

Senate Bill 242

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Removes sunset on certain changes to laws governing civil forfeiture. Removes sunset on laws authorizing criminal forfeiture.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to forfeiture; creating new provisions; amending ORS 133.643, 137.138, 164.864, 164.866, 166.282, 166.370, 166.660, 167.350, 475.245, 475.495, 475A.005, 475A.010, 475A.020, 475A.030, 475A.035, 475A.040, 475A.045, 475A.050, 475A.055, 475A.060, 475A.075, 475A.080, 475A.085, 475A.100, 475A.110, 475A.115, 475A.120, 475A.130, 475A.155, 475A.160, 647.155 and 809.730 and sections 26 and 31, chapter 780, Oregon Laws 2001; repealing ORS 163.696, 164.879, 165.586, 166.279 and 167.379 and sections 57 and 58, chapter 666, Oregon Laws 2001, sections 1b, 2b, 3b, 4b, 5b, 6b, 7b, 8b, 9b, 10b, 11b, 12b, 13b, 14b, 16b, 17b, 18b, 19b, 20b, 21b, 22b, 33, 35, 36, 37, 38 and 40, chapter 780, Oregon Laws 2001, section 11, chapter 834, Oregon Laws 2001, and section 14c, chapter 926, Oregon Laws 2001; and declaring an emergency.

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

CIVIL FORFEITURE

SECTION 1. Sections 1b, 2b, 3b, 4b, 5b, 6b, 7b, 8b, 9b, 10b, 11b, 12b, 13b, 14b, 16b, 17b, 18b, 19b, 20b, 21b, 22b, 33, 35, 36, 37, 38 and 40, chapter 780, Oregon Laws 2001, are repealed.

SECTION 2. Section 26, chapter 780, Oregon Laws 2001, is amended to read:

Sec. 26. (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 civil forfeiture. An order directing seizure issued under ORS 475A.035 (5) 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 (10), Article XV of the Oregon Constitution.]

(2) Any person or public body, as defined by ORS 174.109, that violates ORS 475A.120 or section 27 or 28, chapter 780, Oregon Laws 2001, by concealing, transferring, withholding, retaining, diverting or otherwise preventing any property forfeited under this chapter or federal law from being applied, deposited or used in the manner required by ORS 475A.120 or section 27 or 28, chapter 780, Oregon Laws 2001, is subject to a civil penalty. The civil

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 **penalty is equal to an amount that is treble the value of the property concealed, transferred,**
 2 **withheld, retained or diverted.**

3 **(3) A civil penalty under this section may be imposed by the Attorney General in the**
 4 **manner provided by ORS 183.745 or may be recovered by any other person in a civil action**
 5 **brought to enforce the requirements of ORS 475A.120 or section 27 or 28, chapter 780, Oregon**
 6 **Laws 2001.**

7 **SECTION 3.** Section 31, chapter 780, Oregon Laws 2001, is amended to read:

8 **Sec. 31.** (1) Unless the claim arises out of malfeasance in office or willful or wanton neglect of
 9 duty, a public body as defined in ORS 30.260 may defend, save harmless and indemnify any officer,
 10 employee or agent of the public body against whom a claim is made under [section 10 (10), Article
 11 XV of the Oregon Constitution] **section 26, chapter 780, Oregon Laws 2001.**

12 (2) Any amount recovered as a civil penalty in a claim made under [section 10 (10), Article XV
 13 of the Oregon Constitution] **section 26, chapter 780, Oregon Laws 2001,** shall be paid into the
 14 Criminal Injuries Compensation Account of the Department of Justice Crime Victims' Assistance
 15 Section to be used for the purposes set forth in ORS chapter 147.

16 **SECTION 4.** ORS 475A.005, as amended by section 1a, chapter 780, Oregon Laws 2001, and
 17 section 308, chapter 14, Oregon Laws 2003, is amended to read:

18 475A.005. [As used in this chapter, unless the context requires otherwise:]

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

20 [(a) Any person who has, prior to the time the property is seized for forfeiture, filed notice of in-
 21 terest with any public office as may be required or permitted by law to be filed with respect to the
 22 property which has been seized for forfeiture;]

23 [(b) Any person from whose custody the property was seized; or]

24 [(c) Any person who has an interest in the property, including all owners and occupants of the
 25 property, whose identity and address is known or is ascertainable upon diligent inquiry and whose
 26 rights and interest in the property may be affected by the action.]

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

28 [(3) "Costs and disbursements" are those expenditures set forth in ORCP 68 A.]

29 [(4) "Financial institution" means any person lawfully conducting business as:]

30 [(a) A financial institution or trust company, as those terms are defined in ORS 706.008;]

31 [(b) A consumer finance company subject to the provisions of ORS chapter 725;]

32 [(c) A mortgage banker or a mortgage broker as those terms are defined in ORS 59.840, a mortgage
 33 servicing company or other mortgage company;]

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

36 [(A) The Secretary of Housing and Urban Development;]

37 [(B) The Federal Housing Administration;]

38 [(C) The Department of Veterans Affairs;]

39 [(D) The Farmers Home Administration;]

40 [(E) The Federal National Mortgage Association;]

41 [(F) The Government National Mortgage Administration;]

42 [(G) The Federal Home Loan Mortgage Association;]

43 [(H) The Federal Agricultural Mortgage Corporation; and]

44 [(I) The Small Business Administration;]

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

1 [(A) *The Housing Agency*;]

2 [(B) *Any entity established by the Director of Veterans' Affairs to carry out the provisions of ORS*
 3 *chapter 407; and*]

4 [(C) *The Public Employees Retirement System*;]

5 [(f) *An agency, department or instrumentality of any municipality in the state, including but not*
 6 *limited to such agencies as the Portland Development Commission*;]

7 [(g) *An insurer as defined in ORS 731.106*;]

8 [(h) *A private mortgage insurance company*;]

9 [(i) *A pension plan or fund or other retirement plan; and*]

10 [(j) *A broker-dealer or investment adviser as defined in ORS 59.015*.]

11 [(5) *"Forfeiting agency" means the State of Oregon or a political subdivision thereof that has ac-*
 12 *cepted for forfeiture property seized by a seizing agency or that is processing a forfeiture case.*]

13 [(6) *"Forfeiture counsel" means an attorney designated to represent a forfeiting agency in forfeiture*
 14 *actions or proceedings.*]

15 [(7) *"Law enforcement agency" means any agency which employs police officers or prosecutes*
 16 *criminal cases.*]

17 [(8) *"Official law enforcement use" or "official law enforcement activity" means uses or activities*
 18 *which may reasonably be expected to result in the identification, apprehension or conviction of criminal*
 19 *offenders.*]

20 [(9) *"Police officer" has the meaning given that term in ORS 133.525.*]

21 [(10) *"Proceeds of prohibited conduct" means property derived directly or indirectly from, main-*
 22 *tained by or realized through an act or omission, and includes any benefit, interest or property of any*
 23 *kind without reduction for expenses of acquiring or maintaining it or incurred for any other reason.*]

24 [(11) *"Prohibited conduct" includes violation of, solicitation to violate, attempt to violate or con-*
 25 *spiracy to violate any provisions of ORS 475.005 to 475.285 and 475.805 to 475.999 when the conduct*
 26 *constitutes either a felony or misdemeanor as those terms are defined in ORS 161.525 and 161.545.*]

27 [(12) *"Property" means any interest in anything of value, including the whole of any lot or tract*
 28 *of land and tangible and intangible personal property, including currency, instruments or securities or*
 29 *any other kind of privilege, interest, claim or right whether due or to become due.*]

30 [(13) *"Seizing agency" means a law enforcement agency that has seized property for forfeiture.*]

31 [(14) *"Weapon" means any instrument of offensive or defensive combat or anything used, or de-*
 32 *signed to be used, in destroying, defeating or injuring a person.*]

33 **As used in this chapter, unless the context requires otherwise:**

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

35 **(a) Any person who has, prior to the time the property is seized for civil forfeiture, filed**
 36 **notice of interest with any public office as may be required or permitted by law to be filed**
 37 **with respect to the property which has been seized for civil forfeiture;**

38 **(b) Any person from whose custody the property was seized; or**

39 **(c) Any person who has an interest in the property, including all owners and occupants**
 40 **of the property, whose identity and address is known or is ascertainable upon diligent inquiry**
 41 **and whose rights and interest in the property may be affected by the action.**

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

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

44 **(a) A financial institution or trust company, as those terms are defined in ORS 706.008;**

45 **(b) A consumer finance company subject to the provisions of ORS chapter 725;**

1 (c) A mortgage banker or a mortgage broker as those terms are defined in ORS 59.840,
2 a mortgage servicing company or other mortgage company;

3 (d) An officer, agency, department or instrumentality of the federal government, includ-
4 ing but not limited to:

5 (A) The Secretary of Housing and Urban Development;

6 (B) The Federal Housing Administration;

7 (C) The Department of Veterans Affairs;

8 (D) The Farmers Home Administration;

9 (E) The Federal National Mortgage Association;

10 (F) The Government National Mortgage Administration;

11 (G) The Federal Home Loan Mortgage Association;

12 (H) The Federal Agricultural Mortgage Corporation; and

13 (I) The Small Business Administration;

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

15 (A) The Housing Agency;

16 (B) Any entity established by the Director of Veterans' Affairs to carry out the pro-
17 visions of ORS chapter 407; and

18 (C) The Public Employees Retirement System;

19 (f) An agency, department or instrumentality of any municipality in the state, including
20 but not limited to such agencies as the Portland Development Commission;

21 (g) An insurer as defined in ORS 731.106;

22 (h) A private mortgage insurance company;

23 (i) A pension plan or fund or other retirement plan; and

24 (j) A broker-dealer or investment adviser as defined in ORS 59.015.

25 (4) "Forfeiting agency" means the State of Oregon or a political subdivision thereof that
26 has accepted for civil forfeiture property seized by a seizing agency or that is processing a
27 civil forfeiture case.

28 (5) "Forfeiture counsel" means an attorney designated to represent a forfeiting agency
29 in civil forfeiture actions or proceedings.

30 (6) "Instrumentalities" means any property that is instrumental in committing prohibited
31 conduct or facilitating prohibited conduct.

32 (7) "Law enforcement agency" means any agency which employs police officers or pros-
33 ecutes criminal cases.

34 (8) "Police officer" has the meaning given that term in ORS 133.525.

35 (9) "Proceeds of prohibited conduct" means property derived directly or indirectly from,
36 maintained by or realized through an act or omission, and includes any benefit, interest or
37 property of any kind without reduction for expenses of acquiring or maintaining it or in-
38 curred for any other reason.

39 (10) "Prohibited conduct" means:

40 (a) Violation of, solicitation to violate, attempt to violate or conspiracy to violate any
41 provisions of ORS 475.005 to 475.285 and 475.805 to 475.999 when the conduct constitutes the
42 commission of a crime as described in ORS 161.515; and

43 (b) Other conduct that constitutes the commission of a crime as described in ORS 161.515
44 that provides for civil forfeiture of proceeds or instrumentalities of the conduct and that is
45 made subject to the provisions of this chapter under ORS 475A.010 (4) or other law.

