conduct should be uniform throughout the state.

(2) The Legislative Assembly adopts the provisions of this chapter as the sole and exclusive law of the state governing civil forfeiture of real and personal property based on prohibited conduct. This chapter supersedes all charter provisions, ordinances, regulations and other enactments adopted by cities and counties relating to civil forfeitures. All forfeitures under the provisions of this chapter are subject to the limitations of section 10, Article XV of the Oregon Constitution.

(3) This chapter is applicable throughout this state. The electors or the governing body of a city or county may not enact, and the governing body of a city or county may not enforce, any charter provision, ordinance, resolution or other regulation that is inconsistent with this section.

(4) This chapter does not impair the right of any city or county to enact ordinances providing for the civil forfeiture of property if:

(a) The prohibited conduct constitutes the commission of a crime as described in ORS 161.515;

(b) The property constitutes proceeds or instrumentalities of the prohibited conduct; and

(c) The civil forfeiture is subject to the procedures and limitations set forth in this chapter.

(5) This chapter does not limit or impair any right or remedy that any person or entity may have under ORS 166.715 to 166.735. The application of any remedy under this chapter is remedial and not punitive and does not affect the application of any other civil or criminal remedy under any other provision of law. Civil remedies under this chapter are supplemental and are not mutually exclusive. [2009 c.78 §2]

131A.015 Vesting of title to forfeited property. Subject to this chapter, all right, title and interest in property forfeited under this chapter vests in the forfeiting agency upon the occurrence of the prohibited conduct on which the forfeiture is based. [2009 c.78 §3]

PROPERTY SUBJECT TO FORFEITURE

131A.020 Property subject to forfeiture. The following property is subject to forfeiture under this chapter:

(1) All controlled substances that have been manufactured, distributed, dispensed, possessed or acquired in the course of prohibited conduct.

(2) All raw materials, products and equipment of any kind that are used in providing, manufacturing, compounding, processing, delivering, importing or exporting any service or substance in the course of prohibited conduct.

(3) All property that is used as a container for property described in subsection (1) or (2) of this section.

(4) All conveyances, including aircraft, vehicles or vessels, that are used to transport

or in any manner facilitate the transportation, sale, receipt, possession or concealment of property described in subsection (1) or (2) of this section, and all conveyances, including aircraft, vehicles or vessels, that are used in prohibited conduct or that are used to facilitate prohibited conduct in any manner.

(5) All books, records, computers and research, including formulae, microfilm, tapes and data that are used to facilitate prohibited conduct in any manner.

(6) All moneys, negotiable instruments, balances in deposit accounts or other accounts, securities or other things of value furnished by any person in the course of prohibited conduct, all proceeds of prohibited conduct, and all moneys, negotiable instruments, balances in deposit and other accounts and securities used to facilitate any prohibited conduct.

(7) All real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements, that is used in any manner, in whole or part, to commit or facilitate prohibited conduct.

(8) All weapons possessed, used or available for use in any manner to facilitate prohibited conduct.

(9) Any property described in this section that was intended for use in committing or facilitating an attempt to commit a crime as described in ORS 161.405, a solicitation as described in ORS 161.435 or a conspiracy as described in ORS 161.450. [2009 c.78 §4]

131A.025 Consensual search of motor vehicle; required notice. (1) Notwithstanding any other provision of this chapter, property that is seized solely on the basis of a consensual search of a motor vehicle is not subject to forfeiture unless, before obtaining the consent of a person for the search, the person is provided with written, multilingual notice of the right of the person to refuse to consent to the search. The notice shall include at least the following information:

(a) Notice that the person has a right to refuse to consent to a search.

(b) Notice that a refusal to consent to a search cannot be used against the person for any purpose.

(c) Notice that anything found in the search can be seized as evidence of a crime or can be seized for forfeiture.

(2) A notice or consent form under this section shall be considered multilingual if the notice or form provides information in at least English and Spanish. [2009 c.78 §5]

131A.030 Seizure of motor vehicle with hidden compartment. (1) When a seizing agency lawfully seizes a motor vehicle with a hidden compartment, the agency shall disable the hidden compartment, unless the motor vehicle is forfeited and the agency:

(a) Retains the motor vehicle for law enforcement purposes; or

(b) Determines that the cost of disabling the hidden compartment exceeds the value of the motor vehicle.

(2) Notwithstanding ORS 131A.360 and 131A.365, if the motor vehicle with a hidden compartment is forfeited and the seizing agency:

(a) Retains the motor vehicle for law enforcement purposes, the agency shall deduct the cost of disabling the hidden compartment from the value of the motor vehicle before making the distribution described in ORS 131A.360 and 131A.365.

(b) Does not retain the motor vehicle for law enforcement purposes and determines that the cost of disabling the hidden compartment exceeds the value of the motor vehicle, the agency shall sell the motor vehicle for scrap or salvage and distribute the proceeds of the sale according to ORS 131A.360 and 131A.365. The seizing agency shall ensure that the person to whom the motor vehicle is sold disables the hidden compartment or the motor vehicle.

(3) If a motor vehicle with a hidden compartment is forfeited and the seizing agency sells the motor vehicle, the agency shall deduct the cost of disabling the hidden compartment from the proceeds of the sale as a cost of prosecuting the case under ORS 131A.360 (3) and 131A.365 (2). [2009 c.874 §7]

131A.035 Seizure of currency. Notwithstanding any other provision of this chapter, United States currency in an amount less than $15,000 may not be seized for forfeiture solely on the basis that the money is in the form of cash rather than some other form. [2009 c.78 §6]

SEIZURE OF PROPERTY FOR FORFEITURE

(Generally)

131A.050 Seizure generally. (1) Property seized for forfeiture is not subject to replevin, conveyance, sequestration or attachment, and is not subject to a motion or order to return under ORS chapter 133.

(2) Property that has been unconstitutionally seized may be forfeited if the property is determined to be subject to forfeiture under this chapter based on evidence that is not the fruit of the unconstitutional seizure.

(3) Property other than real property may be constructively seized by affixing a forfeiture notice to the property, or by recording a forfeiture notice in the public record. Real

property, including equitable interests under land sale contracts, may be seized only by recording a forfeiture notice in the form prescribed by ORS 131A.155.

(4) If property is seized from the possession of a person who has a possessory lien in the property, the lien remains in effect after the seizure and is enforceable as though the person had retained possession of the property. [2009 c.78 §7]

(Inventory and Receipt; Written Warning)

131A.055 Inventory and receipt. (1) Promptly upon seizure of property for forfeiture, the police officer who seized the property shall make an inventory of the seized property. The inventory may contain an estimate of the value of the seized property.

