

House Bill 3457

Sponsored by Representative OLSON; Representatives AVAKIAN, BARKER, BERGER, BEYER, BOONE, BOQUIST, BROWN, BURLEY, CAMERON, ESQUIVEL, FARR, FLORES, GARRARD, HUNT, KITTS, KOMP, KRIEGER, KROPF, LIM, MINNIS, MORGAN, ROBLAN, SCHAUFLEER, SCOTT, SUMNER, THATCHER, WHISNANT, WIRTH, Senators BURDICK, FERRIOLI

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**.

Provides that forfeiting agency in civil forfeiture proceeding must prove by clear and convincing evidence that real property constitutes proceeds of prohibited conduct or instrumentality of prohibited conduct.

Provides that default judgment may be entered against fugitive in criminal and civil forfeitures.

Modifies distribution of proceeds from civil forfeitures.

Eliminates sunset on criminal forfeiture laws.

Declares emergency, effective July 31, 2005.

A BILL FOR AN ACT

1
2 Relating to forfeiture; creating new provisions; amending ORS 133.643, 137.138, 164.864, 164.866,
3 166.282, 166.370, 166.660, 167.350, 475A.075, 475A.080, 475A.120, 475A.130 and 475A.160 and sec-
4 tion 12, chapter 666, Oregon Laws 2001, and sections 35, 36 and 38, chapter 780, Oregon Laws
5 2001; repealing ORS 163.696, 164.879, 165.586, 166.279 and 167.379 and sections 57 and 58, chap-
6 ter 666, Oregon Laws 2001, section 11, chapter 834, Oregon Laws 2001, and section 14c, chapter
7 926, Oregon Laws 2001; and declaring an emergency.

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

STANDARD OF PROOF FOR CIVIL FORFEITURE OF REAL PROPERTY

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13 **SECTION 1.** ORS 475A.080, as amended by section 9a, chapter 780, Oregon Laws 2001, is
14 amended to read:

15 475A.080. (1) In all actions brought for forfeiture of **personal property**, the burden of persua-
16 sion shall lie upon the claimant, provided that probable cause to believe that the property is subject
17 to forfeiture shall first be shown by the forfeiting agency.

18 (2) **In all actions brought for forfeiture of real property, the forfeiting agency has the**
19 **burden of persuasion. The forfeiting agency must prove by clear and convincing evidence that**
20 **the property constitutes proceeds of prohibited conduct or an instrumentality of prohibited**
21 **conduct.**

DEFAULT JUDGMENT AGAINST FUGITIVES

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25 **SECTION 2.** Section 12, chapter 666, Oregon Laws 2001, is amended to read:

26 **Sec. 12.** (1) If a district attorney decides to proceed with a criminal forfeiture, the district at-
27 torney must present the criminal forfeiture to the grand jury for indictment. The indictment must

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 allege facts sufficient to establish that the property is subject to criminal forfeiture and must comply
 2 with ORS 132.510, 132.540, 132.550, 132.557, 132.560 and 132.580.

3 (2) If the grand jury returns an indictment for criminal forfeiture, the defendant may admit or
 4 deny that the property is subject to criminal forfeiture. If the defendant fails to admit or deny that
 5 the property is subject to forfeiture, the court shall enter a denial on behalf of the defendant.

6 (3) When the underlying criminal conduct is a Class A misdemeanor, a city or county attorney
 7 may prosecute a criminal forfeiture by filing an information in the municipal or justice court.

8 (4) A criminal forfeiture proceeding and the underlying criminal case must be tried in the same
 9 proceeding.

10 (5) The criminal procedure laws of this state apply to criminal forfeiture proceedings.

11 (6) The court shall enter a judgment of criminal forfeiture if the forfeiture counsel proves be-
 12 yond a reasonable doubt that the property for which forfeiture is sought is an instrumentality or the
 13 proceeds of the crime of conviction or past prohibited conduct that is similar to the crime of con-
 14 viction.

15 **(7) Forfeiture counsel may move the court at any time for an order finding that the de-**
 16 **fendant is a fugitive and in default. The court shall enter an order finding the defendant in**
 17 **default under this subsection and enter a judgment of criminal forfeiture if:**

18 (a) **The defendant has failed to make a required appearance in the criminal proceeding;**
 19 **and**

20 (b) **The court finds from affidavits filed by the forfeiture counsel that the forfeiture**
 21 **counsel or other public bodies as defined in ORS 174.109 have made a good faith effort to lo-**
 22 **cate the defendant and the defendant cannot be found.**

23 [(7)] (8) No later than 21 days after the entry of a judgment of criminal forfeiture under this
 24 section, the forfeiture counsel shall notify by mail all persons who filed claims under section 8,
 25 **chapter 666, Oregon Laws 2001, [of this 2001 Act]** or affidavits under section 11, **chapter 666,**
 26 **Oregon Laws 2001, [of this 2001 Act]** of the judgment of criminal forfeiture. The notice must inform
 27 the person of the requirements of subsection [(8)] (9) of this section.

28 [(8)] (9) If a person who receives notice under subsection [(7)] (8) of this section wishes to assert
 29 the person's interest in the property but was not eligible to file an affidavit under section 11,
 30 **chapter 666, Oregon Laws 2001 [of this 2001 Act]**, the person must file an affidavit with the trial
 31 court, and must serve the forfeiture counsel with a copy of the affidavit, no later than 21 days after
 32 the date the notice required by subsection [(7)] (8) of this section was mailed. The person must al-
 33 lege facts in an affidavit filed under this subsection that if true would prove that the person took
 34 the property or the interest that the person holds in the property:

35 (a)(A) Before it was seized for criminal forfeiture; and

36 (B) In good faith and without intent to defeat the interest of any seizing agency; or

37 (b) As a bona fide purchaser for value without acquiescing in the prohibited conduct.

38 [(9)(a)] (10)(a) If an affidavit is timely filed under subsection [(8)] (9) of this section and the
 39 forfeiture counsel:

40 (A) Does not contest the affidavit, the forfeiture counsel shall submit a form of judgment to the
 41 court for entry under section 14, **chapter 666, Oregon Laws 2001 [of this 2001 Act]**.

42 (B) Does contest the affidavit, the forfeiture counsel shall request a hearing with the trial court
 43 no later than 21 days after receiving the affidavit.

44 (b) If no affidavit is filed under subsection [(8)] (9) of this section but the seizing agency filed
 45 an affidavit under section 11 (4), **chapter 666, Oregon Laws 2001 [of this 2001 Act]**, the forfeiture

1 counsel shall request a hearing with the trial court no later than 21 days after the last date for
 2 receiving affidavits under subsection [(8)] (9) of this section.

3 [(10)(a)] (11)(a) A hearing pursuant to subsection [(9)] (10) of this section is an ancillary pro-
 4 ceeding and the Oregon Rules of Civil Procedure apply. At the hearing:

5 (A) Forfeiture counsel has the burden of proving by a preponderance of the evidence that the
 6 person claiming an interest in the property:

- 7 (i) Took the property with the intent to defeat the interest of a seizing agency; or
- 8 (ii) Is not a bona fide purchaser for value or acquiesced in the prohibited conduct.

9 (B) Forfeiture counsel may present evidence and witnesses and cross-examine witnesses who
 10 appear at the hearing.

11 (C) The person claiming an interest in the property may testify, present evidence and witnesses
 12 and cross-examine witnesses who appear at the hearing.

13 (b) In addition to testimony and evidence presented at the hearing, the court shall consider
 14 relevant portions of the record of the criminal case that resulted in the judgment of criminal
 15 forfeiture.

16 (c) The court shall amend the judgment of criminal forfeiture in accordance with its determi-
 17 nation if, after the hearing, the court determines that the claimant:

18 (A) Did take the property before it was seized for criminal forfeiture and in good faith and
 19 without intent to defeat the interest of the seizing agency; or

20 (B) Is a bona fide purchaser for value of the right, title or interest in the property and did not
 21 acquiesce in the prohibited conduct.

22 (d) Notwithstanding ORS 19.255 (1), a person may file a notice of appeal within 30 days after
 23 entry in the register of an order disposing of the matters at issue in the ancillary proceeding. An
 24 appeal under this paragraph is governed by the provisions of ORS chapter 19 relating to appeals in
 25 civil actions.