1 **(11) “Property” means any interest in anything of value, including the whole of any lot**
 2 **or tract of land and tangible and intangible personal property, including currency, instru-**
 3 **ments or securities or any other kind of privilege, interest, claim or right whether due or**
 4 **to become due.**

5 **(12) “Seizing agency” means a law enforcement agency that has seized property for civil**
 6 **forfeiture.**

7 **(13) “Weapon” means any instrument of offensive or defensive combat or anything used,**
 8 **or designed to be used, in destroying, defeating or injuring a person.**

9 **SECTION 5.** ORS 475A.010, as amended by section 2a, chapter 780, Oregon Laws 2001, is
 10 amended to read:

11 475A.010. *[(1) The Legislative Assembly finds that:]*

12 *[(a) The prohibited conduct defined in this chapter is undertaken in the course of profitable activ-*
 13 *ities which result in, and are facilitated by, the acquisition, possession or transfer of property subject*
 14 *to forfeiture under this chapter;]*

15 *[(b) Transactions involving property subject to forfeiture under this chapter escape taxation;]*

16 *[(c) Governments attempting to respond to prohibited conduct require additional resources to meet*
 17 *their needs; and]*

18 *[(d) There is a need to provide for the forfeiture of certain property subject to forfeiture under this*
 19 *chapter, to provide for the protection of the rights and interests of affected persons, and to provide for*
 20 *uniformity throughout the state with respect to the laws of this state which pertain to the forfeiture of*
 21 *real and personal property based upon prohibited conduct as defined in this chapter.]*

22 *[(2) Therefore, the Legislative Assembly adopts the provisions of this chapter as the sole and ex-*
 23 *clusive law of the state pertaining to the forfeiture of real and personal property based upon the pro-*
 24 *hibited conduct, thereby replacing all charter provisions, ordinances, regulations and other enactments*
 25 *adopted by cities and counties pertaining to such forfeitures. After July 24, 1989, no actions for forfei-*
 26 *ture shall be initiated except those in compliance with the provisions of this chapter.]*

27 *[(3) This chapter is applicable throughout this state and in all cities and counties. The electors or*
 28 *the governing body of a city or county shall not enact and the governing body shall not enforce any*
 29 *charter provision, ordinance, resolution or other regulation that is inconsistent with this section.]*

30 *[(4) This chapter does not impair the right of any city or county to enact ordinances providing for*
 31 *the forfeiture of property based upon conduct that is other than prohibited conduct as defined in this*
 32 *chapter if:]*

33 *[(a) The property was used to commit the conduct described in the ordinances, or is proceeds of the*
 34 *conduct; and]*

35 *[(b) The forfeiture is subject to procedures and limitations set forth in this chapter.]*

36 *[(5) Nothing in this chapter shall be construed to limit or impair any right or remedy that any*
 37 *person or entity may have under ORS 166.715 to 166.735. The application of any remedy under this*
 38 *chapter is intended to be remedial and not punitive and shall not preclude or be precluded by the ap-*
 39 *plication of any previous or subsequent civil or criminal remedy under any other provision of law. Civil*
 40 *remedies under this chapter are supplemental and not mutually exclusive.]*

41 **(1) The Legislative Assembly finds that:**

42 **(a) The prohibited conduct defined in this chapter is undertaken in the course of criminal**
 43 **activities that result in, and are facilitated by, the acquisition, possession or transfer of**
 44 **property subject to civil forfeiture under this chapter;**

45 **(b) Transactions involving property subject to civil forfeiture under this chapter escape**

1 **taxation;**

2 (c) Governments attempting to respond to prohibited conduct require additional re-
 3 sources to meet their needs; and

4 (d) There is a need to provide for the civil forfeiture of certain property subject to civil
 5 forfeiture under this chapter, to provide for the protection of the rights and interests of af-
 6 fected persons, and to provide for uniformity throughout the state with respect to the laws
 7 of this state which pertain to the civil forfeiture of real and personal property based upon
 8 prohibited conduct as defined in this chapter.

9 (2) Therefore, the Legislative Assembly adopts the provisions of this chapter as the sole
 10 and exclusive law of the state pertaining to the civil forfeiture of real and personal property
 11 based upon the prohibited conduct, thereby replacing all charter provisions, ordinances,
 12 regulations and other enactments adopted by cities and counties pertaining to civil forfei-
 13 tures.

14 (3) This chapter is applicable throughout this state and in all cities and counties. The
 15 electors or the governing body of a city or county shall not enact and the governing body
 16 shall not enforce any charter provision, ordinance, resolution or other regulation that is in-
 17 consistent with this section.

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

20 (a) The prohibited conduct constitutes the commission of a crime as described in ORS
 21 161.515;

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

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

24 (5) Nothing in this chapter shall be construed to limit or impair any right or remedy that
 25 any person or entity may have under ORS 166.715 to 166.735. The application of any remedy
 26 under this chapter is intended to be remedial and not punitive and shall not preclude or be
 27 precluded by the application of any previous or subsequent civil or criminal remedy under
 28 any other provision of law. Civil remedies under this chapter are supplemental and not mu-
 29 tually exclusive.

30 **SECTION 6.** ORS 475A.020, as amended by section 3a, chapter 780, Oregon Laws 2001, is
 31 amended to read:

32 475A.020. *[The following will be subject to civil in rem forfeiture:]*

33 *[(1) All controlled substances which have been manufactured, distributed, dispensed, possessed or*
 34 *acquired in the course of prohibited conduct;]*

35 *[(2) All raw materials, products and equipment of any kind which are used, or intended for use,*
 36 *in providing, manufacturing, compounding, processing, delivering, importing or exporting any service*
 37 *or substance in the course of prohibited conduct;]*

38 *[(3) All property which is used, or intended for use, as a container for property described in sub-*
 39 *section (1) or (2) of this section;]*

40 *[(4) All conveyances, including aircraft, vehicles or vessels, which are used, or are intended for use,*
 41 *to transport or in any manner facilitate the transportation, sale, receipt, possession or concealment of*
 42 *property described in subsection (1) or (2) of this section, and all conveyances, including aircraft, ve-*
 43 *hicles or vessels, which are used or intended for use in prohibited conduct or to facilitate prohibited*
 44 *conduct in any manner, except that:]*

45 *[(a) No conveyance used by any person as a common carrier in the transaction of business as a*

1 common carrier shall be forfeited under the provisions of this section unless the owner or other person
 2 in charge of such conveyance was a consenting party or knew of and acquiesced in the prohibited
 3 conduct; and]

4 [(b) No conveyance shall be forfeited under the provisions of this section by reason of any act or
 5 omission established by the owner thereof to have been committed or omitted by any person other than
 6 such owner while such conveyance was unlawfully in the possession of a person other than the owner
 7 in violation of the criminal laws of the United States or of any state;]

8 [(5) All books, records, computers and research, including formulae, microfilm, tapes and data
 9 which are used or intended for use to facilitate prohibited conduct in any manner;]

10 [(6) All moneys, negotiable instruments, balances in deposit or other accounts, securities or other
 11 things of value furnished or intended to be furnished by any person in the course of prohibited conduct,
 12 all proceeds of or from prohibited conduct, and all moneys, negotiable instruments, balances in deposit
 13 and other accounts and securities used or intended to be used to facilitate any prohibited conduct;]

14 [(7) All real property, including any right, title and interest in the whole of any lot or tract of land
 15 and any appurtenances or improvements, which is used, or intended to be used, in any manner or part,
 16 to commit or facilitate in any manner the commission of prohibited conduct; and]

17 [(8) All weapons possessed, used or available for use in any manner to facilitate conduct giving
 18 rise to forfeiture.]

19 **The following property will be subject to civil in rem forfeiture:**

20 **(1) All controlled substances that have been manufactured, distributed, dispensed, pos-**
 21 **essed or acquired in the course of prohibited conduct;**

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

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

27 **(4) All conveyances, including aircraft, vehicles or vessels, that are used to transport or**
 28 **in any manner facilitate the transportation, sale, receipt, possession or concealment of**
 29 **property described in subsection (1) or (2) of this section, and all conveyances, including**
 30 **aircraft, vehicles or vessels, that are used in prohibited conduct or that are used to facilitate**
 31 **prohibited conduct in any manner;**

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

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

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

41 **(8) All weapons possessed, used or available for use in any manner to facilitate conduct**
 42 **giving rise to civil forfeiture; and**

43 **(9) Any property described in this section that was intended for use in committing or**
 44 **facilitating an attempt to commit a crime as described in ORS 161.405, a solicitation as de-**
 45 **scribed in ORS 161.435 or a conspiracy as described in ORS 161.450.**

1 **SECTION 7.** ORS 475A.030, as amended by section 4a, chapter 780, Oregon Laws 2001, is
2 amended to read:

3 475A.030. [*Notwithstanding any other provision of this chapter, United States currency in an*
4 *amount less than \$15,000 is not subject to seizure or forfeiture solely on the basis that the money is in*
5 *the form of cash rather than some other form.*] **Notwithstanding any other provision of this**
6 **chapter, United States currency in an amount less than \$15,000 is not subject to seizure**
7 **solely on the basis that the money is in the form of cash rather than some other form.**

8 **SECTION 8.** ORS 475A.035, as amended by section 5a, chapter 780, Oregon Laws 2001, is
9 amended to read:

10 475A.035. [*Property may be seized for forfeiture as provided in this section.*]

11 [(1) *Any person who delivers property in obedience to an order or direction to deliver the property*
12 *under this section shall not be liable:*]

13 [(a) *To any person on account of obedience to the order or direction; or*]

14 [(b) *For any costs incurred on account of any contamination of the delivered property. This in-*
15 *cludes, but is not limited to, any disposal costs for any property forfeited under ORS 475A.020, any*
16 *hazardous waste or material, any contraband or any other contamination contained in property seized*
17 *under this section.*]

18 [(2) *Property may be seized by any police officer without a court order if:*]

19 [(a) *The property has been the subject of an earlier judgment in favor of any forfeiting agency in*
20 *an earlier civil in rem proceeding under this chapter;*]

21 [(b) *There is probable cause to believe that property is subject to forfeiture, provided that the*
22 *property may constitutionally be seized without a warrant;*]

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

25 [(d) *The property is directly or indirectly dangerous to the health or safety of any person; or*]

26 [(e) *An owner consents to the seizure.*]

27 [(3) *Except as provided in ORS 475A.045, with regard to cash or other assets which at the time*
28 *of seizure are held in any form of account in a financial institution, if the property is in whole or in*
29 *part intangible, the person having control or custody of the property shall deliver the same over to the*
30 *police officer.*]

31 [(4)(a) *Property may be seized by any police officer pursuant to an order of the court. Forfeiture*
32 *counsel or a seizing agency may apply for an ex parte order directing seizure of specified property.*]

33 [(b) *Application shall be made to any judge as defined in ORS 133.525. The application shall be*
34 *supported by one or more affidavits setting forth the facts and circumstances tending to show where the*
35 *objects of the seizure are to be found. The court shall issue the order upon a finding of probable cause*
36 *to believe that the described property is subject to forfeiture. The order may be set out on the face of*
37 *a search warrant.*]

38 [(c) *Except as provided in ORS 475A.045, with regard to cash or other assets which at the time*
39 *of seizure are held in any form of account in a financial institution, if the property is in whole or in*
40 *part intangible, the order shall direct any person having control or custody of the property to deliver*
41 *the same over to the seizing agency or to the court to abide judgment.*]

42 [(5) *Property may be constructively seized by posting notice of seizure for forfeiture on it or by*
43 *filing notice of seizure for forfeiture or notice of pending forfeiture in the public records that impart*
44 *constructive notice of matters relating to such property. A notice which is filed must include a de-*
45 *scription of the property that is the subject of the seizure. Real property, including interests arising out*

1 of land sale contracts, shall be seized only upon recording notice of seizure containing a legal de-
 2 scription of the property in the mortgage records of the county in which the real property is located.]