(2) If seized property is taken from the possession of a person, or there is a person who is in apparent control of the property at the time of the seizure, the officer shall deliver a receipt to that person when the property is seized. The receipt prepared under this subsection must contain:

(a) The inventory prepared under subsection (1) of this section;

(b) The identity of the seizing agency; and

(c) The address and telephone number of the office or other place where the person may obtain further information concerning the forfeiture.

(3) A seizing agency shall amend the inventory prepared by a police officer under this section if the agency determines at any time before the commencement of a forfeiture action under ORS 131A.225 that the inventory is substantially incorrect. The changes to the inventory must be clearly indicated in the amended inventory. A copy of the original inventory and any amendments made to the original inventory must be served with any summons and complaint served under ORS 131A.230. If the amendment occurs after the commencement of a forfeiture action, the amended inventory must be served on all persons previously served with summons and complaint in the proceeding.

(4) If tangible personal property is constructively seized as described in ORS 131A.050 (3), the officer shall affix the receipt to the property. If the property is physically removed from the place of seizure, and the place is unoccupied or nobody is present with apparent control over the property, the officer shall promptly file the receipt in the public records of the forfeiting agency. [2009 c.78 §8]

(Manner of Seizure)

131A.060 Seizure with court order. (1) Property may be seized by any police officer pursuant to an order of the court. Forfeiture counsel or a seizing agency may apply for an ex parte order directing seizure of specified property.

(2) An application for an order directing seizure under subsection (1) of this section may be made to any judge as defined in ORS 133.525. The application shall be supported by one or more affidavits setting forth facts and circumstances that support a finding that probable cause exists to believe that the described property is subject to forfeiture. The court shall issue the order upon a finding of probable cause to believe that the described property is subject to forfeiture. The order may be made as part of a search warrant.

(3) An order issued under this section may specify the manner in which intangible property may be seized for forfeiture.

(4) Except as provided in ORS 131A.080 (3), an order under this section shall direct any person having control or custody of the property, including money and other assets held in the form of an account in a financial institution, to deliver the property to the police officer. [2009 c.78 §9]

131A.065 Seizure without court order. (1) Property may be seized for forfeiture by a police officer without a court order if:

(a) There is probable cause to believe that property is subject to forfeiture, and the property may constitutionally be seized without a warrant;

(b) The seizure is in the course of a constitutionally valid criminal investigative stop, arrest or search, and there is probable cause to believe that the property is subject to forfeiture;

(c) The property is directly or indirectly dangerous to the health or safety of any person; or

(d) An owner consents to the seizure.

(2) If a police officer finds cash, weapons or negotiable instruments in close proximity to controlled substances or to instrumentalities of prohibited conduct, the officer has probable cause to believe that the property is subject to forfeiture. [2009 c.78 §10]

(Delivery of Property)

131A.070 Delivery by third person. (1) Except as provided in ORS 131A.080 (3), a person who has control or custody of property must deliver the property to a police officer if the police officer presents a court order issued under ORS 131A.060 or the po-

lice officer has probable cause to believe that the property is subject to forfeiture.

(2) Any person who delivers property in obedience to a court order or pursuant to a direction from a police officer is not liable to any person by reason of the delivery, and is not liable for any costs incurred by reason of any contamination of the delivered property, including but not limited to any disposal costs for the property, any hazardous waste or material, any contraband or any other contamination contained in property seized under this section. [2009 c.78 §11]

(Effect of Seizure on Liens and Security Interests of Financial Institutions)

131A.075 Liens and security interests of financial institutions. (1) Seizure of property for forfeiture and other proceedings under this chapter does not prevent, abate or delay the initiation or prosecution of a suit or action by a financial institution for the possession of seized property in which the financial institution claims a lien or security interest, or initiation or prosecution of a suit or action by a financial institution for the foreclosure of a lien or security interest claimed by the financial institution. A financial institution may proceed with any suit or action involving property in which the institution claims a lien or security interest even though a seizure has occurred and a forfeiture action has been commenced or will be commenced. The financial institution's suit or action may be consolidated with the forfeiture action for the purpose of trial. If seized property is sold before the conclusion of the forfeiture action, the sheriff, trustee or other person who is conducting the sale and who has actual notice of the forfeiture action shall distribute the sale proceeds as follows:

(a) To the payment of the expenses of the sale.

(b) If the property is a motor vehicle with a hidden compartment, after making the payment required by paragraph (a) of this subsection, to reimburse the seizing agency for the cost of disabling the hidden compartment.

(c) After payment of the expenses of the sale and making any reimbursement under paragraphs (a) and (b) of this subsection, to the payment of the obligations owed to the foreclosing financial institution that are secured by the property, and to the payment of the obligations owed to any other person that has a lien or security interest in the property that has been foreclosed in the suit or action. Payment under this paragraph shall be made in the order determined by the court.

(d) If there is any remaining amount after the payments required under paragraphs (a) to (c) of this subsection, to the seizing or forfeiting agency, or to the court in which the forfeiture action is pending.

(2) A sheriff, trustee or other person who distributes sale proceeds as provided in subsection (1) of this section is not liable to any person who has or asserts an interest in the property. [2009 c.78 §12; 2009 c.874 §9]

(Care and Custody of Property)

131A.080 Care and custody of seized property generally. (1) Pending final disposition of seized property, and subject to the need to retain the property for any criminal proceeding, a forfeiting agency shall maintain and care for property that is in the physical custody of the seizing or forfeiting agency in a manner that is reasonably appropriate for the preservation of the property's value.

(2) A forfeiting agency may transfer property seized for forfeiture to any city, county, state or federal agency with authority to seek forfeiture of the property, unless the transfer diminishes or reduces the rights of any third party under this chapter or constitutes a violation of section 10 (13), Article XV of the Oregon Constitution.

(3) If property seized for forfeiture consists of money, stocks, bonds, promissory notes or other security or evidence of indebtedness, and the property is held in some form of account in a financial institution, the property may remain in the account pending a final decision in the forfeiture action. Unless otherwise allowed by order of the court, transactions involving the account are not permitted until final disposition of the property, except for the deposit or reinvestment of dividends or other normally recurring payments on the property. Any accrual to the value of the property during the pendency of forfeiture proceedings shall be disbursed in the manner provided for the disbursement of interest under ORS 131A.090.