26 [(11)] (12) When a court enters a judgment of criminal forfeiture under this section, the juris-
 27 diction of the court continues for purposes of subsection [(10)] (11) of this section and the property
 28 continues to be subject to the court's jurisdiction.

29 **SECTION 3.** ORS 475A.075, as amended by section 8a, chapter 780, Oregon Laws 2001, is
 30 amended to read:

31 475A.075. A civil action in rem may be brought as provided in this section in any case in which
 32 forfeiture is sought. A civil action in rem must be brought if the property is real property, the
 33 property is in whole or part a manufactured dwelling as defined in ORS 446.003, the property is a
 34 floating home as defined in ORS 830.700 or [if] the property is subject to an interest in favor of any
 35 person known to have an interest, other than a person who engaged in prohibited conduct.

36 (1) If a forfeiting agency has commenced proceedings under ORS 475A.055, then an action shall
 37 be commenced by forfeiture counsel, within 15 days of receipt of a claim. If no proceedings have
 38 been commenced under ORS 475A.055, then the action shall be commenced by forfeiture counsel
 39 within 30 days of seizure. The property may be released by forfeiture counsel as provided in ORS
 40 475A.045 (2).

41 (2) An action is commenced by filing a complaint. Responses to a complaint shall conform to the
 42 following procedure:

43 (a) A person claiming an interest in the property shall respond as provided in the Oregon Rules
 44 of Civil Procedure and, if a claim has not previously been filed, by filing a claim in the form set forth
 45 in ORS 475A.055 (3) with the court and posting a bond with the court. The bond shall be a cash bond

1 in an amount equal to 10 percent of the value of the interest claimed by the person in the property.
 2 Upon good cause shown by motion and affidavit filed with the initial appearance, the court may
 3 waive or reduce the bond. Failure to file an appearance, claim and bond shall constitute a default.
 4 The bond shall be returned to the claimant upon the entry of a final determination on the claim.

5 (b) Notwithstanding the provisions of paragraph (a) of this subsection, a financial institution
 6 holding an interest in the seized property shall respond to a complaint with an affidavit establishing
 7 that the financial institution's interest in the property was acquired:

- 8 (A) In the regular course of business as a financial institution;
- 9 (B) For valuable consideration;
- 10 (C) Without knowledge of the prohibited conduct;
- 11 (D) In good faith and without intent to defeat the interest of any potential forfeiting agency; and
- 12 (E) With respect to personal property, prior to the seizure of the property, or with respect to
 13 real property, recorded prior to the recording of notice of the seizure of the real property in the
 14 mortgage records of the county in which the real property is located. Failure to file an affidavit
 15 shall constitute a default. The affidavit shall be filed within 30 days from the date of service.

16 (c) Notwithstanding the provisions of paragraph (a) of this subsection, any person, other than
 17 a financial institution, who transfers or conveys an interest in real property pursuant to a contract
 18 for transfer or conveyance of an interest in real property as defined in ORS 93.905 and who retains
 19 an interest in the real property, or any successor in interest, may respond to a complaint with an
 20 affidavit establishing that the person:

- 21 (A) Received the interest in return for valuable consideration or by way of devise or intestate
 22 succession;
- 23 (B) Had no knowledge at the time of transfer or conveyance of the prohibited conduct;
- 24 (C) Acted in good faith and without intent to defeat the interest of any potential forfeiting
 25 agency;
- 26 (D) Recorded the interest in the mortgage records of the county in which the real property is
 27 located prior to the recording of any notice of intent to seize or notice of seizure; and
- 28 (E) Continued to hold the interest without acquiescing in the prohibited conduct.

29 (d) For the purposes of paragraph (c) of this subsection, a person shall be considered to have
 30 acquiesced in prohibited conduct if the person knew of the prohibited conduct and knowingly failed
 31 to take reasonable action under the circumstances to terminate or avoid use of the property in the
 32 course of prohibited conduct. For purposes of this section, "reasonable action under the circum-
 33 stances" includes, but is not limited to:

- 34 (A) Reporting the prohibited conduct to a police agency;
- 35 (B) Commencing action that will assert the rights of the affiant as to the property interest;
- 36 (C) Terminating a rental agreement; or
- 37 (D) Seeking an abatement order under the provisions of ORS 105.505 to 105.520, or under the
 38 provisions of ORS 105.550 to 105.600, or under any ordinance or regulation allowing abatement of
 39 nuisances.

40 (e) The affidavit permitted by paragraph (c) of this subsection shall be filed within 30 days from
 41 the date of service of the summons and complaint. Failure to file an affidavit or to respond as set
 42 forth in paragraph (a) of this subsection shall constitute a default.

43 (f) In response to an affidavit filed pursuant to paragraph (c) of this subsection, the forfeiting
 44 agency may controvert any or all of the assertions made in the affidavit. The affidavit of the for-
 45 feiting agency shall be filed within 20 days of the filing of the affidavit filed under paragraph (c) of

1 this subsection. The transferor, conveyor or successor in interest may respond, within five days of
2 the filing of the affidavit of the forfeiting agency, with a supplemental affidavit limited to the mat-
3 ters stated in the affidavit of the forfeiting agency. If the forfeiting agency does not file an affidavit
4 within the time allowed, the transferor, conveyor or successor in interest shall be considered a fi-
5 nancial institution for all purposes under this chapter.

6 (g)(A) If the forfeiting agency files an affidavit under paragraph (f) of this subsection, the court
7 shall determine from the affidavits whether there is a genuine issue of material fact with respect to
8 the assertions of the transferor, conveyor or successor in interest.

9 (B) If the court determines that there is no genuine issue of material fact as to the truth of the
10 assertions in the affidavit filed under paragraph (f) of this subsection, the transferor, conveyor or
11 successor in interest shall be considered a financial institution for all purposes under this chapter.
12 The court shall order the forfeiting agency to pay the costs and disbursements, including attorney
13 fees, of the prevailing transferor, conveyor or successor in interest if the forfeiting agency does not
14 prevail.

15 (C) If the court determines that there is a genuine issue of material fact as to the truth of the
16 assertions in the affidavit filed pursuant to paragraph (f) of this subsection, the transferor, conveyor
17 or successor in interest shall, within 15 days, respond as provided in paragraph (a) of this sub-
18 section. The court may order the transferor, conveyor or successor in interest to pay the attorney
19 fees of the forfeiting agency that were incurred in contesting the affidavit of the transferor, con-
20 veyor or successor in interest if the court determines that the affidavit of the transferor, conveyor
21 or successor in interest was frivolous.

22 (3) All persons known to have an interest in the property, including any claimant, shall be
23 served with a true copy of the inventory of the property prepared pursuant to ORS 475A.035 and
24 475A.055, the summons and the complaint as provided in ORCP 5 and 7 D. Notice of the action shall
25 be published as provided in ORCP 7 D(6)(b) to (d) unless notice has previously been published in
26 accordance with ORS 475A.055 (1). In the event that a forfeiture involves a vehicle, and the notices
27 required by this statute have been given, and substitute service on the claimant is required because
28 personal service cannot be reasonably accomplished, service as authorized by ORCP 7 D(4) shall be
29 sufficient to establish jurisdiction over a registered owner or operator of a vehicle. If the property
30 is in whole or part a manufactured dwelling as defined in ORS 446.003 or a floating home as defined
31 in ORS 830.700, the forfeiting agency shall, in addition to serving all persons known to have an in-
32 terest in the property, record a notice of seizure containing a description of the manufactured
33 dwelling or floating home in all public offices maintaining records that impart constructive notice
34 of matters relating to manufactured dwellings or floating homes.

35 **(4) In addition to any other grounds for entry of a default judgment against a claimant,**
36 **a forfeiting agency may move the court at any time after a response is made as provided in**
37 **subsection (2)(a) of this section for an order finding that the claimant is a fugitive and in**
38 **default. The court shall enter an order finding the claimant in default under this subsection**
39 **and enter judgment against the claimant if:**

40 **(a) The claimant is a defendant in a criminal proceeding on which the forfeiture is based;**

41 **(b) The claimant has failed to make a required appearance in the criminal proceeding;**
42 **and**

43 **(c) The court finds from affidavits filed by the forfeiting agency that the forfeiting agency**
44 **or other public bodies as defined in ORS 174.109 have made a good faith effort to locate the**
45 **claimant and the claimant cannot be found.**

1 [(4)] (5) All judicial proceedings under this chapter shall be governed by the Oregon Rules of
 2 Civil Procedure to the extent that they do not conflict with specific provisions of this chapter.