3 [(6) Property which has been unconstitutionally seized may be subject to forfeiture if the basis for
 4 forfeiture under this chapter is sustained by evidence which is not the fruit of the unconstitutional
 5 seizure.]

6 [(7) Promptly upon seizure, the officer who seized the property shall make an inventory of the
 7 property seized and shall deliver a receipt embodying the inventory to the person from whose pos-
 8 session they are taken or to the person in apparent control of the property at the time it is seized. The
 9 officer may, in addition, provide an estimate of the value of the property seized and information on the
 10 right to file a claim under ORS 475A.055 (2), and the deadline for filing that claim. If the property is
 11 unoccupied or there is no one present in apparent control, the officer shall leave the receipt suitably
 12 affixed to the property. If the property is physically removed from the location of seizure and it is
 13 unoccupied or there is no one present in apparent control, then the officer shall promptly file the receipt
 14 in the public records of the forfeiting agency. Every receipt prepared under this subsection shall con-
 15 tain, in addition to an inventory of the property seized, the following information:]

16 [(a) The identity of the seizing agency; and]

17 [(b) The address and telephone number of the office or other place where the person may obtain
 18 further information concerning the forfeiture.]

19 [(8) In determining probable cause or reasonable suspicion for seizure, evidence that cash, weapons
 20 or negotiable instruments were found in close proximity to controlled substances or to instrumentalities
 21 of prohibited conduct gives rise to an inference that the cash, weapons or negotiable instruments are
 22 subject to forfeiture. This inference is sufficient in itself to carry the forfeiting agency's initial burden
 23 under ORS 475A.080.]

24 [(9) In the event that property is seized from the possession of a person who asserts a possessory
 25 lien over such property pursuant to applicable law, notwithstanding any other provision of law, any
 26 lien of the person from whom the property was seized shall remain in effect and shall be enforceable
 27 as fully as though the person had retained possession of the property.]

28 **Property may be seized for civil forfeiture as provided in this section.**

29 **(1) Any person who delivers property in obedience to an order or direction to deliver the
 30 property under this section shall not be liable:**

31 **(a) To any person on account of obedience to the order or direction; or**

32 **(b) For any costs incurred on account of any contamination of the delivered property.
 33 This includes, but is not limited to, any disposal costs for any property forfeited under ORS
 34 475A.020, any hazardous waste or material, any contraband or any other contamination
 35 contained in property seized under this section.**

36 **(2) Property may be seized for civil forfeiture by any police officer without a court order
 37 if:**

38 **(a) The property has been the subject of an earlier judgment in favor of any forfeiting
 39 agency in an earlier civil in rem proceeding under this chapter;**

40 **(b) There is probable cause to believe that property is subject to seizure, provided that
 41 the property may constitutionally be seized without a warrant;**

42 **(c) The seizure is in the course of a constitutionally valid criminal investigative stop,
 43 arrest or search, and there is probable cause to believe that the property is subject to sei-
 44 zure;**

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

1 or

2 (e) An owner consents to the seizure.

3 (3)(a) For the purposes of subsection (2) of this section, a police officer has probable
4 cause to believe that property is subject to seizure if the police officer has a substantial ob-
5 jective basis for believing that more likely than not a crime has been committed and that the
6 property seized constitutes proceeds or instrumentalities of a crime.

7 (b) In determining probable cause for seizure under this section, evidence that cash,
8 weapons or negotiable instruments were found in close proximity to controlled substances
9 or to instrumentalities of prohibited conduct gives rise to an inference that the cash, weap-
10 ons or negotiable instruments are subject to seizure.

11 (4) Except as provided in ORS 475A.045, with regard to cash or other assets which at the
12 time of seizure are held in any form of account in a financial institution, if the property is
13 in whole or in part intangible, the person having control or custody of the property shall
14 deliver the same over to the police officer.

15 (5)(a) Property may be seized by any police officer pursuant to an order of the court.
16 Forfeiture counsel or a seizing agency may apply for an ex parte order directing seizure of
17 specified property.

18 (b) Application shall be made to any judge as defined in ORS 133.525. The application shall
19 be supported by one or more affidavits setting forth the facts and circumstances tending to
20 show where the objects of the seizure are to be found. The court shall issue the order upon
21 a finding of probable cause to believe that the described property is subject to civil forfeiture.
22 The order may be set out on the face of a search warrant.

23 (c) Except as provided in ORS 475A.045, with regard to cash or other assets which at the
24 time of seizure are held in any form of account in a financial institution, if the property is
25 in whole or in part intangible, the order shall direct any person having control or custody
26 of the property to deliver the same over to the seizing agency or to the court to abide judg-
27 ment.

28 (6) Property may be constructively seized by posting notice of seizure for civil forfeiture
29 on it or by filing notice of seizure for civil forfeiture or notice of pending civil forfeiture in
30 the public records that impart constructive notice of matters relating to such property. A
31 notice which is filed must include a description of the property that is the subject of the
32 seizure. Real property, including interests arising out of land sale contracts, shall be seized
33 only upon recording notice of seizure containing a legal description of the property in the
34 mortgage records of the county in which the real property is located.

35 (7) Property which has been unconstitutionally seized may be subject to civil forfeiture
36 if the basis for civil forfeiture under this chapter is sustained by evidence which is not the
37 fruit of the unconstitutional seizure.

38 (8) Promptly upon seizure, the officer who seized the property shall make an inventory
39 of the property seized and shall deliver a receipt embodying the inventory to the person from
40 whose possession they are taken or to the person in apparent control of the property at the
41 time it is seized. The officer may, in addition, provide an estimate of the value of the prop-
42 erty seized and information on the right to file a claim under ORS 475A.055 (2), and the
43 deadline for filing that claim. If the property is unoccupied or there is no one present in
44 apparent control, the officer shall leave the receipt suitably affixed to the property. If the
45 property is physically removed from the location of seizure and it is unoccupied or there is

1 no one present in apparent control, then the officer shall promptly file the receipt in the
 2 public records of the forfeiting agency. Every receipt prepared under this subsection shall
 3 contain, in addition to an inventory of the property seized, the following information:

4 (a) The identity of the seizing agency; and

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

7 (9) In the event that property is seized from the possession of a person who asserts a
 8 possessory lien over such property pursuant to applicable law, notwithstanding any other
 9 provision of law, any lien of the person from whom the property was seized shall remain in
 10 effect and shall be enforceable as fully as though the person had retained possession of the
 11 property.

12 **SECTION 9.** ORS 475A.040, as amended by section 20a, chapter 780, Oregon Laws 2001, is
 13 amended to read:

14 475A.040. [*If, prior to the commencement of forfeiture proceedings under ORS 475A.075, it is de-*
 15 *termined that the inventory prepared pursuant to ORS 475A.035 and 475A.055 is substantially incor-*
 16 *rect, the seizing agency shall cause the inventory to be amended. The substance of the amendment shall*
 17 *be clearly noted on the face of the inventory. The amended inventory shall be served with any summons*
 18 *and complaint served under ORS 475A.075. If the amendment occurs after the commencement of*
 19 *forfeiture proceedings, the amended inventory shall be served on all persons previously served with*
 20 *summons and complaint under ORS 475A.075.] **If, prior to the commencement of civil forfeiture***

21 **proceedings under ORS 475A.075, it is determined that the inventory prepared pursuant to**
 22 **ORS 475A.035 and 475A.055 is substantially incorrect, the seizing agency shall cause the in-**
 23 **ventory to be amended. The substance of the amendment shall be clearly noted on the face**
 24 **of the inventory. The amended inventory shall be served with any summons and complaint**
 25 **served under ORS 475A.075. If the amendment occurs after the commencement of civil**
 26 **forfeiture proceedings, the amended inventory shall be served on all persons previously**
 27 **served with summons and complaint under ORS 475A.075.**

28 **SECTION 10.** ORS 475A.045, as amended by section 6a, chapter 780, Oregon Laws 2001, is
 29 amended to read:

30 475A.045. [(1)(a) *Except as otherwise provided in this chapter, property seized for forfeiture is not*
 31 *subject to replevin, conveyance, sequestration or attachment, nor is it subject to a motion or order to*
 32 *return under ORS chapter 133. The seizure of property or the commencement of a forfeiture proceeding*
 33 *pursuant to this chapter shall not abate, impede or in any way delay the initiation or prosecution of*
 34 *a suit or action by a financial institution for the possession of seized property in which the financial*
 35 *institution has or purports to have a lien or security interest or for the foreclosure of such lien or se-*
 36 *curity interest. A financial institution may proceed with any suit or action involving property in which*
 37 *it has a lien or security interest even though a seizure has occurred and forfeiture proceedings have*
 38 *been or will be commenced. Any such suit or action may be consolidated with the forfeiture proceeding*
 39 *for the purpose of trial. If property which may be subject to forfeiture is sold prior to the conclusion*
 40 *of the forfeiture proceedings, the sheriff, trustee or other person conducting the sale and who has actual*
 41 *notice of the forfeiture proceedings shall distribute the sale proceeds as follows:]*

42 [(A) *To the expenses of the sale;*]

43 [(B) *To the payment of the obligations owed to the foreclosing financial institution that are secured*
 44 *by the property and to any other person whose lien or security interest in the property has been fore-*
 45 *closed in the suit or action in the order determined by the court; and]*

1 [(C) *The surplus, if any, shall be distributed to the seizing or forfeiting agency, or to the court in*
2 *which the forfeiture proceedings are pending.*]

3 [(b) *The sheriff, trustee or other person who distributes the sale proceeds as provided shall not be*
4 *liable to any person who has or asserts an interest in the property.*]

5 [(2) *Within 30 days following seizure of property for forfeiture, the seizing agency, in consultation*
6 *with the district attorney of the county in which the property was seized for forfeiture, shall determine*
7 *whether it will seek the forfeiture of the property. If the seizing agency elects not to seek forfeiture, it*
8 *shall pay all costs and expenses relating to towing and storage of the property, and shall cause to be*
9 *discharged any possessory chattel liens arising under ORS 87.152 to 87.162 that have attached to the*
10 *property since its seizure and release the property. The property may be released to a person other than*
11 *the person from whose custody or control the property was taken if the seizing agency, forfeiting agency*
12 *or forfeiture counsel first mails to the last-known addresses of all persons known to have an interest*
13 *in the property a notice of intent to release the property. The notice shall specify the person to whom*
14 *the property is to be released and shall detail the time and place of the release. An agency that complies*
15 *with the provisions of this subsection by paying costs and expenses of towing and storage, discharging*
16 *possessory liens, mailing any required notices and releasing the property shall not be liable for its*
17 *actions under this subsection or for any consequences thereof.*]

18 [(3) *A forfeiting agency shall, pending forfeiture and final disposition and subject to the need to*
19 *retain it in any criminal proceeding, provide that property in the physical custody of the seizing or*
20 *forfeiting agency be serviced or maintained as may be reasonably appropriate to preserve the value of*
21 *the property.*]