(4) This chapter does not prevent a seizing agency from entering into an agreement with a person who claims seized property, or with any other person, for the reimbursement of the seizing agency for the costs and expenses relating to towing and storage of seized property, or for the reimbursement of the cost of discharging any possessory chattel lien on the property arising under ORS 87.152 to 87.162 that attaches to the property after seizure of the property and before release or forfeiture of the property. [2009 c.78 §13]

131A.085 Order for sale, lease, rental or operation of seized property. (1) Pending final disposition of property seized for forfeiture, and subject to the need to retain the property for any criminal proceeding, a forfeiting agency may apply to the court for an order allowing the seized property to be sold, leased, rented or operated in the manner and on terms that may be specified in the court's order. Any sale, lease, rental or operation of seized property under this section must be conducted in a commercially reasonable manner, and may not result in a material reduction of the property's value. An order may be entered under this section only:

(a) After notice and opportunity to be heard is provided to all persons known to have an interest in the property, or who claim to have an interest in the property; and

(b) With the consent of all persons holding security interests of record in the property.

(2) Unless otherwise ordered by the court, the proceeds of the sale, lease, rental or operation of seized property under this section shall be held by the forfeiting agency in a forfeiture trust account established under ORS 131A.090, and the rights of holders of security interests of record in the property attach to the proceeds of the sale, lease, rental or operation in the order of the priority of their claims. [2009 c.78 §14]

131A.090 Forfeiture trust accounts. (1) Except for currency with collector value, all money seized for forfeiture, together with all money received from the sale, lease, rental or operation of seized property, shall be immediately deposited in an insured interest-bearing forfeiture trust account or accounts maintained by the seizing or forfeiting agency exclusively for this purpose. Cash may be retained as evidence in a criminal proceeding, but must be deposited in a trust account or trust accounts immediately after the cash is no longer needed as evidence.

(2) Subject to any court order, amounts deposited in a forfeiture trust account, or held in an account in a financial institution under ORS 131A.080 (3), including interest on those amounts, shall be disbursed as follows:

(a) If forfeiture proceedings are abandoned, or if the court ultimately fails to enter a judgment of forfeiture, the amount of the account shall be disbursed by the seizing or forfeiting agency to the person from whom the property was seized.

(b) If a judgment of forfeiture is entered, but parties other than the forfeiting agency establish rights to portions of the amount deposited in the account that are in the aggregate equal to or larger than the amount in the account, the account shall be disbursed by the forfeiting agency to the parties in the order of the priority of their claims.

(c) If a judgment of forfeiture is entered, and the total amount in the account is greater than the amount needed to satisfy the interests of security interest holders, lienholders and other claimants, the balance remaining after payment to those claimants shall be retained by the forfeiting agency for distribution as required by ORS 131A.360 and 131A.365. [2009 c.78 §15]

HEARING ON PROBABLE CAUSE AND DECISION ON SEEKING FORFEITURE

(Hearing on Probable Cause)

131A.100 Hearing on probable cause. (1) Any person with an interest in property that has been seized for forfeiture may file an application to have an order to show cause order issued to a forfeiting agency to determine if probable cause exists to seize the property for forfeiture. The application must be filed not more than 15 days after forfeiture notice is served under ORS 131A.150, or within 15 days after the person receives actual knowledge of the seizure, whichever is later. A copy of the application must be served on the forfeiture counsel.

(2) When a hearing is held on a show cause order issued under this section, the court shall determine if probable cause to seize the property for forfeiture exists on the date of the hearing. If the court finds that probable cause for seizure of the property for forfeiture does not exist, the forfeiting agency shall release the property. [2009 c.78 §16]

(Decision on Seeking Forfeiture)

131A.105 Decision on seeking forfeiture. (1) A seizing agency, after consultation with the district attorney of the county in which the property was seized, must decide whether to seek forfeiture of seized property not more than 30 days after the property is seized. If the seizing agency elects not to seek forfeiture, the agency shall pay all costs and expenses relating to towing and storage of the property, and shall release the property and cause to be discharged any possessory chattel liens arising under ORS 87.152 to 87.162 that have attached to the property since the seizure. If the property is a motor vehicle with a hidden compartment, the seizing agency is not liable for any diminution in the value of the property as a result of disabling the compartment.

(2) Property may be released under this section to a person other than the person

from whose custody or control the property was taken if the seizing agency mails notice to the last-known addresses of all persons known to have an interest in the property. The notice shall specify the person to whom the property is to be released and shall detail the time and place of the release. [2009 c.78 §17; 2009 c.874 §10]

FORFEITURE NOTICE

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

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

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

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

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

(e) A statement in substantially the following form:

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.

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(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) 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. 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. 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 in a newspaper as provided in ORCP 7 D(6)(b) to (d). In all other cases, the forfeiting agency shall publish notice of seizure for forfeiture in a newspaper as provided in ORCP 7 D(6)(b) to (d). A copy of the 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 statement of the identity of the person from whose custody the property was seized.

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

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

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

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

(7) If a person received a receipt as described in subsection (6) of this section, but the person must be served with a forfeiture notice because the seizing agency has amended the inventory under ORS 131A.055 (3), the seizing agency may serve a forfeiture notice on the person by mailing a true copy of the notice to the person by certified mail, return receipt requested. [2009 c.78 §18]

131A.155 Recorded forfeiture notice. (1) If a forfeiting agency intends to seek forfeiture of real property, the forfeiting agency may record a forfeiture notice in the

form prescribed in this section in the County Clerk Lien Record. The notice must contain the legal description of the real property, any street address for the property, and the name and address of the forfeiture counsel. From the time of recording the notice, the recording is notice to purchasers and other transferees of the rights and equities in the premises of the forfeiting agency.

(2) A forfeiture notice must be in substantially the following form:

FORFEITURE NOTICE

Pursuant to ORS 131A.155, the undersigned states:

That _____ (forfeiting agency) intends to initiate a forfeiture action against the following described real property:

1. The description of the real property to be affected is:

_____
_____
_____
_____
_____

2. The common address, if any, is:

_____
_____
_____

Dated this _____ day of _____, _____.

This forfeiture notice expires on _____ day of _____, _____, absent future filings.

Name of agency seeking forfeiture

_____

Name of attorney

_____

Address

_____
_____
_____

Telephone number

_____

State of Oregon)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, _____.

_____
Notary public for Oregon
My commission expires _____.

---

(3) A forfeiture notice recorded under this section expires 30 days after the date of filing unless another forfeiture notice is recorded within the 30-day period. If another forfeiture notice is recorded within the 30-day period, the notice remains in effect for 30 days after the notice is recorded. The forfeiting agency may continue to record forfeiture notices in like manner until final disposition of the real property. [2009 c.78 §19]

131A.160 Transfer of proceedings prohibited. After service of a forfeiture notice under ORS 131A.150, or recording of a forfeiture notice under ORS 131A.155, a forfeiting agency may not transfer the proceedings to the federal government unless a state court has affirmatively found by a preponderance of the evidence that:

(1) The activity giving rise to the forfeiture is interstate in nature and sufficiently complex to justify the transfer;

(2) The seized property may be forfeited only under federal law; or

(3) Pursuing forfeiture under state law would unduly burden the forfeiting agency. [2009 c.78 §20]

CLAIMS

(Generally)

131A.165 Claims. (1) Except as provided in subsection (2) of this section, a person claiming an interest in property seized for forfeiture must file a claim with the forfeiting agency's forfeiture counsel not more than 21 days after service of a forfeiture notice.