3 [(5)(a)] (6)(a) The filing of criminal charges related to any civil proceeding for forfeiture may,
 4 upon motion of forfeiture counsel or the district attorney or upon motion on behalf of defendant in
 5 a related criminal proceeding, stay the civil forfeiture proceeding until the trial, plea or dismissal
 6 of the related criminal proceeding. A motion for stay on behalf of the defendant in a related criminal
 7 proceeding shall constitute a waiver of double jeopardy by the defendant as to the civil forfeiture
 8 proceeding and any related criminal proceeding. Pursuant to subsection [(6)] (7) of this section, a
 9 civil forfeiture proceeding stayed under this paragraph may be consolidated for trial or other re-
 10 solution with any related criminal proceeding.

11 (b) The court may stay the civil forfeiture proceeding upon motion of a party and good cause
 12 shown. Good cause may include a reasonable fear on the part of a claimant that the claimant could
 13 be prosecuted for conduct arising out of the same factual situation which gave rise to the seizure
 14 of property. Pursuant to subsection [(6)] (7) of this section, a civil forfeiture proceeding stayed under
 15 this paragraph may be consolidated for trial or other resolution with any related criminal proceed-
 16 ing.

17 [(6)] (7) Notwithstanding any stay entered pursuant to subsection [(5)(a)] (6)(a) or (b) of this
 18 section, an action pursuant to this section may be consolidated with any other action pursuant to
 19 this section relating to the same property or parties on motion by any party in any related action.
 20 Upon motion by the state or a political subdivision of the state, or any criminal defendant who is
 21 also a claimant, a civil forfeiture proceeding under this section may be consolidated for trial or
 22 other resolution with any related criminal proceeding. Trial or other resolution of the civil forfeiture
 23 action shall immediately follow the related criminal trial or other resolution, shall be part of the
 24 same proceeding and shall be heard by the same trier of fact. Any objection by the defendant to
 25 the consolidation or any motion by the defendant to sever the related criminal case from the civil
 26 proceeding for forfeiture shall constitute a waiver of double jeopardy as to any related criminal
 27 action and the civil forfeiture proceeding.

28 [(7)] (8) The action shall be commenced and tried:

29 (a) In the case of real property, in the circuit court in a county in which the property is situ-
 30 ated; or

31 (b) In all other cases, in the circuit court of the county in which the property was seized or the
 32 county in which any part of the prohibited conduct took place.

33 **SECTION 4.** ORS 475A.120, as amended by section 14a, chapter 780, Oregon Laws 2001, is
 34 amended to read:

35 475A.120. [(1) *After the forfeiture counsel distributes property under ORS 475A.110, the forfeiture*
 36 *counsel shall dispose of and distribute property when the forfeiting agency is not the state as*
 37 *follows:]*

38 [(a) *Costs shall first be paid from the property or, if the property is sold, from its proceeds.*
 39 *“Costs” as used in this section includes costs, disbursements and attorney fees as defined in ORCP 68*
 40 *A and those special expenses, including hourly investigative costs and the provision of lawful currency,*
 41 *incurred by any seizing or forfeiting agency in investigating and prosecuting a specific case. “Costs”*
 42 *as used in this section also includes any expenses of servicing or maintaining the seized property under*
 43 *the provisions of ORS 475A.045 (3). These costs shall not include the expenditures made in connection*
 44 *with the ordinary maintenance and operation of the seizing or forfeiting agency.]*

45 [(b) *The balance of the property shall be credited to the general fund of the political jurisdiction*

1 *that operates the forfeiting agency.]*

2 *[(c) Forfeiture proceeds received by a political subdivision, including amounts received under an*
3 *intergovernmental agreement pursuant to the provisions of section 38 (3), chapter 780, Oregon Laws*
4 *2001, shall be used for enforcement of laws relating to the unlawful delivery, distribution, manufacture*
5 *or possession of controlled substances, including but not limited to use of the proceeds for controlled*
6 *substance crime prevention, drug intervention, drug treatment and drug education programs. Except*
7 *as specifically provided by this paragraph, forfeiture proceeds under this paragraph may not be used*
8 *for payment of the wages of peace officers, as defined in ORS 161.015, the purchase, construction, ex-*
9 *pansion, remodeling or maintenance of buildings, or the funding of all or part of any position that was*
10 *in existence before August 23, 1993, and that was previously funded out of revenues other than forfei-*
11 *ture proceeds. Forfeiture proceeds may be used for the following:]*

12 *[(A) Payment of that portion of the wages of personnel other than peace officers who administer*
13 *the forfeiture laws.]*

14 *[(B) Payment of the wages of peace officers performing supervisory duties for interagency drug*
15 *enforcement task forces created by intergovernmental agreement.]*

16 *[(C) Payments to counties in the manner specified in paragraph (d) of this subsection.]*

17 *[(D) Payment of overtime wages of peace officers arising out of drug enforcement duties.]*

18 *[(d) If the political subdivision is not a county, the political subdivision shall enter into an agree-*
19 *ment with the county pursuant to ORS chapter 190 to provide a portion for prosecution from these*
20 *funds. Any intergovernmental agreements or ordinances providing for the distribution of forfeiture*
21 *proceeds in effect on July 24, 1989, shall remain valid unless changed by the parties.]*

22 *[(e) Except as otherwise provided by intergovernmental agreement, the forfeiting agency may:]*

23 *[(A) Sell, lease, lend or transfer the property or proceeds to any federal, state or local law*
24 *enforcement agency or district attorney.]*

25 *[(B) Sell the forfeited property by public or other commercially reasonable sale and pay from the*
26 *proceeds the expenses of keeping and selling the property.]*

27 *[(C) Retain the property.]*

28 *[(D) With written authorization from the district attorney for the forfeiting agency's jurisdiction,*
29 *destroy any firearms or controlled substances.]*

30 *[(f) Notwithstanding paragraphs (c) and (d) of this subsection, before any distribution of funds*
31 *under paragraph (d) of this subsection or use of funds in the manner specified by paragraph (c) of this*
32 *subsection, the political subdivision shall deduct an amount equal to five percent of the proceeds cred-*
33 *ited to the general fund of the political subdivision under paragraph (b) of this subsection and deposit*
34 *that amount in the Illegal Drug Cleanup Fund established by ORS 475.495 for the purposes specified*
35 *in ORS 475.495 (5). The political subdivision shall sell as much property as may be needed to meet the*
36 *requirements of this paragraph. Deposits to the Illegal Drug Cleanup Fund under this paragraph shall*
37 *be made once every three months and are due within 20 days of the end of each quarter. No interest*
38 *shall accrue on amounts that are paid within the period specified by this paragraph.]*

39 *[(g) Notwithstanding paragraphs (c) and (d) of this subsection, before any distribution of funds*
40 *under paragraph (d) of this subsection or use of funds in the manner specified by paragraph (c) of this*
41 *subsection, the political subdivision shall deduct an amount equal to 2.5 percent of the proceeds credited*
42 *to the general fund of the political subdivision under paragraph (b) of this subsection and deposit that*
43 *amount in the Asset Forfeiture Oversight Account established by ORS 475A.160. The political subdi-*
44 *vision shall sell as much property as may be needed to meet the requirements of this paragraph. De-*
45 *posits to the Asset Forfeiture Oversight Account under this paragraph shall be made once every three*

1 months and are due within 20 days of the end of each quarter. No interest shall accrue on amounts that
 2 are paid within the period specified by this paragraph.]