22 [(4) *A forfeiting agency may, pending forfeiture and final disposition and subject to the need to*
23 *retain seized property in any criminal proceeding:*]

24 [(a) *Provide that the seized property be transferred for forfeiture to any city, county, state or federal*
25 *agency with forfeiture authority, provided that no such transfer shall have the effect of diminishing or*
26 *reducing the rights of any third party under this chapter.*]

27 [(b) *Apply to the court for an order providing that the seized property may be sold, leased, rented*
28 *or operated in the manner and on the terms that may be specified in the court's order. The court shall*
29 *deny any application unless the sale, lease, rental or operation of the property will be conducted in a*
30 *commercially reasonable manner and shall not result in a material reduction of the property's value.*
31 *An order shall only be entered:*]

32 [(A) *After notice and opportunity to be heard is provided to all persons known to have or to claim*
33 *an interest in the property; and]*

34 [(B) *With the consent of all persons holding security interests of record in the property.*]

35 [(c) *Provide that the seized property be removed to a storage area for safekeeping.*]

36 [(5) *Unless otherwise ordered by the court, the proceeds of the sale, leasing, renting or operation*
37 *under subsection (4) of this section shall be held by the forfeiting agency, and the rights of holders of*
38 *security interests of record in the property shall attach to the proceeds of the sale, leasing, renting or*
39 *operation in the same order of priority as interests attached to the property.*]

40 [(6)(a) *Except as provided in paragraph (b) of this subsection and except for currency with apparent*
41 *or known intrinsic collector value, all cash seized for forfeiture, together with all cash received from*
42 *the sale, leasing, renting or operation of the property, shall be immediately deposited in an insured*
43 *interest-bearing forfeiture trust account or accounts maintained by the seizing or forfeiting agency ex-*
44 *clusively for this purpose. Cash may be retained as evidence in a criminal proceeding but shall be de-*
45 *posited immediately when the need to retain it as evidence is discharged.*]

1 **[(b) Notwithstanding paragraph (a) of this subsection, all cash seized for forfeiture which at the**
2 *time of seizure is deposited in any form of account in a financial institution may remain in the account*
3 *in the financial institution. From the time of seizure until the forfeiture proceeding is abandoned, or*
4 *until a court ultimately enters or fails to enter a judgment of forfeiture, all deposits except the deposit*
5 *of interest by the financial institution, withdrawals or other transactions involving the account are*
6 *prohibited, unless approved by the court.]*

7 **[(c) Subject to any court order, interest earned upon cash deposited in a forfeiture trust account**
8 *or held in an account in a financial institution under this subsection shall be disbursed as follows:]*

9 **[(A) If the forfeiture proceeding is abandoned, or if the court ultimately fails to enter a judgment**
10 *of forfeiture or foreclosure, any interest earned, together with the cash deposited in the forfeiture trust*
11 *account in connection with the seizure in question, shall be paid by the seizing or forfeiting agency to*
12 *the person from whom it was seized and any interest earned, together with the cash deposited in an*
13 *account in a financial institution shall be released by the seizing or forfeiting agency to the person from*
14 *whom it was seized.]*

15 **[(B) If a judgment of forfeiture is entered, but parties other than the forfeiting agency establish**
16 *rights to portions of the amount deposited in the forfeiture trust account or the account held in a fi-*
17 *nanical institution which are in the aggregate larger than or equal to the cash on deposit plus interest*
18 *earned thereon, the interest, together with the cash on deposit, shall be disbursed by the forfeiting*
19 *agency to the parties in the order of their priority.]*

20 **[(C) If a judgment of forfeiture is entered, and the total amount arising out of the seizure which**
21 *is on deposit in the forfeiture trust account or in an account in a financial institution, including interest*
22 *earned on moneys deposited, is greater than the aggregate amount needed to satisfy the established*
23 *interests of security interest holders, lienholders and other claimants, then the balance remaining after*
24 *payment by the forfeiting agency to parties shall be retained by the forfeiting agency.]*

25 **[(7) If the property seized for forfeiture consists of stocks, bonds, promissory notes, or other security**
26 *or evidence of indebtedness, and the property is held in some form of account in a financial institution,*
27 *the property may remain in the account pending a final decision in the forfeiture proceedings. Unless*
28 *otherwise allowed by order of the court, no transactions involving the account shall be permitted other*
29 *than the deposit or reinvestment of dividends or other normally recurring payments on the property.*
30 *Any accrual to the value of the property during the pendency of forfeiture proceedings shall be dis-*
31 *burse in the manner provided for the disbursement of interest under subsection (6) of this section.]*

32 **[(8) If property is seized for forfeiture or if a notice of forfeiture is filed without a prior judicial**
33 *determination of probable cause, a court, on application filed by an owner of or interest holder in the*
34 *property within 15 days after notice of its seizure for forfeiture, or actual knowledge of it, whichever*
35 *is earlier, may, after five days' written notice to the forfeiture counsel, issue an order to show cause to*
36 *the forfeiting agency, for a hearing on the sole issue of whether probable cause for forfeiture of the*
37 *property then exists. If the court finds that there is no probable cause for forfeiture of the property, the*
38 *property seized for forfeiture from the applicant or subjected to the notice of forfeiture shall be released*
39 *from its seizure for forfeiture or lien pending the outcome of a judicial proceeding under ORS*
40 *475A.075.]*

41 **(1)(a) Except as otherwise provided in this chapter, property seized for civil forfeiture is**
42 **not subject to replevin, conveyance, sequestration or attachment, nor is it subject to a mo-**
43 **tion or order to return under ORS chapter 133. The seizure of property or the commence-**
44 **ment of a civil forfeiture proceeding pursuant to this chapter shall not abate, impede or in**
45 **any way delay the initiation or prosecution of a suit or action by a financial institution for**

1 the possession of seized property in which the financial institution has or purports to have
2 a lien or security interest or for the foreclosure of such lien or security interest. A financial
3 institution may proceed with any suit or action involving property in which it has a lien or
4 security interest even though a seizure has occurred and civil forfeiture proceedings have
5 been or will be commenced. Any such suit or action may be consolidated with the civil
6 forfeiture proceeding for the purpose of trial. If property which may be subject to civil
7 forfeiture is sold prior to the conclusion of the civil forfeiture proceedings, the sheriff,
8 trustee or other person conducting the sale and who has actual notice of the civil forfeiture
9 proceedings shall distribute the sale proceeds as follows:

10 (A) To the expenses of the sale;

11 (B) To the payment of the obligations owed to the foreclosing financial institution that
12 are secured by the property and to any other person whose lien or security interest in the
13 property has been foreclosed in the suit or action in the order determined by the court; and

14 (C) The surplus, if any, shall be distributed to the seizing or forfeiting agency, or to the
15 court in which the civil forfeiture proceedings are pending.

16 (b) The sheriff, trustee or other person who distributes the sale proceeds as provided
17 shall not be liable to any person who has or asserts an interest in the property.

18 (2) Within 30 days following seizure of property for civil forfeiture, the seizing agency,
19 in consultation with the district attorney of the county in which the property was seized for
20 civil forfeiture, shall determine whether it will seek the civil forfeiture of the property. If the
21 seizing agency elects not to seek civil forfeiture, it shall pay all costs and expenses relating
22 to towing and storage of the property, and shall cause to be discharged any possessory
23 chattel liens arising under ORS 87.152 to 87.162 that have attached to the property since its
24 seizure and release the property. The property may be released to a person other than the
25 person from whose custody or control the property was taken if the seizing agency, forfeiting
26 agency or forfeiture counsel first mails to the last-known addresses of all persons known to
27 have an interest in the property a notice of intent to release the property. The notice shall
28 specify the person to whom the property is to be released and shall detail the time and place
29 of the release. An agency that complies with the provisions of this subsection by paying costs
30 and expenses of towing and storage, discharging possessory liens, mailing any required no-
31 tices and releasing the property shall not be liable for its actions under this subsection or
32 for any consequences thereof.

33 (3) A forfeiting agency shall, pending civil forfeiture and final disposition and subject to
34 the need to retain it in any criminal proceeding, provide that property in the physical custody
35 of the seizing or forfeiting agency be serviced or maintained as may be reasonably appropri-
36 ate to preserve the value of the property.

37 (4) A forfeiting agency may, pending civil forfeiture and final disposition and subject to
38 the need to retain seized property in any criminal proceeding:

39 (a) Provide that the seized property be transferred for forfeiture to any city, county,
40 state or federal agency with forfeiture authority, unless the transfer diminishes or reduces
41 the rights of any third party under this chapter or constitutes a violation of section 28,
42 chapter 780, Oregon Laws 2001.

43 (b) Apply to the court for an order providing that the seized property may be sold, leased,
44 rented or operated in the manner and on the terms that may be specified in the court's or-
45 der. The court shall deny any application unless the sale, lease, rental or operation of the

1 property will be conducted in a commercially reasonable manner and shall not result in a
2 material reduction of the property's value. An order shall only be entered:

3 (A) After notice and opportunity to be heard is provided to all persons known to have
4 or to claim an interest in the property; and

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

6 (c) Provide that the seized property be removed to a storage area for safekeeping.

7 (5) Unless otherwise ordered by the court, the proceeds of the sale, leasing, renting or
8 operation under subsection (4) of this section shall be held by the forfeiting agency, and the
9 rights of holders of security interests of record in the property shall attach to the proceeds
10 of the sale, leasing, renting or operation in the same order of priority as interests attached
11 to the property.

12 (6)(a) Except as provided in paragraph (b) of this subsection and except for currency with
13 apparent or known intrinsic collector value, all cash seized for civil forfeiture, together with
14 all cash received from the sale, leasing, renting or operation of the property, shall be im-
15 mediately deposited in an insured interest-bearing forfeiture trust account or accounts
16 maintained by the seizing or forfeiting agency exclusively for this purpose. Cash may be
17 retained as evidence in a criminal proceeding but shall be deposited immediately when the
18 need to retain it as evidence is discharged.

19 (b) Notwithstanding paragraph (a) of this subsection, all cash seized for civil forfeiture
20 which at the time of seizure is deposited in any form of account in a financial institution
21 may remain in the account in the financial institution. From the time of seizure until the
22 civil forfeiture proceeding is abandoned, or until a court ultimately enters or fails to enter
23 a judgment of forfeiture, all deposits except the deposit of interest by the financial institu-
24 tion, withdrawals or other transactions involving the account are prohibited, unless approved
25 by the court.

26 (c) Subject to any court order, interest earned upon cash deposited in a forfeiture trust
27 account or held in an account in a financial institution under this subsection shall be dis-
28 bursed as follows:

29 (A) If the civil forfeiture proceeding is abandoned, or if the court ultimately fails to enter
30 a judgment of forfeiture or foreclosure, any interest earned, together with the cash deposited
31 in the forfeiture trust account in connection with the seizure in question, shall be paid by
32 the seizing or forfeiting agency to the person from whom it was seized and any interest
33 earned, together with the cash deposited in an account in a financial institution shall be re-
34 leased by the seizing or forfeiting agency to the person from whom it was seized.