(2) If service of a forfeiture notice is made by publication under ORS 131A.150 (4), a person claiming an interest in the property must file a claim with the forfeiting agency's forfeiture counsel not more than 21 days after the last publication date. Extensions for filing claims may not be granted.

(3) A claim under this section must be signed by the claimant under penalty of perjury and must include:

(a) The true name of the claimant;

(b) The address at which the claimant will accept future mailings from the court and forfeiture counsel; and

(c) A statement that the claimant has an interest in the seized property. [2009 c.78 §21]

(Expedited Hearing)

131A.170 Expedited hearing on claim. (1) A person claiming an interest in seized property may file a petition for an expedited hearing within 15 days after service of a forfeiture notice on the person or within such further time as the court may allow for good cause shown.

(2) A petition for an expedited hearing must contain a claim as described in ORS 131A.165 if a claim has not previously been filed. The petition must indicate whether the petitioner seeks one or more of the following:

(a) A determination at the hearing of any of the affirmative defenses provided for in ORS 131A.260.

(b) An order restoring custody of seized property to the petitioner during the pendency of the proceedings.

(c) Appointment of a receiver.

(3) A person filing a petition under this section shall serve a copy of the petition on all persons known to have an interest in the property. Service must be made as provided in ORCP 7 D. Service by publication is not required before an expedited hearing.

(4) A hearing shall be held within 15 days after service of all persons known to have an interest in the property, or at such later time as the court may allow for good cause shown. The hearing shall be limited to deciding whether to grant the relief sought in the petition.

(5) The court may enter an order directing the return of the seized property to the claimant during the pendency of the hearing if the court finds, by a preponderance of the evidence, that it is probable that the property will remain available for forfeiture at the completion of the proceedings and that there is a reasonable possibility that the petitioner will ultimately prevail in the proceeding.

(6) If the petition is denied, and the petitioner subsequently discovers evidence relevant to the claimed relief, the petitioner may file a new petition under this section at any time before a trial in the forfeiture action. The new petition shall be served as provided in ORS 131A.230.

(7) The parties in a forfeiture action may at any time stipulate to the entry of an order restoring custody of seized property to a petitioner who claims an interest in the property. The order shall comply with the requirements of ORS 131A.180 (1). [2009 c.78 §22]

131A.175 Expedited hearing on affirmative defenses. (1) In any expedited hearing under ORS 131A.170 in which a petitioner seeks a determination at the hearing of any of the affirmative defenses provided for in ORS 131A.260, the court may consider evidence relating to those affirmative defenses and shall make a determination as to any of those defenses that may be asserted by the petitioner.

(2) If the court finds that the petitioner has proven an affirmative defense provided for in ORS 131A.260, the court shall order that custody of the seized property be returned to the petitioner, to the extent of the petitioner's interest, pending a final determination as to the disposition of the property, unless the forfeiting agency can show that the return of the property will result in prejudice to the agency in seeking forfeiture of other claimants' interest in the property.

(3) If the court finds that the petitioner has failed to prove an affirmative defense provided for in ORS 131A.260, the court shall continue the matter for further proceedings as a forfeiture action under this chapter. [2009 c.78 §23]

131A.180 Order restoring custody of property after expedited hearing. (1) An order restoring custody of property to a petitioner under ORS 131A.170 or 131A.175 shall:

(a) Prohibit the petitioner from using the property in unlawful conduct of any kind, or from allowing the property to be used by any other person in unlawful conduct;

(b) Require the petitioner to service and maintain the property as may be reasonably appropriate to preserve the property's value; and

(c) Require the petitioner to inform the court of the exact location of the property at the time of any trial in a forfeiture action and to deliver the property to the forfeiting agency immediately upon the issuance of a judgment of forfeiture.

(2) An order restoring custody of property to a petitioner under ORS 131A.170 or 131A.175 may include such other requirements as the court finds appropriate pending a final determination as to the disposition of the property. If the property is a motor vehicle with a hidden compartment, the seizing agency is not liable for any diminution in the value of the property as a result of disabling the compartment.

(3) An order restoring custody of property to a petitioner under ORS 131A.170 or 131A.175 is enforceable by a contempt proceeding brought on the relation of forfeiture counsel, by an order directing the petitioner to deliver the property to the custody of the forfeiting agency, by an order awarding to the forfeiting agency its reasonably incurred attorney fees, costs and investigative expenses, and by such other remedies or relief

as the court may find appropriate. [2009 c.78 §24; 2009 c.874 §11]

EX PARTE FORFEITURES

131A.200 Ex parte forfeiture. (1) An ex parte judgment of forfeiture may be entered under this section only if:

(a) The property is personal property;

(b) The property is not subject to an interest in favor of any person known to have an interest, other than a person who is believed by the forfeiting agency to have engaged in prohibited conduct; and

(c) A claim is not filed in the manner provided by ORS 131A.165 within the time allowed.

(2) At any time after the time for filing a claim under ORS 131A.165 has expired, a forfeiting agency may petition the circuit court specified in ORS 131A.225 (3) for an ex parte judgment of forfeiture under this section. The petition must state that the requirements of subsection (1) of this section have been met. An affidavit must be attached to the petition that states that forfeiture notice was served on all persons claiming an interest in the property, or that sets forth facts demonstrating the forfeiting agency's efforts to accomplish service, together with proof of any publication of notice.

(3) Upon filing of a petition under this section, the court shall enter a judgment forfeiting the property identified in the petition. [2009 c.78 §25]

FORFEITURE ACTIONS

(Generally)

131A.225 Forfeiture actions generally. (1) A civil forfeiture action in rem may be brought as provided in this section in any case in which forfeiture is sought. A civil forfeiture action must be brought if:

(a) The property is real property;

(b) The property is in whole or part a manufactured dwelling as defined in ORS 446.003;

(c) The property is a floating home as defined in ORS 830.700;

(d) A claim has been made for the property under ORS 131A.165; or

(e) A person, other than a person who is believed by the forfeiting agency to have engaged in prohibited conduct, is known to have an interest in the property.

(2) If a claim has been made for seized property under ORS 131A.165, forfeiture counsel must commence a forfeiture action not more than 15 days after receipt of the claim. In all other cases, a forfeiture action must be commenced by forfeiture counsel within 30 days after seizure of the property.