3 *[(h) Notwithstanding paragraphs (c) and (d) of this subsection, growing equipment and laboratory*
 4 *equipment seized by a forfeiting agency that was used, or intended for use, in manufacturing of con-*
 5 *trolled substances, may be donated to a public school, community college or institution of higher edu-*
 6 *cation.]*

7 **(1) The provisions of this section apply to a forfeiting agency other than the state.**

8 **(2) Except as otherwise provided by intergovernmental agreement and this section, a**
 9 **forfeiting agency may:**

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

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

14 **(c) Retain forfeited property.**

15 **(d) With written authorization from the district attorney for the county in which the**
 16 **property was seized, destroy any forfeited firearms or controlled substances.**

17 **(3) If the forfeiting agency is a political subdivision other than a county, the political**
 18 **subdivision shall enter into an agreement with the county pursuant to ORS chapter 190 to**
 19 **provide a portion of the forfeiture proceeds to the county. Any intergovernmental agree-**
 20 **ments or ordinances providing for the distribution of forfeiture proceeds in effect on July 24,**
 21 **1989, shall remain valid unless changed by the parties.**

22 **(4) A forfeiting agency shall distribute forfeiture proceeds as follows:**

23 **(a) Costs shall be paid first, including costs, disbursements and attorney fees as defined**
 24 **in ORCP 68 A and special expenses, including hourly investigative costs and the provision of**
 25 **lawful currency, incurred by any seizing or forfeiting agency in investigating and prosecuting**
 26 **a specific case. The forfeiting agency may pay expenses of servicing or maintaining the seized**
 27 **property under ORS 475A.045 (3) under the provisions of this paragraph. The forfeiting**
 28 **agency may not pay expenditures made in connection with the ordinary maintenance and**
 29 **operation of the seizing or forfeiting agency under the provisions of this paragraph.**

30 **(b) After payment of costs under paragraph (a) of this subsection, the forfeiting agency**
 31 **shall:**

32 **(A) Deduct an amount equal to five percent of the proceeds and deposit that amount in**
 33 **the Illegal Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS**
 34 **475.495 (5);**

35 **(B) Deduct an amount equal to 2.5 percent of the proceeds and deposit that amount in**
 36 **the Asset Forfeiture Oversight Account established by ORS 475A.160 for the purposes speci-**
 37 **fied in ORS 475A.155;**

38 **(C) Deduct an amount equal to 20 percent of the proceeds and deposit that amount in the**
 39 **Judicial Department Revolving Account established by ORS 1.007 for disbursement to drug**
 40 **court programs as described in ORS 3.450; and**

41 **(D) Deduct an amount equal to 10 percent of the proceeds and deposit that amount in the**
 42 **State Commission on Children and Families Account established by ORS 417.733 for dis-**
 43 **bursement to relief nurseries as described in ORS 417.788.**

44 **(c) If the forfeiting agency has entered into an agreement with a county under subsection**
 45 **(3) of this section, after paying costs under paragraph (a) of this subsection and making the**

1 **deductions required by paragraph (b) of this subsection, the forfeiting agency shall pay the**
 2 **county the amounts required by the agreement.**

3 **(d) After making all payments and deductions required by paragraphs (a) to (c) of this**
 4 **subsection, the forfeiting agency may use forfeiture proceeds, including amounts received**
 5 **by a county under paragraph (c) of this subsection and pursuant to an intergovernmental**
 6 **agreement entered into under ORS 475A.115, only for:**

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

9 **(B) Cash for use in law enforcement activities;**

10 **(C) Drug awareness and drug education programs offered in middle schools and high**
 11 **schools;**

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

15 **(E) Expenses of district attorneys in criminal prosecutions for unlawful delivery, dis-**
 16 **tribution, manufacture or possession of controlled substances. Expenses payable under this**
 17 **subparagraph may not exceed _____ percent of the amounts expended under this para-**
 18 **graph.**

19 **(5) Notwithstanding subsection (4) of this section, growing equipment and laboratory**
 20 **equipment seized by a forfeiting agency that was used, or intended for use, in the manufac-**
 21 **turing of controlled substances may be donated to a public school, community college or in-**
 22 **stitution of higher education.**

23 **(6) A political subdivision shall sell as much property as may be needed to make the**
 24 **distributions required by subsection (4) of this section. Distributions required under sub-**
 25 **section (4)(b) of this section must be made once every three months and are due within 20**
 26 **days of the end of each quarter. No interest shall accrue on amounts that are paid within**
 27 **the period specified by this subsection.**

28 [(2)] **(7) The forfeiting agency, and any agency which receives forfeited property or proceeds**
 29 **from the sale of forfeited property, shall maintain written documentation of each sale, decision to**
 30 **retain, transfer or other disposition.**

31 [(3)] **(8) Forfeiture counsel shall report each forfeiture to the Asset Forfeiture Oversight Advi-**
 32 **sory Committee as soon as reasonably possible after the conclusion of forfeiture proceedings,**
 33 **whether or not the forfeiture results in an entry of judgment under ORS 475A.110. The committee**
 34 **shall develop and make available forms for the purpose of reporting forfeitures.**

35 [(4)] **(9) Law enforcement agencies shall supply to forfeiture counsel all information requested**
 36 **by forfeiture counsel necessary for the preparation of the report required by subsection [(3)] (8) of**
 37 **this section.**

38 [(5)] **(10) Political subdivisions of the state who receive forfeiture proceeds under this section**
 39 **shall submit a report to the Asset Forfeiture Oversight Advisory Committee for any year in which**
 40 **those proceeds are received. The committee shall develop and make available forms for the purpose**
 41 **of those reports. The forms shall require the political subdivision to report on how proceeds received**
 42 **by the political subdivision have been or will be used, and such other information as may be re-**
 43 **quested by the committee. Reports shall be submitted each December 15 for the last ending fiscal**
 44 **year of the political subdivision.**

45 [(6)] **(11) This section applies only to forfeiture proceeds arising out of prohibited conduct as**

1 defined by ORS 475A.005 (11), and does not apply to proceeds from forfeiture based on other con-
2 duct.

3 **SECTION 5.** Section 38, chapter 780, Oregon Laws 2001, is amended to read:

4 **Sec. 38.** *[After the forfeiture counsel distributes payments under ORS 475A.110, the forfeiture*
5 *counsel shall disburse and distribute payment as follows when the forfeiting agency is the state or when*
6 *the state is the recipient of property forfeited under this chapter:]*

7 *[(1)(a) Costs shall first be paid from the property or, if the property is sold, from its proceeds. As*
8 *used in this section, "costs" includes attorney fees, costs and disbursements, and those special expenses,*
9 *including hourly investigative costs and including the provision of lawful currency, incurred by any*
10 *seizing agency or other agency of the state in investigating and prosecuting a specific case. "Costs" as*
11 *used in this section also includes any expenses of servicing or maintaining the seized property under*
12 *the provisions of ORS 475A.045 (3). These costs shall not otherwise include the expenditures made in*
13 *connection with the ordinary maintenance and operation of the seizing agency.]*

14 *[(b) Any amount paid to or retained by the Department of Justice under this subsection shall be*
15 *deposited in the Criminal Justice Revolving Account in the State Treasury.]*

16 *[(c) Any amount paid to or retained by the Oregon State Police under this subsection shall be de-*
17 *posited in the State Police Account.]*

18 *[(2) The state may:]*

19 *[(a) With written authorization from the district attorney for the jurisdiction in which the property*
20 *was seized, destroy any firearms or controlled substances.]*

21 *[(b) Sell the forfeited property by public or other commercially reasonable sale and pay from the*
22 *proceeds the expenses of keeping and selling the property.]*

23 *[(c) Retain any vehicles, firearms or other equipment usable for law enforcement purposes, for of-*
24 *ficial law enforcement use directly by the state.]*

25 *[(d) Lend or transfer any vehicles, firearms or other equipment usable for law enforcement pur-*
26 *poses, to any federal, state or local law enforcement agency or district attorney for official law*
27 *enforcement use directly by the transferee entity.]*

28 *[(3) When the state has entered into an intergovernmental agreement with one or more political*
29 *subdivisions under ORS 475A.115, or when a law enforcement agency of the state has entered into an*
30 *agreement with another law enforcement agency of the state, an equitable portion of the forfeited*
31 *property shall be distributed to each agency participating in the seizure or forfeiture as provided by the*
32 *agreement.]*

33 *[(4) The balance of the property, including the balance of any proceeds received by the state under*
34 *an intergovernmental agreement or under an agreement between state law enforcement agencies, shall*
35 *be divided as follows:]*

36 *[(a) When no law enforcement agency other than the Department of Justice participated in the sei-*
37 *zure or forfeiture, or when the Department of Justice has entered into an agreement under subsection*
38 *(3) of this section, the property shall be divided between the Criminal Justice Revolving Account and*
39 *the Special Crime and Forfeiture Account created in ORS 475A.130, according to the following sched-*
40 *ule:]*