35 (B) If a judgment of forfeiture is entered, but parties other than the forfeiting agency
36 establish rights to portions of the amount deposited in the forfeiture trust account or the
37 account held in a financial institution which are in the aggregate larger than or equal to the
38 cash on deposit plus interest earned thereon, the interest, together with the cash on deposit,
39 shall be disbursed by the forfeiting agency to the parties in the order of their priority.

40 (C) If a judgment of forfeiture is entered, and the total amount arising out of the seizure
41 which is on deposit in the forfeiture trust account or in an account in a financial institution,
42 including interest earned on moneys deposited, is greater than the aggregate amount needed
43 to satisfy the established interests of security interest holders, lienholders and other claim-
44 ants, then the balance remaining after payment by the forfeiting agency to parties shall be
45 retained by the forfeiting agency for distribution as required by ORS 475A.120.

1 (7) If the property seized for civil forfeiture consists of stocks, bonds, promissory notes,
2 or other security or evidence of indebtedness, and the property is held in some form of ac-
3 count in a financial institution, the property may remain in the account pending a final de-
4 cision in the civil forfeiture proceedings. Unless otherwise allowed by order of the court,
5 no transactions involving the account shall be permitted other than the deposit or reinvest-
6 ment of dividends or other normally recurring payments on the property. Any accrual to the
7 value of the property during the pendency of civil forfeiture proceedings shall be disbursed
8 in the manner provided for the disbursement of interest under subsection (6) of this section.

9 (8) If property is seized for civil forfeiture or if a notice of civil forfeiture is filed without
10 a prior judicial determination of probable cause, a court, on application filed by an owner of
11 or interest holder in the property within 15 days after notice of its seizure for civil forfeiture,
12 or actual knowledge of it, whichever is earlier, may, after five days' written notice to the
13 forfeiture counsel, issue an order to show cause to the forfeiting agency, for a hearing on
14 the sole issue of whether probable cause, as described in ORS 475A.035 (3), for seizure of the
15 property exists as of the time of the hearing. If the court finds that there is no probable
16 cause for seizure of the property, the property seized for civil forfeiture from the applicant
17 or subjected to the notice of civil forfeiture shall be released from its seizure for civil
18 forfeiture or lien pending the outcome of a judicial proceeding under ORS 475A.075.

19 **SECTION 11.** ORS 475A.050, as amended by section 21a, chapter 780, Oregon Laws 2001, is
20 amended to read:

21 475A.050. [(1) Whenever the state or a political subdivision intends to forfeit any real property, the
22 state or political subdivision may have recorded by the county clerk or other recorder of deeds of every
23 county in which any part of the premises or real property lies a notice of intent to forfeit real property
24 under ORS 205.246. The notice shall contain the legal description of the real property, the common
25 address if any and the attorney responsible for the forfeiture action. From the time of recording the
26 notice, and from that time only, the intent to forfeit is notice to purchasers and encumbrances of the
27 rights and equities in the premises of the party filing the notice. The notice shall be recorded in the
28 same book and in the same manner in which mortgages are recorded and may be discharged in like
29 manner as mortgages are discharged, either by such party or the attorney signing the notice.]

30 [(2) Unless otherwise prescribed by law, a party recording a notice of intent to forfeit shall use
31 substantially the following form:]

32 [_____]

33
34 NOTICE OF INTENT
35 TO FORFEIT

36 Pursuant to ORS 475A.050, the undersigned states:

37
38 That I, _____ do declare that it is my intent to initiate forfeiture proceedings on the
39 following described real property:

40
41 1. The description of the real property to be affected is:

42 _____
43 _____
44 _____
45 _____

1 _____
2
3 2. The common address, if any, is:
4 _____
5 _____
6 _____
7

8 Dated this _____ day of _____,
9 This notice of intent to file forfeiture will expire on _____ day of _____, _____ absent
10 future filings.

11
12 Name of agency seeking forfeiture
13 _____

14
15 Name of Attorney
16 _____

17
18 Address
19 _____
20 _____
21 _____

22
23 Phone Number
24 _____

25 State of Oregon)
26) ss.
27 County of _____)

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

30
31 _____
32 Notary Public for Oregon
33 My commission expires _____

34 [_____]

35
36 [(3) The notice of intent to forfeit property shall expire 30 days after the date of filing absent future
37 filings to perfect.]

38 (1) Whenever the state or a political subdivision intends to forfeit any real property, the
39 state or political subdivision may have recorded by the county clerk or other recorder of
40 deeds of every county in which any part of the premises or real property lies a notice of in-
41 tent to forfeit real property under ORS 205.246. The notice shall contain the legal description
42 of the real property, the common address if any and the attorney responsible for the forfei-
43 ture action. From the time of recording the notice, and from that time only, the intent to
44 forfeit is notice to purchasers and encumbrances of the rights and equities in the premises
45 of the party filing the notice. The notice shall be recorded in the same book and in the same

manner in which mortgages are recorded and may be discharged in like manner as mortgages are discharged, either by such party or the attorney signing the notice.

(2) Unless otherwise prescribed by law, a party recording a notice of intent to forfeit shall use substantially the following form:

NOTICE OF INTENT TO FORFEIT

Pursuant to ORS 475A.050, the undersigned states:

That I, _____ do declare that it is my intent to initiate civil forfeiture proceedings on 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 notice of intent to file civil forfeiture will expire on ____ day of _____, _____ absent future filings.

Name of agency seeking forfeiture

Name of Attorney

Address

Phone Number

State of Oregon)

) ss.

County of _____)

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

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_____.

Notary Public for Oregon
My commission expires _____.

(3) The notice of intent to forfeit property shall expire 30 days after the date of filing absent future filings to perfect.

SECTION 12. ORS 475A.055, as amended by section 7a, chapter 780, Oregon Laws 2001, is amended to read:

475A.055. *[Personal property which is not subject to an interest in favor of any person known to have an interest, other than a person who engaged in prohibited conduct, may be forfeited by the forfeiting agency in the manner provided in this section.]*

[(1) As soon as practicable after seizure for forfeiture, the seizing agency shall review the inventory prepared by the officer under ORS 475A.035 (7) and estimate the value of the property seized. The forfeiting agency shall amend the inventory to supply an estimate of value of the property seized if no estimate was made by the officer under ORS 475A.035 (7). The forfeiting agency shall, in addition, amend the inventory to supply a correct listing of the property seized or estimate of the value of that property if either the listing or any estimate of value made by the officer is substantially incorrect. Within 15 days after seizure for forfeiture, the forfeiting agency shall prepare a notice of seizure for forfeiture containing a copy of the inventory prepared pursuant to this section and ORS 475A.035, the identity of the person from whom the property was seized, the name, address and telephone number of the seizing agency and the address and telephone number of the office or other place where further information concerning the seizure and forfeiture may be obtained, and shall make reasonable efforts to serve the notice of seizure for forfeiture 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 the notice shall also include information regarding the right to file a claim under subsection (3) of this section, 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, inventory and estimate of value shall be provided to the forfeiting agency's forfeiture counsel.]

[(2)(a) The notice of seizure for forfeiture provided for in this section need not be served on a person who has received the receipt provided for in ORS 475A.035 (7) if:]

[(A) The receipt contains an estimate of the value of the property seized and the seizing agency has not amended the listing of property or estimate of the value in reviewing the inventory under subsection (1) of this section; and]

[(B) The receipt contains information regarding the right to file a claim under subsection (3) of this section and the deadline for filing the claim.]

[(b) Any person who has received the receipt provided for in ORS 475A.035 (7), who must be served with the notice of seizure for forfeiture solely by reason of an amendment to the listing of property or estimate of value under subsection (1) of this section, need only be served by mailing a true copy of the notice of seizure for forfeiture by certified mail, return receipt requested.]

1 [(3) Any person claiming an interest in the property shall file a claim with the forfeiting agency's
2 forfeiture counsel within 21 days after notice of seizure for forfeiture if notice is given in a manner
3 other than by publication. All other persons claiming an interest in the property shall file a claim with
4 the forfeiting agency's forfeiture counsel within 21 days after the last publication date if notice is pub-
5 lished. No extension for the filing of any claim shall be granted. The claim shall be signed by the
6 claimant under penalty of perjury and shall set forth all of the following:]

7 [(a) The true name of the claimant;]

8 [(b) The address at which the claimant will accept future mailings from the court or forfeiture
9 counsel; and]

10 [(c) A statement that the claimant has an interest in the seized property.]

11 [(4) If no timely claim is filed, the property shall, upon application and affidavit of the forfeiting
12 agency, be declared forfeited to the forfeiting agency. The affidavit shall set forth proof of service or,
13 if no service was accomplished, facts demonstrating the forfeiting agency's efforts to accomplish service,
14 together with proof of publication of notice. The application and affidavit shall be filed in the circuit
15 court designated in ORS 475A.075. The judgment declaring the property forfeited shall be as provided
16 in ORS 475A.110.]

17 [(5) If a timely claim is filed, a judicial forfeiture proceeding may be commenced as provided in
18 ORS 475A.075.]

19 [(6) Notwithstanding ORS 8.720 or any other provision of law, but subject to the provisions of ORS
20 180.060, a district attorney may act as forfeiture counsel in any civil forfeiture proceeding.]

21 [(7) In any civil forfeiture proceeding where there are or may be related criminal proceedings, a
22 prosecuting attorney or forfeiture counsel may participate in settlement negotiations initiated by the
23 defendant or claimant or by the attorney representing the defendant or claimant.]

24 [(8) If a forfeiting agency publishes notice of seizure for forfeiture in a newspaper in the manner
25 provided by subsection (1) of this section, the agency may include in a single publication as many no-
26 tices of forfeiture as the agency considers convenient. The publication may contain a single statement
27 of matters from the notices of forfeiture that are common to all of the notices and which would other-
28 wise result in needless repetition. The publication must contain for each notice of forfeiture a separate
29 copy of the inventory prepared pursuant to this section and ORS 475A.035 and a separate statement
30 of the identity of the person from whose custody the property was seized. The published inventory need
31 not contain estimates of value for the property seized.]

32 **Personal property which is not subject to an interest in favor of any person known to**
33 **have an interest, other than a person who is believed by the forfeiting agency to have en-**
34 **gaged in prohibited conduct, may be forfeited by the forfeiting agency in the manner provided**
35 **in this section.**

36 **(1) As soon as practicable after seizure for civil forfeiture, the seizing agency shall review**
37 **the inventory prepared by the officer under ORS 475A.035. The forfeiting agency shall amend**
38 **the inventory to supply a correct listing of the property seized if the listing is substantially**
39 **incorrect. Within 15 days after seizure for civil forfeiture, the forfeiting agency shall prepare**
40 **a notice of seizure for civil forfeiture containing a copy of the inventory prepared pursuant**
41 **to this section and ORS 475A.035, the identity of the person from whom the property was**
42 **seized, the name, address and telephone number of the seizing agency and the address and**
43 **telephone number of the office or other place where further information concerning the**
44 **seizure and forfeiture may be obtained, and shall make reasonable efforts to serve the notice**
45 **of seizure for civil forfeiture on all persons known to have an interest in the seized property.**

1 A person may be served as provided in ORCP 7 D except that the notice shall also include
2 information regarding the right to file a claim under subsection (3) of this section, if appli-
3 cable, and the deadline for filing the claim. If the property is cash in the amount of \$1,000
4 or less, or if the fair market value of the property is \$1,000 or less, the forfeiting agency
5 may publish notice of seizure for civil forfeiture in a newspaper as provided in ORCP 7
6 D(6)(b) to (d). In all other cases, the forfeiting agency shall publish notice of seizure for civil
7 forfeiture in a newspaper as provided in ORCP 7 D(6)(b) to (d). A copy of the notice and in-
8 ventory shall be provided to the forfeiting agency's forfeiture counsel.