(3) If the property to be forfeited is real property, the forfeiture action must be commenced in the circuit court for a county in which the property is situated. In all other cases, the forfeiture action must be commenced in the circuit court for the county in which the property was seized, or in the circuit court for the county in which any part of the prohibited conduct took place.

(4) A forfeiture action is commenced by filing a complaint. A copy of the inventory prepared under ORS 131A.055 must be attached to the complaint. The complaint need only allege that there is probable cause for seizure of the property or that a court order was issued under ORS 131A.060, and need not allege that any claimant has been convicted of a crime. A complaint under this section may be amended at any time to allege that a claimant has been convicted of a crime.

(5) A complaint in a forfeiture action is not subject to a motion to strike, a motion for summary judgment or any other pretrial motion for dismissal that is based solely on the lack of a criminal conviction in support of the forfeiture. This subsection does not affect the ability of a claimant to file a motion to strike or a motion for summary judgment based on the acquittal of the claimant of all criminal charges on which the forfeiture action is based, or based on dismissal of all criminal charges on which the forfeiture action is based.

(6) Forfeiture actions are governed by the Oregon Rules of Civil Procedure except to the extent those rules conflict with this chapter. [2009 c.78 §26]

(Service of Complaint)

131A.230 Service. (1) Upon commencement of a forfeiture action, the forfeiting agency must serve the summons and complaint on all persons known to have an interest in the property in the manner provided by ORCP 5 and 7 D. In addition, notice of the action must be published as provided in ORCP 7 D(6)(b) to (d) unless the forfeiture notice for the property was previously published in the manner provided in ORS 131A.150 (4).

(2) If the property to be forfeited in a forfeiture action is a vehicle, and substitute service on the claimant is required because personal service cannot be reasonably accomplished, service in the manner provided by ORCP 7 D(4) is sufficient to establish jurisdiction over a registered owner or operator of a vehicle.

(3) If the property to be forfeited in a forfeiture action is in whole or part a manufactured dwelling as defined in ORS 446.003 or a floating home as defined in ORS 830.700, the forfeiting agency must record a notice of seizure containing a description of the manufactured dwelling or floating home in all public offices maintaining records that impart constructive notice of matters relating to manufactured dwellings or floating homes. [2009 c.78 §27]

(Response to Complaint)

131A.235 Responsive pleading. Except as provided by ORS 131A.240, a person claiming an interest in property that is the subject of a forfeiture action must file a responsive pleading as provided in the Oregon Rules of Civil Procedure. If the person has not previously filed a claim under ORS 131A.165, a claim as described in ORS 131A.165 (3) must be attached to the responsive pleading. [2009 c.78 §28]

131A.240 Response by affidavit. (1) In lieu of filing a responsive pleading under ORS 131A.235, a financial institution holding an interest in the property may respond to a complaint with an affidavit establishing the financial institution's interest in the property.

(2) In lieu of filing a responsive pleading under ORS 131A.235, a person who has an interest in the property by reason of being the transferee or conveyor of an interest in the property under a contract for transfer or conveyance of an interest in real property as defined in ORS 93.905 may respond to a complaint in a forfeiture action by filing an affidavit establishing that:

(a) The person did not take the property with the intent to defeat forfeiture of the property;

(b) The person did not know and did not have reason to know that the property constituted proceeds or an instrumentality of prohibited conduct; and

(c) The claimant did not acquiesce in the criminal conduct as described in ORS 131A.255 (4).

(3) An affidavit under subsection (1) or (2) of this section must be filed within 30 days after service of the summons and complaint. The failure to file the affidavit or other responsive pleading under ORS 131A.235 within the time allowed constitutes a default.

(4) A forfeiting agency may file objections to any or all of the assertions made in an affidavit filed under subsection (1) or (2) of this section. The objections must be filed within 20 days after the filing of an affidavit under subsection (1) or (2) of this section. The person filing the affidavit may respond to the objections by filing a supplemental affidavit limited to the matters stated in the affidavit of the forfeiting agency. The responding affidavit must be filed not later than five days after the forfeiting agency files objections.

(5) If a forfeiting agency does not file objections within the time allowed by subsection (4) of this section, the interest of the person filing the affidavit is conclusively established for all purposes under this chapter. [2009 c.78 §29]

131A.245 Hearing on objections to affidavit. (1) If a forfeiting agency files objections under ORS 131A.240, the court shall determine from the affidavits whether there is a genuine issue of material fact with respect to the assertions of the financial institution, transferor, conveyor or successor in interest.

(2) If the court determines that there is no genuine issue of material fact as to the truth of the assertions in an affidavit filed under ORS 131A.240 (2):

(a) The interest of the financial institution, transferor, conveyor or successor in interest shall be conclusively established for all purposes under this chapter;

(b) A transferor, conveyor or successor in interest shall be considered a financial institution for all purposes under this chapter; and

(c) The court shall order the forfeiting agency to pay the costs and disbursements, as described in ORCP 68 A, and the attorney fees of the prevailing financial institution, transferor, conveyor or successor in interest.

(3) If the court determines that there is a genuine issue of material fact as to the truth of the assertions in an affidavit filed under ORS 131A.240, the financial institution, transferor, conveyor or successor in interest shall, within 15 days, file a responsive pleading as provided by ORS 131A.235. The court may order the financial institution, transferor, conveyor or successor in interest to pay the attorney fees of the forfeiting agency that were incurred in contesting the affidavit of the financial institution, transferor, conveyor or successor in interest if the court determines that the affidavit of the financial institution, transferor, conveyor or successor in interest was frivolous. [2009 c.78 §30]

131A.250 Foreclosure of security interests, liens and vendor's interests. (1) If a responsive pleading or affidavit is filed under ORS 131A.235 or 131A.240, the court shall foreclose all security interests, liens and vendor's interests in the property, including contracts for the transfer or convey-

ance of the property, for which the court determines that there is a legal or equitable basis for foreclosure.

(2) Except for deficiencies resulting from disabling a hidden compartment in a motor vehicle with a hidden compartment, foreclosure of a security interest, lien or vendor's interest under this section does not prevent a claimant from obtaining any deficiency to which the claimant would otherwise be entitled under the law. [2009 c.78 §31; 2009 c.874 §12]

(Standards of Proof and Defenses)

131A.255 Standards of proof in forfeiture action. (1) In all forfeiture actions, the forfeiting agency must prove that a person has been convicted of a crime that constitutes prohibited conduct, and that the property to be forfeited is:

(a) Proceeds of the crime for which the person has been convicted;

(b) An instrumentality of the crime for which the person has been convicted;

(c) Proceeds of one or more other crimes similar to the crime for which the person was convicted; or

(d) An instrumentality of one or more other crimes similar to the crime for which the person was convicted.