41 *[(A) One hundred percent of the first \$200,000 accumulated shall be deposited in the Criminal*
42 *Justice Revolving Account.]*

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

45 *[(C) Fifty percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving Account*

1 *and the balance in the Special Crime and Forfeiture Account.]*

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

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

6 *[(b) When no law enforcement agency other than the Department of State Police participated in the*
7 *seizure or forfeiture, or when the Department of State Police has entered into an agreement under*
8 *subsection (3) of this section, the property shall be divided between the State Police Account and the*
9 *Special Crime and Forfeiture Account according to the following schedule:]*

10 *[(A) One hundred percent of the first \$600,000 accumulated shall be deposited in the State Police*
11 *Account.]*

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

14 *[(C) Fifty percent of the next \$200,000 shall be deposited in the State Police Account and the bal-*
15 *ance in the Special Crime and Forfeiture Account.]*

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

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

20 *[(5) Notwithstanding subsections (3) and (4) of this section, before any distribution under subsection*
21 *(3) of this section or any division and disbursement of proceeds under subsection (4) of this section, the*
22 *state shall deduct an amount equal to 10 percent of the proceeds from the property, but not to exceed*
23 *\$250,000 in any biennium, and deposit that amount in the Illegal Drug Cleanup Fund established by*
24 *ORS 475.495 for the purposes specified in ORS 475.495 (5). The state shall sell as much property as*
25 *may be needed to meet the requirements of this section. Deposits to the Illegal Drug Cleanup Fund*
26 *under this subsection shall be made once every three months and are due within 20 days of the end*
27 *of each quarter. No interest shall accrue on amounts that are paid within the period specified by this*
28 *subsection.]*

29 *[(6) Notwithstanding subsections (3) and (4) of this section, before any distribution under subsection*
30 *(3) of this section or any division and disbursement of proceeds under subsection (4) of this section, the*
31 *state shall deduct an amount equal to three percent of the proceeds from the property, but not to exceed*
32 *\$50,000 in any biennium, and deposit that amount in the Asset Forfeiture Oversight Account estab-*
33 *lished by ORS 475A.160 for the purposes specified in ORS 475A.155. The state shall sell as much*
34 *property as may be needed to meet the requirements of this section. Deposits to the Asset Forfeiture*
35 *Oversight Account under this subsection shall be made once every three months and are due within*
36 *20 days of the end of each quarter. No interest shall accrue on amounts that are paid within the period*
37 *specified by this subsection.]*

38 *[(7) Forfeiture proceeds received by the Department of Justice and the Department of State Police*
39 *shall be used for enforcement of laws relating to the unlawful delivery, distribution, manufacture or*
40 *possession of controlled substances, including but not limited to use of the proceeds for controlled*
41 *substance crime prevention, drug intervention, drug treatment and drug education programs. Except*
42 *as specifically provided by this subsection, forfeiture proceeds under this subsection may not be used*
43 *for payment of the wages of peace officers, as defined in ORS 161.015, the purchase, construction, ex-*
44 *ansion, remodeling or maintenance of buildings, or the funding of all or part of any position that was*
45 *in existence before August 23, 1993, and that was previously funded out of revenues other than forfei-*

1 *ture proceeds. Forfeiture proceeds may be used for the following:]*

2 [(a) *Payment of that portion of the wages of personnel other than peace officers who administer the*
3 *forfeiture laws.*]

4 [(b) *Payment of the wages of peace officers performing supervisory duties for interagency drug*
5 *enforcement task forces created by intergovernmental agreement.*]

6 [(c) *Payment of overtime wages of peace officers arising out of drug enforcement duties.*]

7 **(1) The provisions of this section apply only when the forfeiting agency is the state.**

8 **(2) Except as otherwise provided by intergovernmental agreement and this section, a**
9 **forfeiting agency may:**

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

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

14 **(c) Retain forfeited property.**

15 **(d) With written authorization from the district attorney for the county in which the**
16 **property was seized, destroy any forfeited firearms or controlled substances.**

17 **(3) The forfeiting agency shall distribute forfeiture proceeds as follows:**

18 **(a) Costs shall be paid first, including costs, disbursements and attorney fees as defined**
19 **in ORCP 68 A and special expenses, including hourly investigative costs and the provision of**
20 **lawful currency, incurred by any seizing or forfeiting agency in investigating and prosecuting**
21 **a specific case. The forfeiting agency may pay expenses of servicing or maintaining the seized**
22 **property under ORS 475A.045 (3) under the provisions of this paragraph. The forfeiting**
23 **agency may not pay expenditures made in connection with the ordinary maintenance and**
24 **operation of the seizing or forfeiting agency under the provisions of this paragraph. Any**
25 **amount paid to or retained by the Department of Justice under this paragraph shall be de-**
26 **posited in the Criminal Justice Revolving Account in the State Treasury. Any amount paid**
27 **to or retained by the Oregon State Police under this paragraph shall be deposited in the State**
28 **Police Account.**

29 **(b) After payment of costs under paragraph (a) of this subsection, the forfeiting agency**
30 **shall:**

31 **(A) Deduct an amount equal to five percent of the proceeds and deposit that amount in**
32 **the Illegal Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS**
33 **475.495 (5);**

34 **(B) Deduct an amount equal to 2.5 percent of the proceeds and deposit that amount in**
35 **the Asset Forfeiture Oversight Account established by ORS 475A.160 for the purposes speci-**
36 **fied in ORS 475A.155;**

37 **(C) Deduct an amount equal to 20 percent of the proceeds and deposit that amount in the**
38 **Judicial Department Revolving Account established by ORS 1.007 for disbursement to drug**
39 **court programs as described in ORS 3.450; and**

40 **(D) Deduct an amount equal to 10 percent of the proceeds and deposit that amount in the**
41 **State Commission on Children and Families Account established by ORS 417.733 for dis-**
42 **bursement to relief nurseries as described in ORS 417.788.**

43 **(c) If the forfeiting agency has entered into an intergovernmental agreement with a pol-**
44 **itical subdivision under ORS 475A.115, or has entered into an agreement with any other law**
45 **enforcement agency of the state relating to distribution of forfeiture proceeds, after paying**

1 costs under paragraph (a) of this subsection and making the deductions required by para-
 2 graph (b) of this subsection, the forfeiting agency shall pay an equitable portion of the
 3 forfeiture proceeds to each agency participating in the seizure or forfeiture as provided by
 4 the agreement.

5 (d) After making all payments and deductions required by paragraphs (a) to (c) of this
 6 subsection, the forfeiting agency shall distribute the remaining proceeds as follows:

7 (A) If no law enforcement agency other than the Department of Justice participated in
 8 the seizure or forfeiture, the remaining proceeds, and proceeds received by the Department
 9 of Justice under paragraph (c) of this subsection, shall be divided between the Criminal
 10 Justice Revolving Account and the Special Crime and Forfeiture Account established by ORS
 11 475A.130 according to the following schedule:

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

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

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

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

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

22 (B) If no law enforcement agency other than the Department of State Police participated
 23 in the seizure or forfeiture, the remaining proceeds, and proceeds received by the Depart-
 24 ment of State Police under paragraph (c) of this subsection, shall be divided between the
 25 State Police Account and the Special Crime and Forfeiture Account according to the follow-
 26 ing schedule:

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

29 (ii) Seventy-five percent of the next \$300,000 shall be deposited in the State Police Ac-
 30 count and the balance in the Special Crime and Forfeiture Account.

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

33 (iv) Twenty-five percent of the next \$200,000 shall be deposited in the State Police Ac-
 34 count and the balance in the Special Crime and Forfeiture Account.

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

37 (4) Forfeiture proceeds distributed under subsection (3)(d) of this section may be used
 38 only for:

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

41 (b) Cash for use in law enforcement activities;

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

44 (d) The expenses of a forfeiting agency in operating joint narcotic operations with other
 45 forfeiting agencies pursuant to the terms of an intergovernmental agreement, including

1 **paying for rental space, utilities and office equipment.**

2 **(5) A forfeiting agency shall sell as much property as may be needed to make the dis-**
 3 **tributions required by subsection (3) of this section. Distributions required under subsection**
 4 **(3)(b) of this section must be made once every three months and are due within 20 days of**
 5 **the end of each quarter. No interest shall accrue on amounts that are paid within the period**
 6 **specified by this subsection.**

7 [(8)] **(6)** The forfeiting agency, and any agency that receives forfeited property or proceeds from
 8 the sale of forfeited property, shall maintain written documentation of each sale, decision to retain,
 9 transfer or other disposition of the property or proceeds.