9 (2)(a) The notice of seizure for civil forfeiture provided for in this section need not be
10 served on a person who has received the receipt provided for in ORS 475A.035 (8) if:

11 (A) The receipt contains an estimate of the value of the property seized and the seizing
12 agency has not amended the listing of property in reviewing the inventory under subsection
13 (1) of this section; and

14 (B) The receipt contains information regarding the right to file a claim under subsection
15 (3) of this section and the deadline for filing the claim.

16 (b) Any person who has received the receipt provided for in ORS 475A.035 (8), who must
17 be served with the notice of seizure for civil forfeiture solely by reason of an amendment to
18 the listing of property under subsection (1) of this section, need only be served by mailing a
19 true copy of the notice of seizure for civil forfeiture by certified mail, return receipt re-
20 quested.

21 (3) Any person claiming an interest in the property shall file a claim with the forfeiting
22 agency's forfeiture counsel within 21 days after notice of seizure for civil forfeiture if notice
23 is given in a manner other than by publication. All other persons claiming an interest in the
24 property shall file a claim with the forfeiting agency's forfeiture counsel within 21 days after
25 the last publication date if notice is published. No extension for the filing of any claim shall
26 be granted. The claim shall be signed by the claimant under penalty of perjury and shall set
27 forth all of the following:

28 (a) The true name of the claimant;

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

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

32 (4) If no timely claim is filed, the property shall, upon application and affidavit of the
33 forfeiting agency, be declared forfeited to the forfeiting agency for distribution as required
34 by ORS 475A.120. The affidavit shall set forth proof of service or, if no service was accom-
35 plished, facts demonstrating the forfeiting agency's efforts to accomplish service, together
36 with proof of publication of notice. The application and affidavit shall be filed in the circuit
37 court designated in ORS 475A.075. The judgment declaring the property forfeited shall be as
38 provided in ORS 475A.110. A judgment may not be entered under this section unless the
39 statement provided for in section 5c, chapter 780, Oregon Laws 2001, was given to the person
40 from whose possession the property was taken or to the person in apparent control of the
41 property at the time the property was taken.

42 (5) If a timely claim is filed, or if the statement provided for in section 5c, chapter 780,
43 Oregon Laws 2001, was not given to the person from whose possession the property was
44 taken or to the person in apparent control of the property at the time the property was
45 taken, a judicial civil forfeiture proceeding may be commenced as provided in ORS 475A.075.

1 **(6) Notwithstanding ORS 8.720 or any other provision of law, but subject to the provisions**
 2 **of ORS 180.060, a district attorney may act as forfeiture counsel in any civil forfeiture pro-**
 3 **ceeding.**

4 **(7) In any civil forfeiture proceeding where there are or may be related criminal pro-**
 5 **ceedings, a prosecuting attorney or forfeiture counsel may participate in settlement negoti-**
 6 **ations initiated by the defendant or claimant or by the attorney representing the defendant**
 7 **or claimant.**

8 **(8) If a forfeiting agency publishes notice of seizure for civil forfeiture in a newspaper in**
 9 **the manner provided by subsection (1) of this section, the agency may include in a single**
 10 **publication as many notices of civil forfeiture as the agency considers convenient. The pub-**
 11 **lication may contain a single statement of matters from the notices of civil forfeiture that**
 12 **are common to all of the notices and which would otherwise result in needless repetition.**
 13 **The publication must contain for each notice of civil forfeiture a separate copy of the in-**
 14 **ventory prepared pursuant to this section and ORS 475A.035 and a separate statement of the**
 15 **identity of the person from whose custody the property was seized.**

16 **SECTION 13.** ORS 475A.060, as amended by section 22a, chapter 780, Oregon Laws 2001, is
 17 amended to read:

18 475A.060. *[(1) A person claiming an interest in property seized pursuant to this chapter may file*
 19 *a petition for an expedited hearing within 15 days after notice of seizure for forfeiture or within such*
 20 *further time as the court may allow for good cause shown.]*

21 *[(2) A petition for an expedited hearing shall contain a claim if no claim has previously been filed.*
 22 *The petition shall reflect whether the petitioner seeks one or more of the following:]*

23 *[(a) A determination at the hearing of any of the affirmative defenses provided for in ORS*
 24 *475A.085.]*

25 *[(b) An order restoring custody of seized property to the petitioner during the pendency of the*
 26 *proceedings if the court finds, by a preponderance of the evidence, that it is probable that the property*
 27 *will remain available for forfeiture at the completion of the proceedings and that there is a reasonable*
 28 *possibility that the petitioner will ultimately prevail in the proceeding.]*

29 *[(c) Appointment of a receiver.]*

30 *[(3) A person filing a petition under this section shall serve a copy of the petition on all persons*
 31 *known to have an interest. Service shall be accomplished as provided in ORCP 7D. Service by publi-*
 32 *cation shall not be required prior to an expedited hearing.]*

33 *[(4) A hearing shall be held within 15 days after service of all persons known to have an interest*
 34 *or at such later time as the court may allow for good cause shown. The hearing shall be limited to:]*

35 *[(a) Deciding whether claimant can prove an affirmative defense provided for in ORS 475A.085 if*
 36 *the petitioner asserts one of those defenses;]*

37 *[(b) Determining whether an order should be entered directing the return of the seized property to*
 38 *the claimant during the pendency of the hearing; and]*

39 *[(c) Determining whether an order should be entered directing the appointment of a receiver to*
 40 *manage property seized pursuant to this chapter pending a final determination as to the disposition of*
 41 *the property, if the petitioner or the forfeiting agency requests that order.]*

42 *[(5) If the petition is denied, and evidence that was not previously available to the petitioner is*
 43 *discovered, the petitioner may file a new petition under this section at any time prior to a trial under*
 44 *ORS 475A.075. The new petition shall be served as provided under subsection (3) of this section. A*
 45 *hearing on the petition shall be conducted as provided in ORS 475A.065.]*

1 [(6) *The parties to a proceeding under ORS 475A.075 may at any time stipulate to the entry of an*
 2 *order restoring custody of seized property to a petitioner who claims an interest in the property. The*
 3 *order shall comply with the requirements of ORS 475A.070 (1).*]

4 **(1) A person claiming an interest in property seized pursuant to this chapter may file a**
 5 **petition for an expedited hearing within 15 days after notice of seizure for civil forfeiture or**
 6 **within such further time as the court may allow for good cause shown.**

7 **(2) A petition for an expedited hearing shall contain a claim if no claim has previously**
 8 **been filed. The petition shall reflect whether the petitioner seeks one or more of the follow-**
 9 **ing:**

10 **(a) A determination at the hearing of any of the affirmative defenses provided for in ORS**
 11 **475A.085.**

12 **(b) An order restoring custody of seized property to the petitioner during the pendency**
 13 **of the proceedings if the court finds, by a preponderance of the evidence, that it is probable**
 14 **that the property will remain available for civil forfeiture at the completion of the pro-**
 15 **ceedings and that there is a reasonable possibility that the petitioner will ultimately prevail**
 16 **in the proceeding.**

17 **(c) Appointment of a receiver.**

18 **(3) A person filing a petition under this section shall serve a copy of the petition on all**
 19 **persons known to have an interest. Service shall be accomplished as provided in ORCP 7D.**
 20 **Service by publication shall not be required prior to an expedited hearing.**

21 **(4) A hearing shall be held within 15 days after service of all persons known to have an**
 22 **interest or at such later time as the court may allow for good cause shown. The hearing shall**
 23 **be limited to:**

24 **(a) Deciding whether claimant can prove an affirmative defense provided for in ORS**
 25 **475A.085 if the petitioner asserts one of those defenses;**

26 **(b) Determining whether an order should be entered directing the return of the seized**
 27 **property to the claimant during the pendency of the hearing; and**

28 **(c) Determining whether an order should be entered directing the appointment of a re-**
 29 **ceiver to manage property seized pursuant to this chapter pending a final determination as**
 30 **to the disposition of the property, if the petitioner or the forfeiting agency requests that**
 31 **order.**

32 **(5) If the petition is denied, and evidence that was not previously available to the**
 33 **petitioner is discovered, the petitioner may file a new petition under this section at any time**
 34 **prior to a trial under ORS 475A.075. The new petition shall be served as provided under**
 35 **subsection (3) of this section. A hearing on the petition shall be conducted as provided in**
 36 **ORS 475A.065.**

37 **(6) The parties to a proceeding under ORS 475A.075 may at any time stipulate to the**
 38 **entry of an order restoring custody of seized property to a petitioner who claims an interest**
 39 **in the property. The order shall comply with the requirements of ORS 475A.070 (1).**

40 **SECTION 14.** ORS 475A.075, as amended by section 8a, chapter 780, Oregon Laws 2001, is
 41 amended to read:

42 475A.075. *[A civil action in rem may be brought as provided in this section in any case in which*
 43 *forfeiture is sought. A civil action in rem must be brought if the property is real property, the property*
 44 *is in whole or part a manufactured dwelling as defined in ORS 446.003, the property is a floating home*
 45 *as defined in ORS 830.700 or if the property is subject to an interest in favor of any person known to*

1 *have an interest, other than a person who engaged in prohibited conduct.]*

2 *[(1) If a forfeiting agency has commenced proceedings under ORS 475A.055, then an action shall*
3 *be commenced by forfeiture counsel, within 15 days of receipt of a claim. If no proceedings have been*
4 *commenced under ORS 475A.055, then the action shall be commenced by forfeiture counsel within 30*
5 *days of seizure. The property may be released by forfeiture counsel as provided in ORS 475A.045*
6 *(2).]*

7 *[(2) An action is commenced by filing a complaint. Responses to a complaint shall conform to the*
8 *following procedure:]*

9 *[(a) A person claiming an interest in the property shall respond as provided in the Oregon Rules*
10 *of Civil Procedure and, if a claim has not previously been filed, by filing a claim in the form set forth*
11 *in ORS 475A.055 (3) with the court and posting a bond with the court. The bond shall be a cash bond*
12 *in an amount equal to 10 percent of the value of the interest claimed by the person in the property.*
13 *Upon good cause shown by motion and affidavit filed with the initial appearance, the court may waive*
14 *or reduce the bond. Failure to file an appearance, claim and bond shall constitute a default. The bond*
15 *shall be returned to the claimant upon the entry of a final determination on the claim.]*

16 *[(b) Notwithstanding the provisions of paragraph (a) of this subsection, a financial institution*
17 *holding an interest in the seized property shall respond to a complaint with an affidavit establishing*
18 *that the financial institution's interest in the property was acquired:]*

19 *[(A) In the regular course of business as a financial institution;]*

20 *[(B) For valuable consideration;]*

21 *[(C) Without knowledge of the prohibited conduct;]*

22 *[(D) In good faith and without intent to defeat the interest of any potential forfeiting agency; and]*