(2) A forfeiting agency may seek forfeiture of the property of a claimant who has been convicted of a crime that constitutes prohibited conduct if the property to be forfeited meets the requirements of subsection (1) of this section. A forfeiting agency may seek forfeiture of the property of a claimant who has not been convicted of a crime if the forfeiting agency proves that:

(a) Another person has been convicted of a crime that constitutes prohibited conduct;

(b) The property to be forfeited meets the requirements of subsection (1) of this section; and

(c) The claimant:

(A) Took the property with the intent to defeat forfeiture of the property;

(B) Knew or should have known that the property was proceeds of prohibited conduct; or

(C) Acquiesced in the prohibited conduct.

(3) Except as provided in subsection (5) of this section, if the property to be forfeited in a forfeiture action is personal property, the forfeiting agency must prove the elements specified in subsection (2) of this section by a preponderance of the evidence. If the property to be forfeited in a forfeiture action is real property, the forfeiting agency must prove the elements specified in subsection (2) of this section by clear and convincing evidence.

(4) For the purposes of subsection (2)(c) of this section, a claimant shall be considered to have acquiesced in prohibited conduct if the claimant knew of the prohibited conduct and failed to take reasonable action under the circumstances to terminate the prohibited conduct or prevent use of the seized property to facilitate the prohibited conduct.

(5) If the forfeiting agency establishes in a forfeiture action that cash, weapons or negotiable instruments were found in close proximity to controlled substances or to instrumentalities of prohibited conduct, the burden is on any person claiming the cash, weapons or negotiable instruments to prove by a preponderance of the evidence that the cash, weapons or negotiable instruments are not proceeds of prohibited conduct or an instrumentality of prohibited conduct. [2009 c.78 §32]

131A.260 Affirmative defenses in forfeiture action. (1) A claimant may plead as an affirmative defense that the property was seized in violation of ORS 131A.025.

(2) In any forfeiture action brought against real property claimed to be an instrumentality of prohibited conduct relating to controlled substances, a claimant may plead as an affirmative defense that the controlled substance was solely for personal use.

(3) If, by a preponderance of the evidence, the claimant proves a defense under this section by a preponderance of the evidence, the court shall enter judgment for the claimant. [2009 c.78 §33]

(Stays and Consolidation of Actions)

131A.265 Stays. (1) The court may stay a forfeiture action upon motion of a party and good cause shown. Good cause may include a reasonable fear on the part of a claimant that the claimant could be prosecuted for conduct arising out of the same factual situation that gave rise to the seizure of property. Good cause for a motion made by forfeiture counsel may include the need for additional time to commence or complete a criminal proceeding related to the forfeiture action.

(2) The court may stay a forfeiture action upon the filing of criminal charges that are related to the prohibited conduct that is the basis for the action. The stay may be granted upon the motion of forfeiture counsel, the motion of the district attorney in the related criminal proceeding, or the motion of the defendant in the related criminal proceeding. A stay granted under this section remains in effect until the final resolution of the related

criminal proceeding. A motion for a stay by the defendant in the related criminal proceeding constitutes a waiver of double jeopardy by the defendant as to the forfeiture action and any related criminal proceeding.

(3) A forfeiture action that has been stayed under this section may be consolidated for trial or other resolution with any related criminal proceeding as provided in ORS 131A.270.

(4) Any party may file a motion with the court at any time to lift a stay granted under this section if good cause no longer exists for the stay. [2009 c.78 §34]

131A.270 Consolidation of actions. (1) A forfeiture action may be consolidated with any other action that relates to the same property or parties on motion by any party in the forfeiture action.

(2) Upon motion by the state or other public body, or any criminal defendant who is also a claimant, a forfeiture action under this section may be consolidated for trial or other resolution with any related criminal proceeding. Trial or other resolution of the forfeiture action shall immediately follow the resolution of the related criminal proceeding, shall be part of the other proceeding and shall be heard by the same trier of fact. Any objection by the defendant to the consolidation, or any motion by the defendant to sever the related criminal case from the forfeiture action, constitutes a waiver of double jeopardy as to the related criminal action and the forfeiture action. [2009 c.78 §35]

(Special Motion for Release of Property)

131A.275 Special motion for release of property. (1) Any claimant who is alleged to have engaged in prohibited conduct, and who has filed a responsive pleading or affidavit in the manner required by ORS 131A.235 or 131A.240, may file a special motion for the release of all or part of the property subject to the forfeiture action if a criminal action alleging the commission of a crime, as described in ORS 161.515, is not brought against any owner of the property within 90 days after the property is seized. The court shall grant the motion except upon good cause shown by the forfeiting agency. The release of the property does not affect the ability of the forfeiting agency to continue the action for the purpose of seeking forfeiture of the released property.

(2) A motion under this section may not be made for the release of any property that is held as evidence or for protective purposes. [2009 c.78 §36]

(Judgment)

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

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

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

(4) A forfeiting agency may apply to any circuit court judge for a writ of assistance directing the sheriff of the county to assist the forfeiting agency in seizing property identified in a judgment forfeiting property. [2009 c.78 §37; 2011 c.504 §4]

131A.305 Judgment forfeiting property; judgment for forfeiting agency. (1) If a judgment forfeiting property is entered, and the judgment finds against all claimants who have filed a responsive pleading or affidavit under ORS 131A.235 or 131A.240, title to the forfeited property passes to the forfeiting agency free of any interest or encumbrance in favor of a person who has been given notice of the proceedings.

(2) If the court has determined that the property should be forfeited and has not foreclosed the interests of any party in the property, the seizing agency shall pay all costs and expenses relating to towing and storage of the property and shall cause to be discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to the property since the seizure, and the court shall enter a judgment forfeiting the property to the forfeiting agency, subject to the interests of any claimants for whom judgment was entered. If the property is a motor vehicle with a hidden compartment, the interests of any claimants or financial institutions shall be reduced on a pro rata basis by the cost of disabling the hidden compartment.

(3) If a judgment forfeiting property is entered, all valid interests in the property that are not foreclosed or otherwise extinguished under the judgment remain in effect. [2009 c.78 §38; 2009 c.874 §13]

131A.310 Judgment for claimant. (1) Except as provided in subsection (2) of this section, if a judgment is entered for a claim-

ant in a proceeding under this chapter, the claimant's property or interest in the property shall be returned or conveyed immediately to the claimant. All security interests, liens and other interests applicable to the property shall remain in effect as though the property had never been seized. Upon the return of the property to the owner, the seizing agency shall pay all costs and expenses relating to towing and storage of the property, and shall cause to be discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to the property since the seizure. The court shall award costs, disbursements and attorney fees in the manner provided by ORCP 68 to the prevailing claimant, to be paid by the forfeiting agency. If the property is a motor vehicle with a hidden compartment, the seizing agency is not liable for any diminution in the value of the property as a result of disabling the compartment.