10 [(9)] **(7)** Forfeiture counsel shall report each forfeiture to the Asset Forfeiture Oversight Advi-
 11 sory Committee as soon as reasonably possible after the conclusion of forfeiture proceedings,
 12 whether or not the forfeiture results in an entry of judgment under ORS 475A.110. The committee
 13 shall develop and make available forms for the purpose of reporting forfeitures.

14 [(10)] **(8)** Law enforcement agencies shall supply to forfeiture counsel all information requested
 15 by forfeiture counsel necessary for the preparation of the report required by subsection [(9)] **(7)** of
 16 this section.

17 **SECTION 6.** ORS 475A.130, as amended by section 9a, chapter 834, Oregon Laws 2001, is
 18 amended to read:

19 475A.130. The Special Crime and Forfeiture Account is established in the General Fund of the
 20 State Treasury. The account shall consist of all forfeiture proceeds received or retained by agencies
 21 of the state under this chapter, except as otherwise provided by section 38, chapter 780, Oregon
 22 Laws 2001. All moneys in the account are continuously appropriated **to the Department of Justice**
 23 **and [shall] may be used only** for *[enforcement of laws relating to the unlawful delivery, distribution,*
 24 *manufacture or possession of controlled substances, including but not limited to use of the proceeds for*
 25 *controlled substance crime prevention, drug intervention, drug treatment and drug education*
 26 *programs]* **the purposes specified in section 38 (4), chapter 780, Oregon Laws 2001.** *[Except as*
 27 *specifically provided by this section, forfeiture proceeds in the Special Crime and Forfeiture Account*
 28 *may not be used for payment of the wages of peace officers, as defined in ORS 161.015, the purchase,*
 29 *construction, expansion, remodeling or maintenance of buildings, or the funding of all or part of any*
 30 *position that was in existence before August 23, 1993, and that was previously funded out of revenues*
 31 *other than forfeiture proceeds. Forfeiture proceeds may be used for the following:]*

32 [(1) *Payment of that portion of the wages of personnel other than peace officers who administer the*
 33 *forfeiture laws.*]

34 [(2) *Payment of the wages of peace officers performing supervisory duties for interagency drug*
 35 *enforcement task forces created by intergovernmental agreement.*]

36 [(3) *Payment of overtime wages of peace officers arising out of drug enforcement duties.*]

37 **SECTION 7.** ORS 475A.160, as amended by section 16a, chapter 780, Oregon Laws 2001, is
 38 amended to read:

39 475A.160. (1) The Asset Forfeiture Oversight Account is established in the State Treasury sep-
 40 arate and distinct from the General Fund.

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

43 (a) Moneys received from a state agency or political subdivision under the provisions of ORS
 44 475A.120 and section 38, chapter 780, Oregon Laws 2001; and

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

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

4 (4) The moneys in the Asset Forfeiture Oversight Account are continuously appropriated to the
 5 Oregon Criminal Justice Commission to be used for the purposes specified in ORS 475A.155.

6 (5) If at the end of a biennium the Asset Forfeiture Oversight Account has received amounts
 7 under the provisions of ORS 475A.120 [(1)(g)] (4)(b) and section 38 [(6)] (3)(b), chapter 780, Oregon
 8 Laws 2001, that are in excess of 115 percent of the biennial expenditure limitation established for
 9 expenditures from the account, the Oregon Criminal Justice Commission shall refund to each state
 10 agency or political subdivision that made payment into the account during the biennium a pro rata
 11 share of the amounts that are in excess of 115 percent of the expenditure limitation for the account,
 12 based on the amount of forfeiture proceeds paid into the account by the state agency or political
 13 subdivision. The commission is not required to issue any refund under this subsection if the amount
 14 of the refund is less than \$25.

15 **SECTION 8.** Section 35, chapter 780, Oregon Laws 2001, as amended by section 254, chapter
 16 576, Oregon Laws 2003, and section 350, chapter _____, Oregon Laws 2005 (Enrolled House Bill
 17 2261), is amended to read:

18 **Sec. 35.** (1) If it has been determined in an action brought under the provisions of ORS 475A.075
 19 that the plaintiff has prevailed as to some or all of the defendant property, the plaintiff shall serve
 20 on the claimant a proposed judgment of forfeiture and a statement of costs as [defined] **described**
 21 in ORS 475A.120 [(1)(a)] (4) and section 38 [(1)(a)] (3), chapter 780, Oregon Laws 2001.

22 (2)(a) A claimant who has filed a claim to seized property, appeared in the action, and part or
 23 all of whose interest in the claimed property is forfeited under the terms of the proposed judgment
 24 may file a motion for a mitigation hearing.

25 (b) A motion under this section must list all evidence not previously received that is relevant
 26 to the determination to be made by the court under ORS 475A.100. Every argument that the claim-
 27 ant wishes to raise in mitigation must be set out in specific detail in the motion.

28 (c) Before filing a motion for mitigation, the claimant and the plaintiff must make a good faith
 29 effort to confer with one another concerning any issues in dispute. The claimant must file a certif-
 30 icate of compliance with the requirements of this paragraph before the time set for hearing on the
 31 motion. The certificate is sufficient if the certificate states that the parties conferred or the certif-
 32 icate contains facts showing good cause for not conferring.

33 (d) A motion under this section may be filed only after the service of a proposed judgment on
 34 the claimants. If a motion for a mitigation hearing is not filed with the court within 14 days after
 35 the date the plaintiff serves the proposed judgment on the claimant, the court shall enter judgment.

36 (3) If a motion for a mitigation hearing is filed, the court shall determine whether any portion
 37 of the proposed judgment is excessive in the manner provided by ORS 475A.100.

38 (4) A hearing under the provisions of this section is subject to the Oregon Rules of Evidence.

39 (5) The court may make such orders[,] as may be necessary to ensure that the forfeiture is not
 40 excessive, including but not limited to the following orders:

41 (a) An order directing that the defendant property, or part of it, be sold and the proceeds of sale
 42 distributed between the litigants.

43 (b) An order directing that the claimant make available to the court other assets, not named
 44 as defendants in the forfeiture action, for the purpose of fashioning a judgment that is not excessive.

45 (6) The court shall make written findings of fact and shall enter written conclusions of law in

1 proceedings under the provisions of this section.

2 **SECTION 9.** Section 36, chapter 780, Oregon Laws 2001, as amended by section 351, chapter
 3 _____, Oregon Laws 2005 (Enrolled House Bill 2261), is amended to read:

4 **Sec. 36.** (1) Subject to subsection (2) of this section, the court shall forfeit to the forfeiting
 5 agency at least as much of the defendant property as may be required to pay the forfeiting agency's
 6 costs as [defined] **described** in ORS 475A.120 [(1)(a)] (4) and section 38 [(1)(a)] (3), chapter 780,
 7 Oregon Laws 2001.

8 (2) At least 10 days before a trial under ORS 475A.075, a claimant may serve upon the forfeiting
 9 agency an offer to allow judgment to be given against all or part of the defendant property for a
 10 specified sum, specified property, or to a specified effect. If the forfeiting agency accepts the offer,
 11 the forfeiting agency must file a written acceptance with the clerk of the court within three days
 12 after the date on which the offer was served upon the forfeiting agency. If an acceptance is filed
 13 with the court, judgment shall be entered based on the acceptance as a stipulated judgment. Unless
 14 otherwise agreed by the parties, costs and disbursements as defined in ORCP 68 shall be entered
 15 as part of the judgment pursuant to the procedure provided by Rule 68. If an acceptance is not filed
 16 with the court within three days after the time the offer was served upon the forfeiting agency, the
 17 offer shall be considered withdrawn, and may not be given in evidence on the trial. If the forfeiting
 18 agency fails to obtain a judgment after trial that is more favorable than the offer made by the
 19 claimant, the court shall award to the claimant costs and disbursements as defined in ORCP 68, and
 20 the court may enter a judgment that forfeits to the forfeiting agency less of the defendant property
 21 than may be required to pay the forfeiting agency's costs as [defined] **described** in ORS 475A.120
 22 [(1)(a)] (4) and section 38 [(1)(a)] (3), chapter 780, Oregon Laws 2001.