23 *[(E) With respect to personal property, prior to the seizure of the property, or with respect to real*
24 *property, recorded prior to the recording of notice of the seizure of the real property in the mortgage*
25 *records of the county in which the real property is located. Failure to file an affidavit shall constitute*
26 *a default. The affidavit shall be filed within 30 days from the date of service.]*

27 *[(c) Notwithstanding the provisions of paragraph (a) of this subsection, any person, other than a*
28 *financial institution, who transfers or conveys an interest in real property pursuant to a contract for*
29 *transfer or conveyance of an interest in real property as defined in ORS 93.905 and who retains an*
30 *interest in the real property, or any successor in interest, may respond to a complaint with an affidavit*
31 *establishing that the person:]*

32 *[(A) Received the interest in return for valuable consideration or by way of devise or intestate*
33 *succession;]*

34 *[(B) Had no knowledge at the time of transfer or conveyance of the prohibited conduct;]*

35 *[(C) Acted in good faith and without intent to defeat the interest of any potential forfeiting*
36 *agency;]*

37 *[(D) Recorded the interest in the mortgage records of the county in which the real property is lo-*
38 *cated prior to the recording of any notice of intent to seize or notice of seizure; and]*

39 *[(E) Continued to hold the interest without acquiescing in the prohibited conduct.]*

40 *[(d) For the purposes of paragraph (c) of this subsection, a person shall be considered to have*
41 *acquiesced in prohibited conduct if the person knew of the prohibited conduct and knowingly failed to*
42 *take reasonable action under the circumstances to terminate or avoid use of the property in the course*
43 *of prohibited conduct. For purposes of this section, "reasonable action under the circumstances" in-*
44 *cludes, but is not limited to:]*

45 *[(A) Reporting the prohibited conduct to a police agency;]*

1 [(B) Commencing action that will assert the rights of the affiant as to the property interest;]

2 [(C) Terminating a rental agreement; or]

3 [(D) Seeking an abatement order under the provisions of ORS 105.505 to 105.520, or under the
4 provisions of ORS 105.550 to 105.600, or under any ordinance or regulation allowing abatement of
5 nuisances.]

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

9 [(f) In response to an affidavit filed pursuant to paragraph (c) of this subsection, the forfeiting
10 agency may controvert any or all of the assertions made in the affidavit. The affidavit of the forfeiting
11 agency shall be filed within 20 days of the filing of the affidavit filed under paragraph (c) of this
12 subsection. The transferor, conveyer or successor in interest may respond, within five days of the filing
13 of the affidavit of the forfeiting agency, with a supplemental affidavit limited to the matters stated in
14 the affidavit of the forfeiting agency. If the forfeiting agency does not file an affidavit within the time
15 allowed, the transferor, conveyer or successor in interest shall be considered a financial institution for
16 all purposes under this chapter.]

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

20 [(B) If the court determines that there is no genuine issue of material fact as to the truth of the
21 assertions in the affidavit filed under paragraph (f) of this subsection, the transferor, conveyer or suc-
22 cessor in interest shall be considered a financial institution for all purposes under this chapter. The
23 court shall order the forfeiting agency to pay the costs and disbursements, including attorney fees, of
24 the prevailing transferor, conveyer or successor in interest if the forfeiting agency does not prevail.]

25 [(C) If the court determines that there is a genuine issue of material fact as to the truth of the as-
26 sertions in the affidavit filed pursuant to paragraph (f) of this subsection, the transferor, conveyer or
27 successor in interest shall, within 15 days, respond as provided in paragraph (a) of this subsection.
28 The court may order the transferor, conveyer or successor in interest to pay the attorney fees of the
29 forfeiting agency that were incurred in contesting the affidavit of the transferor, conveyer or successor
30 in interest if the court determines that the affidavit of the transferor, conveyer or successor in interest
31 was frivolous.]

32 [(3) All persons known to have an interest in the property, including any claimant, shall be served
33 with a true copy of the inventory of the property prepared pursuant to ORS 475A.035 and 475A.055,
34 the summons and the complaint as provided in ORCP 5 and 7 D. Notice of the action shall be pub-
35 lished as provided in ORCP 7 D(6)(b) to (d) unless notice has previously been published in accordance
36 with ORS 475A.055 (1). In the event that a forfeiture involves a vehicle, and the notices required by
37 this statute have been given, and substitute service on the claimant is required because personal service
38 cannot be reasonably accomplished, service as authorized by ORCP 7 D(4) shall be sufficient to es-
39 tablish jurisdiction over a registered owner or operator of a vehicle. If the property is in whole or part
40 a manufactured dwelling as defined in ORS 446.003 or a floating home as defined in ORS 830.700, the
41 forfeiting agency shall, in addition to serving all persons known to have an interest in the property,
42 record a notice of seizure containing a description of the manufactured dwelling or floating home in
43 all public offices maintaining records that impart constructive notice of matters relating to manufac-
44 tured dwellings or floating homes.]

45 [(4) All judicial proceedings under this chapter shall be governed by the Oregon Rules of Civil

1 *Procedure to the extent that they do not conflict with specific provisions of this chapter.]*

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

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

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

25 *[(7) The action shall be commenced and tried:]*

26 *[(a) In the case of real property, in the circuit court in a county in which the property is situated;*
 27 *or]*

28 *[(b) In all other cases, in the circuit court of the county in which the property was seized or the*
 29 *county in which any part of the prohibited conduct took place.]*

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

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

41 **(2) An action is commenced by filing a complaint. The complaint need only allege that**
 42 **there is probable cause for seizure of the property, as described in ORS 475A.035 (3), and need**
 43 **not allege that any claimant has been convicted of a crime. A complaint under this section**
 44 **may be amended at any time to allege that a claimant has been convicted of a crime. Re-**
 45 **sponses to a complaint shall conform to the following procedure:**

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

4 (b) Notwithstanding the provisions of paragraph (a) of this subsection, a financial insti-
5 tution holding an interest in the seized property may respond to a complaint with an affidavit
6 establishing the financial institution's interest in the property.

7 (c) Notwithstanding the provisions of paragraph (a) of this subsection, any person, other
8 than a financial institution, who transfers or conveys an interest in real property pursuant
9 to a contract for transfer or conveyance of an interest in real property as defined in ORS
10 93.905 and who retains an interest in the real property, or any successor in interest, may
11 respond to a complaint with an affidavit establishing that the person:

12 (A) Had no knowledge at the time of transfer or conveyance of the prohibited conduct;

13 (B) Acted in good faith and without intent to defeat the interest of any potential for-
14 feiting agency; and

15 (C) Recorded the interest in the mortgage records of the county in which the real prop-
16 erty is located prior to the recording of any notice of intent to seize or notice of seizure.

17 (d) The affidavits permitted by paragraphs (b) and (c) of this subsection must be filed
18 within 30 days from the date of service of the summons and complaint. Failure to file an
19 affidavit or to respond as set forth in paragraph (a) of this subsection shall constitute a de-
20 fault.

21 (e) In response to an affidavit filed pursuant to paragraph (b) or (c) of this subsection,
22 the forfeiting agency may controvert any or all of the assertions made in the affidavit. The
23 affidavit of the forfeiting agency shall be filed within 20 days of the filing of an affidavit under
24 paragraph (b) or (c) of this subsection. The financial institution, transferor, conveyer or
25 successor in interest may respond, within five days of the filing of the affidavit of the for-
26 feiting agency, with a supplemental affidavit limited to the matters stated in the affidavit
27 of the forfeiting agency. If the forfeiting agency does not file an affidavit within the time
28 allowed, a transferor, conveyer or successor in interest shall be considered a financial insti-
29 tution for all purposes under this chapter, and the interest of the financial institution,
30 transferor, conveyer or successor in interest shall be conclusively established for all pur-
31 poses under this chapter.

32 (f)(A) If the forfeiting agency files an affidavit under paragraph (e) of this subsection, the
33 court shall determine from the affidavits whether there is a genuine issue of material fact
34 with respect to the assertions of the financial institution, transferor, conveyer or successor
35 in interest.

36 (B) If the court determines that there is no genuine issue of material fact as to the truth
37 of the assertions in the affidavit filed under paragraph (e) of this subsection, a transferor,
38 conveyer or successor in interest shall be considered a financial institution for all purposes
39 under this chapter, and the interest of the financial institution, transferor, conveyer or
40 successor in interest shall be conclusively established for all purposes under this chapter.
41 The court shall order the forfeiting agency to pay the costs and disbursements, as described
42 in ORCP 68 A, and the attorney fees of the prevailing financial institution, transferor, con-
43 veyor or successor in interest if the forfeiting agency does not prevail.

44 (C) If the court determines that there is a genuine issue of material fact as to the truth
45 of the assertions in the affidavit filed pursuant to paragraph (e) of this subsection, the fi-

1 nancial institution, transferor, conveyor or successor in interest shall, within 15 days, re-
2 spond as provided in paragraph (a) of this subsection. The court may order the financial
3 institution, transferor, conveyor or successor in interest to pay the attorney fees of the
4 forfeiting agency that were incurred in contesting the affidavit of the financial institution,
5 transferor, conveyor or successor in interest if the court determines that the affidavit of the
6 financial institution, transferor, conveyor or successor in interest was frivolous.

7 (3) All persons known to have an interest in the property, including any claimant, shall
8 be served with a true copy of the inventory of the property prepared pursuant to ORS
9 475A.035 and 475A.055, the summons and the complaint as provided in ORCP 5 and 7 D. No-
10 tice of the action shall be published as provided in ORCP 7 D(6)(b) to (d) unless notice has
11 previously been published in accordance with ORS 475A.055 (1). In the event that a civil
12 forfeiture involves a vehicle, and the notices required by this statute have been given, and
13 substitute service on the claimant is required because personal service cannot be reasonably
14 accomplished, service as authorized by ORCP 7 D(4) shall be sufficient to establish jurisdic-
15 tion over a registered owner or operator of a vehicle. If the property is in whole or part a
16 manufactured dwelling as defined in ORS 446.003 or a floating home as defined in ORS
17 830.700, the forfeiting agency shall, in addition to serving all persons known to have an in-
18 terest in the property, record a notice of seizure containing a description of the manufac-
19 tured dwelling or floating home in all public offices maintaining records that impart
20 constructive notice of matters relating to manufactured dwellings or floating homes.

21 (4)(a) If a claim is not made under the provisions of this section or ORS 475A.055 for an
22 interest in property seized for civil forfeiture, or a claim is made but the claimant is found
23 to be in default in the proceedings, the court shall enter a judgment finding that the claimant
24 has abandoned the property and providing for the forfeiture of the claimant's interest with-
25 out hearing if the forfeiting agency files an affidavit with the court showing that there was
26 probable cause for seizure of the property.

27 (b) In addition to any other grounds for entry of a default judgment against a claimant,
28 a forfeiting agency may move the court at any time after a response is made as provided in
29 subsection (2)(a) of this section for an order finding that the claimant is a fugitive and in
30 default. The court shall enter an order finding the claimant in default under this paragraph,
31 and enter judgment as provided in paragraph (a) of this subsection, if:

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

33 (B) The claimant has failed to make a required appearance in the criminal proceeding;
34 and

35 (C) The court finds from affidavits filed by the forfeiting agency that the forfeiting
36 agency or other public bodies have made a good faith effort to locate the claimant, and the
37 claimant cannot be found.