(2) If a judgment is entered for a claimant in a proceeding under this chapter, but the court has foreclosed one or more interests in the property under ORS 131A.250, the seizing agency shall pay all costs and expenses relating to towing and storage of the property, and shall cause to be discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to the property since the seizure. The judgment shall require that the property then be sold, pursuant to a sheriff's sale or other sale authorized by the court, within such time as may be prescribed by the court. The property shall be sold subject to any interests in the property that have not been foreclosed, including any liens or security interests of a claimant whose claim has been upheld or of a financial institution that has filed the affidavit described in ORS 131A.240 (1). The judgment shall require that the proceeds of the sale be applied as follows:

(a) The proceeds shall first be used to pay the costs of the sale.

(b) If the property is a motor vehicle with a hidden compartment, after making the payment required by paragraph (a) of this subsection, the proceeds shall be used to reimburse the seizing agency for the cost of disabling the hidden compartment.

(c) After payment of the costs of the sale and making any reimbursement required under paragraphs (a) and (b) of this subsection, the proceeds shall be applied to the satisfaction of the foreclosed liens, security interests and contracts in the order of their priority.

(d) After making the payments required under paragraphs (a) to (c) of this subsection, any remaining amounts shall be paid to the claimant. [2009 c.78 §39; 2009 c.874 §14]

131A.315 Default judgment. (1) The court shall enter a judgment finding that a person who claims an interest in property that is the subject of a forfeiture action is in default, and provide for the forfeiture of the claimant's interest without hearing, if:

(a) The person does not make a claim for the property under ORS 131A.165 or file a responsive pleading under ORS 131A.235; or

(b) The person files a responsive pleading under ORS 131A.235 but is thereafter found to be in default in the forfeiture action.

(2) A default judgment may be entered under this section only if the forfeiting agency files an affidavit with the court showing that there was probable cause for seizure of the property. [2009 c.78 §40]

DISPOSITION OF FORFEITED PROPERTY

131A.350 Disposition generally. Except as otherwise provided by intergovernmental agreement and this chapter, a forfeiting agency may:

(1) Sell, lease, lend or transfer forfeited property to any federal, state or local law enforcement agency or district attorney.

(2) Sell forfeited property by public or other commercially reasonable sale and pay from the proceeds the expenses of keeping and selling the property.

(3) Retain forfeited property.

(4) With written authorization from the district attorney for the county in which the property was seized, destroy any forfeited firearms or controlled substances. [2009 c.78 §41]

131A.355 Intergovernmental agreements. A forfeiting agency shall distribute forfeiture proceeds equitably. Distribution of forfeiture proceeds may be made pursuant to intergovernmental agreement under ORS chapter 190. An intergovernmental agreement providing for the distribution of forfeiture proceeds may not provide for a distribution that violates section 10, Article XV of the Oregon Constitution. [2009 c.78 §42]

131A.360 Distribution of forfeiture proceeds by local government. (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;

(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;

(f) Drug treatment and programs that support drug treatment; and

(g) 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. [2009 c.78 §43; 2009 c.874 §15; 2011 c.233 §1; 2011 c.335 §2]

131A.365 Distribution of forfeiture proceeds by state. (1) The provisions of this section apply only when the forfeiting agency is the state, and apply only to forfeiture proceeds arising out of prohibited conduct as defined by ORS 131A.005 (12)(a).

(2) 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. Any amount paid to or retained by the Department of Justice under this subsection shall be deposited in the Criminal Jus-

tice Revolving Account in the State Treasury. Any amount paid to or retained by the Oregon State Police under this subsection shall be deposited in the State Police Account.

(3) After payment of costs under subsection (2) of this section, the forfeiting agency shall:

(a) Deduct an amount equal to 10 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 three percent of the forfeiture proceeds, not to exceed $50,000 in a biennium, 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.

(4) If the forfeiting agency has entered into an intergovernmental agreement with another public body under ORS 131A.355, or has entered into an agreement with any other law enforcement agency of the state relating to distribution of forfeiture proceeds, after paying costs under subsection (2) of this section and making the deductions required by subsection (3) of this section, the forfeiting agency shall pay an equitable portion of the forfeiture proceeds to each agency participating in the seizure or forfeiture as provided by the agreement.

(5) After making all payments and deductions required by subsections (2), (3) and (4) of this section, the forfeiting agency shall distribute the remaining forfeiture proceeds as follows:

(a) If no law enforcement agency other than the Department of Justice participated in the seizure or forfeiture, the remaining forfeiture proceeds, and forfeiture proceeds received by the Department of Justice under subsection (4) of this section, shall be divided between the Criminal Justice Revolving Account and the Special Crime and Forfeiture Account according to the following schedule:

(A) One hundred percent of the first $200,000 accumulated shall be deposited in the Criminal Justice Revolving Account.

(B) Seventy-five percent of the next $200,000 shall be deposited in the Criminal Justice Revolving Account and the balance in the Special Crime and Forfeiture Account.

(C) Fifty percent of the next $200,000 shall be deposited in the Criminal Justice Revolving Account and the balance in the Special Crime and Forfeiture Account.

(D) Twenty-five percent of the next $200,000 shall be deposited in the Criminal Justice Revolving Account and the balance in the Special Crime and Forfeiture Account.

(E) One hundred percent of all additional sums shall be deposited in the Special Crime and Forfeiture Account.

(b) If no law enforcement agency other than the Department of State Police participated in the seizure or forfeiture, the remaining proceeds, and proceeds received by the Department of State Police under subsection (4) of this section, shall be divided between the State Police Account and the Special Crime and Forfeiture Account according to the following schedule:

(A) One hundred percent of the first $600,000 accumulated shall be deposited in the State Police Account.

(B) Seventy-five percent of the next $300,000 shall be deposited in the State Police Account and the balance in the Special Crime and Forfeiture Account.

(C) Fifty percent of the next $200,000 shall be deposited in the State Police Account and the balance in the Special Crime and Forfeiture Account.

(D) Twenty-five percent of the next $200,000 shall be deposited in the State Police Account and the balance in the Special Crime and Forfeiture Account.

(E) One hundred percent of all additional sums shall be deposited in the Special Crime and Forfeiture Account.

(6) Forfeiture proceeds distributed under subsection (5) of this section may be used 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; and

(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.