23
 24 **CRIMINAL FORFEITURE SUNSET ELIMINATED**

25
 26 **SECTION 10.** ORS 163.696, 164.879, 165.586, 166.279 and 167.379 and sections 57 and 58,
 27 chapter 666, Oregon Laws 2001, section 11, chapter 834, Oregon Laws 2001, and section 14c,
 28 chapter 926, Oregon Laws 2001, are repealed.

29 **SECTION 11.** ORS 133.643, as amended by section 23, chapter 666, Oregon Laws 2001, is
 30 amended to read:

31 133.643. A motion for the return or restoration of things seized shall be based on the ground that
 32 the movant has a valid claim to rightful possession thereof, because:

33 (1) The things had been stolen or otherwise converted, and the movant is the owner or rightful
 34 possessor;

35 (2) The things seized were not in fact subject to seizure under ORS 133.525 to 133.703 **or**
 36 **sections 1 to 18, chapter 666, Oregon Laws 2001;**

37 (3) The movant, by license or otherwise, is lawfully entitled to possess things otherwise subject
 38 to seizure under ORS 133.525 to 133.703;

39 (4) Although the things seized were subject to seizure under ORS 133.525 to 133.703, the movant
 40 is or will be entitled to their return or restoration upon the court's determination that they are no
 41 longer needed for evidentiary purposes; or

42 (5) The parties in the case have stipulated that the things seized may be returned to the movant.

43 **SECTION 12.** ORS 137.138, as amended by section 39, chapter 666, Oregon Laws 2001, is
 44 amended to read:

45 137.138. (1) In addition to and not in lieu of any other sentence it may impose, a court shall

1 require a defendant convicted under ORS 164.365, 166.663, 167.315, [167.320, 167.322,] 498.056 or
 2 498.146 or other state, county or municipal laws, for an act involving or connected with injuring,
 3 damaging, mistreating or killing a livestock animal, to forfeit any rights in weapons used in con-
 4 nection with the act underlying the conviction.

5 (2) In addition to and not in lieu of any other sentence it may impose, a court shall revoke any
 6 hunting license possessed by a defendant convicted as described in subsection (1) of this section.

7 (3) The State Fish and Wildlife Director shall refuse to issue a hunting license to a defendant
 8 convicted as described under subsection (1) of this section for a period of two years following the
 9 conviction.

10 (4) As used in this section, "livestock animal" has the meaning given in ORS 164.055.

11 **SECTION 13.** ORS 164.864, as amended by section 42, chapter 666, Oregon Laws 2001, is
 12 amended to read:

13 164.864. As used in ORS 164.865, 164.866, 164.868, 164.869, 164.872, 164.873[,] **and** 164.875 [*and*
 14 *164.879*] and this section, unless the context requires otherwise:

15 (1) "Commercial enterprise" means a business operating in intrastate or interstate commerce for
 16 profit. "Commercial enterprise" does not include:

- 17 (a) Activities by schools, libraries or religious organizations;
- 18 (b) Activities incidental to a bona fide scholastic or critical endeavor;
- 19 (c) Activities incidental to the marketing or sale of recording devices; and
- 20 (d) Activities involving the recording of school or religious events or activities.

21 (2) "Fixed" means embodied in a recording or other tangible medium of expression, by or under
 22 the authority of the author, so that the matter embodied is sufficiently permanent or stable to permit
 23 it to be perceived, reproduced or otherwise communicated for a period of more than transitory du-
 24 ration.

25 (3) "Live performance" means a recitation, rendering or playing of musical instruments or vocal
 26 arrangements in an audible sequence in a public performance.

27 (4) "Manufacturer" means the entity authorizing the duplication of a specific recording, but
 28 shall not include the manufacturer of the cartridge or casing itself.

29 (5) "Master recording" means the master disk, master tape, master film or other device used for
 30 reproducing recorded sound from which a sound recording is directly or indirectly derived.

31 (6) "Motion picture" includes any motion picture, regardless of length or content, that is ex-
 32 hibited in a motion picture theater to paying customers, exhibited on television to paying customers
 33 or under the sponsorship of a paying advertiser or produced and exhibited for scientific research
 34 or educational purposes. "Motion picture" does not include motion pictures exhibited at home or
 35 movies or amateur films that are shown free or at cost to friends, neighbors or civic groups.

36 (7) "Owner" means a person who owns the sounds fixed in a master phonograph record, master
 37 disk, master tape, master film or other recording on which sound is or can be recorded and from
 38 which the transferred recorded sounds are directly or indirectly derived.

39 (8) "Recording" means a tangible medium on which information, sounds or images, or any com-
 40 bination thereof, are recorded or otherwise stored. Medium includes, but is not limited to, an ori-
 41 ginal phonograph record, disk, tape, audio or video cassette, wire, film or other medium now existing
 42 or developed later on which sounds, images or both are or can be recorded or otherwise stored or
 43 a copy or reproduction that duplicates in whole or in part the original.

44 (9) "Sound recording" means any reproduction of a master recording.

45 (10) "Videotape" means a reel of tape upon which a motion picture is electronically or magnet-

1 ically imprinted by means of an electronic video recorder and which may be used in video playback
 2 equipment to project or display the motion picture on a television screen.

3 **SECTION 14.** ORS 164.866, as amended by section 43, chapter 666, Oregon Laws 2001, is
 4 amended to read:

5 164.866. Nothing in ORS 164.864, 164.865, 164.868, 164.869, 164.872, 164.873[,] **or** 164.875 [*or*
 6 *164.879*] or this section limits or impairs the right of a person injured by the criminal acts of a de-
 7 fendant to sue and recover damages from the defendant in a civil action.

8 **SECTION 15.** ORS 166.282, as amended by section 37, chapter 666, Oregon Laws 2001, and
 9 section 5, chapter 614, Oregon Laws 2003, is amended to read:

10 166.282. (1) A political subdivision in this state that sells a weapon described in subsection (2)
 11 of this section shall pay the proceeds from the sale of the weapon, less the costs of the sale, to the
 12 account of the police agency that received **or seized** the weapon, to be used for purposes of public
 13 safety, law enforcement and crime prevention and detection.

14 (2) Subsection (1) of this section applies to a weapon that is donated to the police agency.

15 **SECTION 16.** ORS 166.370, as amended by section 36, chapter 666, Oregon Laws 2001, and
 16 section 6, chapter 614, Oregon Laws 2003, is amended to read:

17 166.370. (1) Any person who intentionally possesses a loaded or unloaded firearm or any other
 18 instrument used as a dangerous weapon, while in or on a public building, shall upon conviction be
 19 guilty of a Class C felony.

20 (2)(a) Except as otherwise provided in paragraph (b) of this subsection, a person who inten-
 21 tionally possesses:

22 (A) A firearm in a court facility is guilty, upon conviction, of a Class C felony. A person who
 23 intentionally possesses a firearm in a court facility shall surrender the firearm to a law enforcement
 24 officer.

25 (B) A weapon, other than a firearm, in a court facility may be required to surrender the weapon
 26 to a law enforcement officer or to immediately remove it from the court facility. A person who fails
 27 to comply with this subparagraph is guilty, upon conviction, of a Class C felony.

28 (b) The presiding judge of a judicial district may enter an order permitting the possession of
 29 specified weapons in a court facility.

30 (3) Subsection (1) of this section does not apply to:

31 (a) A sheriff, police officer, other duly appointed peace officers or a corrections officer while
 32 acting within the scope of employment.

33 (b) A person summoned by a peace officer to assist in making an arrest or preserving the peace,
 34 while the summoned person is engaged in assisting the officer.

35 (c) An active or reserve member of the military forces of this state or the United States, when
 36 engaged in the performance of duty.

37 (d) A person who is licensed under ORS 166.291 and 166.292 to carry a concealed handgun.

38 (e) A person who is authorized by the officer or agency that controls the public building to
 39 possess a firearm or dangerous weapon in that public building.

40 (f) Possession of a firearm on school property if the firearm:

41 (A) Is possessed by a person who is not otherwise prohibited from possessing the firearm; and

42 (B) Is unloaded and locked in a motor vehicle.

43 (4) The exceptions listed in subsection (3)(b) to (f) of this section constitute affirmative defenses
 44 to a charge of violating subsection (1) of this section.