(7) A forfeiting agency shall sell as much property as may be needed to make the distributions required by this section. Distributions required under subsection (3) 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. [2009 c.78 §44; 2009 c.874 §16]

131A.370 Special Crime and Forfeiture Account. The Special Crime and Forfeiture Account is established in the General Fund of the State Treasury. The account shall consist of all forfeiture proceeds deposited in the account under ORS 131A.365. All moneys in the account are continuously appropriated to the Department of Justice and may be used only for the purposes specified in ORS 131A.365 (6). [2009 c.78 §45]

MISCELLANEOUS

131A.400 Prosecuting attorneys and forfeiture counsel. (1) Notwithstanding ORS 8.720 or any other provision of law, but subject to the provisions of ORS 180.060, a district attorney may act as forfeiture counsel in any forfeiture proceeding.

(2) In any forfeiture proceeding for which related criminal proceedings have been brought or could be brought, a prosecuting attorney or forfeiture counsel may participate in settlement negotiations initiated by the defendant or claimant or by the attorney representing the defendant or claimant. [2009 c.78 §46]

131A.405 Liability of seizing agencies, forfeiting agencies and forfeiture counsel. (1) Seizing agencies, forfeiting agencies and forfeiture counsel are not civilly or criminally liable for any acts in seizing or forfeiting property under the provisions of this chapter if there was reasonable suspicion that the property was subject to seizure or forfeiture. An order directing seizure issued under ORS 131A.060 shall constitute a finding of reasonable suspicion that the property was subject to forfeiture. The immunity provided by this section extends to all officers, employees and agents of seizing agencies, forfeiting agencies and forfeiture counsel.

(2) Nothing in this section affects any liability that may be imposed under the provisions of section 10 (14), Article XV of the Oregon Constitution. [2009 c.78 §47]

131A.410 Indemnification of officers, employees and agents; payment of civil penalties. (1) Unless the claim arises out of malfeasance in office or willful or wanton neglect of duty, a public body as defined in ORS 30.260 may defend, save harmless and indemnify any officer, employee or agent of the public body against whom a claim is made under section 10 (14), Article XV of the Oregon Constitution.

(2) Any amount recovered as a civil penalty in a claim made under section 10 (14), Article XV of the Oregon Constitution, shall be paid into the Criminal Injuries Compensation Account of the Department of Justice Crime Victims' Assistance Section to be used for the purposes set forth in ORS chapter 147. [2009 c.78 §48]

ASSET FORFEITURE OVERSIGHT ADVISORY COMMITTEE

131A.450 Record keeping requirements. (1) All forfeiting agencies shall maintain written documentation of each seizure for forfeiture made under the provisions of this chapter, sale of seized or forfeited property under this chapter, decision to retain property forfeited under the provisions of this chapter, transfer of property forfeited under this chapter and other dispositions of property seized for forfeiture or forfeited under the provisions of this chapter.

(2)(a) As soon as practicable following the seizure of property for civil forfeiture, forfeiture counsel shall file with the Asset Forfeiture Oversight Advisory Committee an electronic report that describes the property seized and the circumstances of the seizure.

(b) As soon as practicable following the entry of judgment under this chapter, forfeiture counsel shall file with the committee an electronic report describing the judgment and the manner in which any forfeited property and the proceeds from any sales of forfeited property were distributed.

(3) Law enforcement agencies shall supply to forfeiture counsel all information requested by forfeiture counsel that is necessary for the preparation of the electronic reports required by subsection (2) of this section.

(4) Public bodies that receive forfeiture proceeds under ORS 131A.360 (2) and 131A.365 (4) shall submit an electronic report to the committee for any year in which those proceeds are received. The report must describe how proceeds received by the public body have been or will be used. Reports shall be submitted each December 15 for the preceding fiscal year of the public body.

(5) The committee may require forfeiture counsel or a political subdivision to include in the electronic reports any additional information requested by the committee. The committee shall develop and make available electronic forms for the purposes of the reports described in this section. [2009 c.78 §49; 2011 c.504 §2]

131A.455 Asset Forfeiture Oversight Advisory Committee. (1) The Asset Forfeiture Oversight Advisory Committee is created. The committee consists of 10 members to be appointed as follows:

(a) The President of the Senate and the Speaker of the House of Representatives shall appoint four legislators to the committee. Two shall be Senators appointed by the President. Two shall be Representatives appointed by the Speaker.

(b) The Governor shall appoint three members to the committee.

(c) The Attorney General shall appoint three members to the committee.

(2) The term of a legislative member of the committee shall be two years. The term of all other members shall be four years. Members of the committee may be reappointed. If a vacancy occurs on the committee for any reason during the term of membership, the official who appointed the member to the vacant position shall appoint a new member to serve the remainder of the term. A member of the committee may be removed from the committee at any time by the official who appointed the member.

(3)(a) The members of the committee shall select from among themselves a chairperson and vice chairperson.

(b) The committee shall meet at such times and places as determined by the chairperson.

(4) Legislative members shall be entitled to payment of compensation and expense reimbursement under ORS 171.072, payable from funds appropriated to the Legislative Assembly.

(5) The committee shall:

(a) Prepare reports detailing the number and nature of forfeitures carried out under this chapter and ORS 131.550 to 131.600, including the disposition and use of the proceeds from the forfeitures. The reports shall be submitted on or before March 31 of each year to the Speaker of the House of Representatives, President of the Senate, Attorney General and Governor.

(b) In consultation with forfeiture counsel, review and, if necessary, modify the reports required from forfeiture counsel and public bodies to ensure that information necessary for oversight is being obtained and is gathered in an efficient and effective manner.

(c) Make any recommendations it deems necessary to increase the effectiveness, fairness and efficiency of forfeiture actions brought under this chapter and ORS 131.550 to 131.600.

(d) Make any recommendations for additional legislation governing forfeiture actions brought under this chapter and ORS 131.550 to 131.600.

(e) Conduct studies or other activities as necessary to accomplish the purposes of this subsection.

(6) The executive director of the Oregon Criminal Justice Commission shall provide the committee with staff, subject to funds available for that purpose.

(7) For purposes of this section, "forfeiture counsel" includes forfeiture counsel as defined in ORS 131.550. [2009 c.78 §50; 2009 c.506 §1]

131A.460 Asset Forfeiture Oversight Account. (1) The Asset Forfeiture Oversight Account is established in the State Treasury, separate and distinct from the General Fund.

(2) The following moneys shall be deposited into the State Treasury and credited to the Asset Forfeiture Oversight Account:

(a) Moneys received from a public body under the provisions of ORS 131A.360 and 131A.365; and

(b) Any other moneys appropriated to the Asset Forfeiture Oversight Account.

(3) The State Treasurer may invest and reinvest moneys in the Asset Forfeiture Oversight Account in the manner provided by law. Interest earned by the account shall be credited to the account.

(4) The moneys in the Asset Forfeiture Oversight Account are continuously appropriated to the Oregon Criminal Justice Commission to be used for the expenses of the Asset Forfeiture Oversight Advisory Committee. [2009 c.78 §51; 2011 c.504 §5]