45 (5)(a) Any person who knowingly, or with reckless disregard for the safety of another, discharges

1 or attempts to discharge a firearm at a place that the person knows is a school shall upon con-
 2 viction be guilty of a Class C felony.

3 (b) Paragraph (a) of this subsection does not apply to the discharge of a firearm:

4 (A) As part of a program approved by a school in the school by an individual who is partic-
 5 ipating in the program; or

6 (B) By a law enforcement officer acting in the officer's official capacity.

7 [(6) Any weapon carried in violation of this section is subject to the forfeiture provisions of ORS
 8 166.279.]

9 [(7)] (6) Notwithstanding the fact that a person's conduct in a single criminal episode constitutes
 10 a violation of both subsections (1) and (5) of this section, the district attorney may charge the person
 11 with only one of the offenses.

12 [(8)] (7) As used in this section, "dangerous weapon" means a dangerous weapon as that term
 13 is defined in ORS 161.015.

14 **SECTION 17.** ORS 166.660, as amended by section 38, chapter 666, Oregon Laws 2001, is
 15 amended to read:

16 166.660. (1) A person commits the crime of unlawful paramilitary activity if the person:

17 (a) Exhibits, displays or demonstrates to another person the use, application or making of any
 18 firearm, explosive or incendiary device or any technique capable of causing injury or death to per-
 19 sons and intends or knows that such firearm, explosive or incendiary device or technique will be
 20 unlawfully employed for use in a civil disorder; or

21 (b) Assembles with one or more other persons for the purpose of training with, practicing with
 22 or being instructed in the use of any firearm, explosive or incendiary device or technique capable
 23 of causing injury or death to persons with the intent to unlawfully employ such firearm, explosive
 24 or incendiary device or technique in a civil disorder.

25 (2)(a) Nothing in this section makes unlawful any act of any law enforcement officer performed
 26 in the otherwise lawful performance of the officer's official duties.

27 (b) Nothing in this section makes unlawful any activity of the State Department of Fish and
 28 Wildlife, or any activity intended to teach or practice self-defense or self-defense techniques, such
 29 as karate clubs or self-defense clinics, and similar lawful activity, or any facility, program or lawful
 30 activity related to firearms instruction and training intended to teach the safe handling and use of
 31 firearms, or any other lawful sports or activities related to the individual recreational use or pos-
 32 session of firearms, including but not limited to hunting activities, target shooting, self-defense,
 33 firearms collection or any organized activity including, but not limited to any hunting club, rifle
 34 club, rifle range or shooting range which does not include a conspiracy as defined in ORS 161.450
 35 or the knowledge of or the intent to cause or further a civil disorder.

36 (3) Unlawful paramilitary activity is a Class C felony. [*In addition to any other penalty imposed*
 37 *pursuant to this section, the court may order forfeited to the State of Oregon for the benefit of the*
 38 *Common School Fund any firearm or explosive or incendiary device used in any activity in violation*
 39 *of this section.*]

40 (4) As used in this section:

41 (a) "Civil disorder" means acts of physical violence by assemblages of three or more persons
 42 which cause damage or injury, or immediate danger thereof, to the person or property of any other
 43 individual.

44 (b) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile
 45 by the action of black powder or smokeless black powder and which is readily capable of use as a

1 weapon.

2 (c) "Explosive" means a chemical compound, mixture or device that is commonly used or in-
 3 tended for the purpose of producing a chemical reaction resulting in a substantially instantaneous
 4 release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin,
 5 blasting caps and nitrojelly, but excluding fireworks as defined in ORS 480.110 (1), black powder,
 6 smokeless powder, small arms ammunition and small arms ammunition primers.

7 (d) "Law enforcement officer" means any duly constituted police officer of the United States,
 8 any state, any political subdivision of a state or the District of Columbia, and also includes members
 9 of the military reserve forces or National Guard as defined in 10 U.S.C. 101 (9), members of the or-
 10 ganized militia of any state or territory of the United States, the Commonwealth of Puerto Rico or
 11 the District of Columbia not included within the definition of National Guard as defined by 10 U.S.C.
 12 101 (9), members of the Armed Forces of the United States and such persons as are defined in ORS
 13 161.015 (4) when in the performance of official duties.

14 **SECTION 18.** ORS 167.350, as amended by section 14b, chapter 926, Oregon Laws 2001, is
 15 amended to read:

16 167.350. (1) In addition to and not in lieu of any other sentence it may impose, a court may re-
 17 quire a defendant convicted under ORS 167.315 to 167.333 or 167.340 to forfeit any rights of the
 18 defendant in the animal subjected to the violation, and to repay the reasonable costs incurred by
 19 any person or agency prior to judgment in caring for each animal subjected to the violation.

20 (2) When the court orders the defendant's rights in the animal to be forfeited, the court may
 21 further order that those rights be given over to an appropriate person or agency demonstrating a
 22 willingness to accept and care for the animal or to the county or an appropriate animal care agency
 23 for further disposition in accordance with accepted practices for humane treatment of animals. This
 24 subsection does not limit the right of the person or agency to whom rights are granted to resell or
 25 otherwise make disposition of the animal. A transfer of rights under this subsection constitutes a
 26 transfer of ownership.

27 (3) In addition to and not in lieu of any other sentence it may impose, a court may order the
 28 owner or person having custody of an animal to repay the reasonable costs incurred by any person
 29 or agency in providing minimum care to the animal.

30 (4) A court may order a person convicted under ORS 167.315 to 167.333 or 167.340 to participate
 31 in available animal cruelty prevention programs or education programs, or both, or to obtain psy-
 32 chological counseling for treatment of mental health disorders that, in the court's judgment, con-
 33 tributed to the commission of the crime. The person shall bear any costs incurred by the person for
 34 participation in counseling or treatment programs under this subsection.

35 **(5) Sections 1 to 18, chapter 666, Oregon Laws 2001, do not apply to the forfeiture of an**
 36 **animal subjected to a violation of ORS 167.315 to 167.333 or 167.340. Any such animal is sub-**
 37 **ject to forfeiture as provided in subsections (1) to (3) of this section.**

38
 39 **MISCELLANEOUS**
 40

41 **SECTION 19.** (1) **If this 2005 Act does not become effective until after July 31, 2005, the**
 42 **repeal of section 57, chapter 666, Oregon Laws 2001, by section 10 of this 2005 Act acts to**
 43 **revive sections 1 to 19, chapter 666, Oregon Laws 2001, and the repeal of section 11, chapter**
 44 **834, Oregon Laws 2001, by section 10 of this 2005 Act acts to revive sections 1 to 4, chapter**
 45 **834, Oregon Laws 2001.**

1 **(2) If this 2005 Act does not become effective until after July 31, 2005, the repeal of and**
 2 **amendments to statutes by sections 10 to 18 of this 2005 Act are operative retroactively to**
 3 **that date, and the operation and effect of sections 1 to 19, chapter 666, Oregon Laws 2001,**
 4 **and sections 1 to 4, chapter 834, Oregon Laws 2001, and of ORS 133.643, 137.138, 164.864,**
 5 **164.866, 166.282, 166.370, 166.660, 167.350, 475.245, 475.495, 647.155 and 809.730 as in effect on**
 6 **July 31, 2005, continue unaffected from July 31, 2005, to the effective date of this 2005 Act**
 7 **and thereafter. Any otherwise lawful action taken after July 30, 2005, and before the effective**
 8 **date of this 2005 Act, or otherwise lawful obligation incurred after July 30, 2005, and before**
 9 **the effective date of this 2005 Act, under the authority of sections 1 to 19, chapter 666,**
 10 **Oregon Laws 2001, sections 1 to 4, chapter 834, Oregon Laws 2001, or ORS 133.643, 137.138,**
 11 **164.864, 164.866, 166.282, 166.370, 166.660, 167.350, 475.245, 475.495, 647.155 or 809.730 as in effect**
 12 **on July 31, 2005, is ratified and approved.**

13 **SECTION 20.** **The unit captions used in this 2005 Act are provided only for the conven-**
 14 **ience of the reader and do not become part of the statutory law of this state or express any**
 15 **legislative intent in the enactment of this 2005 Act.**

16 **SECTION 21.** **This 2005 Act being necessary for the immediate preservation of the public**
 17 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
 18 **on July 31, 2005.**

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