38 (5) All judicial proceedings under this chapter shall be governed by the Oregon Rules of
39 Civil Procedure to the extent that they do not conflict with specific provisions of this chap-
40 ter. A complaint filed under this section is not subject to a motion to strike, a motion for
41 summary judgment or any other pretrial motion for dismissal that is based solely on the lack
42 of a criminal conviction in support of the civil forfeiture. Nothing in this subsection affects
43 the ability of a claimant to file a motion to strike or for summary judgment by reason of an
44 acquittal of the claimant of all criminal charges on which the civil forfeiture is based.

45 (6)(a) The filing of criminal charges related to any civil proceeding for forfeiture may,

1 upon motion of forfeiture counsel or the district attorney or upon motion on behalf of de-
2 fendant in a related criminal proceeding, stay the civil forfeiture proceeding until the trial,
3 plea or dismissal of the related criminal proceeding. A motion for stay on behalf of the de-
4 fendant in a related criminal proceeding shall constitute a waiver of double jeopardy by the
5 defendant as to the civil forfeiture proceeding and any related criminal proceeding. Pursuant
6 to subsection (7) of this section, a civil forfeiture proceeding stayed under this paragraph
7 may be consolidated for trial or other resolution with any related criminal proceeding.

8 (b) The court may stay the civil forfeiture proceeding upon motion of a party and good
9 cause shown. Good cause may include a reasonable fear on the part of a claimant that the
10 claimant could be prosecuted for conduct arising out of the same factual situation which
11 gave rise to the seizure of property. Good cause for a motion made by forfeiture counsel may
12 include the need for additional time to commence or complete a criminal proceeding related
13 to the civil forfeiture proceeding. Pursuant to subsection (7) of this section, a civil forfeiture
14 proceeding stayed under this paragraph may be consolidated for trial or other resolution with
15 any related criminal proceeding.

16 (c) Any party may file a motion with the court at any time to lift a stay granted under
17 this subsection if good cause no longer exists for the stay.

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

30 (8)(a) Any claimant who is alleged to have engaged in prohibited conduct, and who has
31 responded in the manner required by subsection (2)(a) of this section, may file a special
32 motion for the release of all or part of the property subject to the civil forfeiture action if
33 a criminal action alleging the commission of a crime, as described in ORS 161.515, is not
34 brought against any owner of the property within 90 days after the property is seized. The
35 court shall grant the motion except upon good cause shown by the forfeiting agency. The
36 release of the property does not affect the ability of the forfeiting agency to continue the
37 action for the purpose of seeking civil forfeiture of the released property.

38 (b) A motion under this subsection may not be made for the release of any property that
39 is held as evidence or for protective purposes.

40 (9) Any claimant who is alleged to have engaged in prohibited conduct, and who has re-
41 sponded in the manner required by subsection (2)(a) of this section, may offer in the manner
42 provided by ORCP 54 E to allow judgment to be given against all or part of the defendant
43 property for a specified sum or specified property, or to a specified effect. An offer under this
44 subsection shall have the effect specified in ORCP 54 E.

45 (10) The action shall be commenced and tried:

1 **(a) In the case of real property, in the circuit court in a county in which the property is**
 2 **situated; or**

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

5 **SECTION 15.** ORS 475A.080, as amended by section 9a, chapter 780, Oregon Laws 2001, is
 6 amended to read:

7 475A.080. *[In all actions brought for forfeiture, the burden of persuasion shall lie upon the claim-*
 8 *ant, provided that probable cause to believe that the property is subject to forfeiture shall first be shown*
 9 *by the forfeiting agency.]*

10 **(1) In all actions brought under this chapter for civil forfeiture of property that is owned**
 11 **by a person who is convicted of a crime, the burden of persuasion is on the forfeiting agency:**

12 **(a) To show that the owner of the property has been convicted of a crime in this state**
 13 **or in another jurisdiction; and**

14 **(b) To show by clear and convincing evidence that the property to be forfeited constitutes**
 15 **proceeds of the crime that the owner was convicted of, or that the property was instru-**
 16 **mental in committing or facilitating the crime.**

17 **(2) In all actions brought under this chapter for civil forfeiture of property that is owned**
 18 **by a person who has not been convicted of a crime, the burden of persuasion is on the for-**
 19 **feiting agency to show by clear and convincing evidence that the person took the property**
 20 **with the intent to defeat forfeiture of the property.**

21 **SECTION 16.** ORS 475A.085, as amended by section 10a, chapter 780, Oregon Laws 2001, and
 22 section 310, chapter 14, Oregon Laws 2003, is amended to read:

23 475A.085. *[(1) A claimant may plead as an affirmative defense that the claimant took the property*
 24 *or the interest which the claimant holds therein:]*

25 *[(a)(A) Before it was seized for forfeiture;]*

26 *[(B) In good faith and without intent to defeat the interest of any forfeiting agency; and]*

27 *[(C) Continued to hold the property or interest without acquiescing in the prohibited conduct; or]*

28 *[(b) By coownership or cotenancy taken in good faith, without intent to defeat the interest of any*
 29 *forfeiting agency and continued to hold the property or interest without acquiescing in the prohibited*
 30 *conduct.]*

31 *[(2) A claimant may plead as an affirmative defense that the property was seized in violation of*
 32 *ORS 475A.025.]*

33 *[(3) In any action brought against property subject to forfeiture under ORS 475A.020 (7), a claim-*
 34 *ant may plead as an affirmative defense that the controlled substance was solely for personal use.]*

35 *[(4) If, by a preponderance of the evidence, the claimant proves a defense under this section, then*
 36 *judgment shall be entered for the claimant as provided in ORS 475A.110 (7).]*

37 *[(5) This defense may not be asserted by a financial institution which holds a security interest in*
 38 *the property.]*

39 *[(6) For the purposes of subsection (1) of this section, a person shall be considered to have*
 40 *acquiesced in prohibited conduct if the person knew of the prohibited conduct and knowingly failed to*
 41 *take reasonable action under the circumstances to terminate or avoid use of the property in the course*
 42 *of prohibited conduct.]*

43 **(1) A claimant may plead as an affirmative defense that the property was seized in vio-**
 44 **lation of ORS 475A.025.**

45 **(2) In any action brought against property subject to civil forfeiture under ORS 475A.020**

1 (7), a claimant may plead as an affirmative defense that the controlled substance was solely
2 for personal use.

3 (3) If, by a preponderance of the evidence, the claimant proves a defense under this sec-
4 tion, then judgment shall be entered for the claimant as provided in ORS 475A.110 (7).

5 **SECTION 17.** ORS 475A.100, as amended by section 11a, chapter 780, Oregon Laws 2001, is
6 amended to read:

7 475A.100. *[The court shall consider the following factors in determining whether any portion of the*
8 *proposed judgment of forfeiture is excessive:]*

9 *[(1) The court shall enter judgment to the extent that the defendant property is derived directly or*
10 *indirectly from past prohibited conduct.]*

11 *[(2) With respect to defendant property that is not derived directly or indirectly from past prohib-*
12 *ited conduct, the court shall consider:]*

13 *[(a) Whether the defendant property constitutes the claimant's lawful livelihood or means of earning*
14 *a living.]*

15 *[(b) Whether the defendant property is the claimant's residence.]*

16 *[(c) The degree of relationship between the defendant property and the prohibited conduct, includ-*
17 *ing the extent to which the defendant property facilitated the prohibited conduct or could facilitate fu-*
18 *ture prohibited conduct.]*

19 *[(d) The monetary value of the defendant property in relation to the risk of injury to the public from*
20 *the prohibited conduct.]*

21 *[(e) The monetary value of the defendant property in relation to the actual injury to the public from*
22 *the prohibited conduct.]*

23 *[(f) The monetary value of the defendant property in relation to objective measures of the potential*
24 *or actual criminal culpability of the person or persons engaging in the prohibited conduct, including:]*

25 *[(A) The inherent gravity of the prohibited conduct;]*

26 *[(B) The potential sentence for similar prohibited conduct under Oregon law;]*

27 *[(C) The claimant's prior criminal history; and]*

28 *[(D) The sentence actually imposed on the claimant.]*

29 *[(g) Any additional relevant evidence.]*

30 (1) **The form of verdict in a civil forfeiture proceeding must clearly designate the prop-**
31 **erty found by the trier of fact to be proceeds and the property found by the trier of fact to**
32 **be instrumentalities. The court shall enter judgment for the forfeiting agency for all pro-**
33 **ceeds of the crime. The court shall then determine whether forfeiture of all instrumentalities**
34 **of the crime would be excessive or not substantially proportional to the specific conduct for**
35 **which the owner of the property has been convicted. The court shall allow introduction of**
36 **additional relevant evidence in making the determinations required under this subsection.**

37 (2) **The court shall consider the following factors in determining whether any portion of**
38 **the proposed forfeiture of instrumentalities of a crime is excessive or not substantially pro-**
39 **portional to the specific conduct for which the owner of the property has been convicted:**

40 (a) **Whether the defendant property constitutes the claimant's lawful livelihood or means**
41 **of earning a living.**

42 (b) **Whether the defendant property is the claimant's residence.**

43 (c) **The degree of relationship between the defendant property and the prohibited conduct,**
44 **including the extent to which the defendant property facilitated the prohibited conduct.**

45 (d) **The monetary value of the defendant property in relation to the risk of injury to the**

1 **public from the prohibited conduct.**

2 (e) **The monetary value of the defendant property in relation to the actual injury to the**
 3 **public from the prohibited conduct.**

4 (f) **Any prior use of the defendant property, or of similar property, by the claimant for**
 5 **the specific type of conduct for which the claimant is convicted.**

6 (g) **The monetary value of the defendant property in relation to objective measures of the**
 7 **potential or actual criminal culpability of the person or persons engaging in the prohibited**
 8 **conduct, including:**

9 (A) **The inherent gravity of the prohibited conduct;**

10 (B) **The potential sentence for similar prohibited conduct under Oregon law; and**

11 (C) **The sentence actually imposed on the claimant.**

12 (h) **Any additional relevant evidence.**

13 **SECTION 18.** ORS 475A.110, as amended by section 12a, chapter 780, Oregon Laws 2001, sec-
 14 tion 312, chapter 14, Oregon Laws 2003, and section 465, chapter 576, Oregon Laws 2003, is amended
 15 to read:

16 475A.110. [(1) A judgment of forfeiture shall recite the basis for the judgment.]

17 [(2) If no financial institutions have filed the affidavit described in ORS 475A.075 (2)(b), and if the
 18 court has failed to uphold the claim or affidavit of any other claimant, the effect of the judgment shall
 19 be that:]

20 [(a) Title to the property shall pass to the forfeiting agency free of any interest or encumbrance
 21 thereon in favor of any person who has been given notice;]

22 [(b) The forfeiting agency may transfer good and sufficient title to any subsequent purchaser or
 23 transferee, and the title shall be recognized by all courts, by the state, by the departments and agencies
 24 of the state, and by any political subdivision. In the case of real property, the forfeiting agency shall
 25 warrant the title against constitutional defect. A warranty under this section is limited to the purchase
 26 price of the real property; and]

27 [(c) Any department, agency or officer of the state or any political subdivision whose official func-
 28 tions include the issuance of certificates or other evidence of title shall be immune from civil or criminal
 29 liability when such issuance is pursuant to a judgment of forfeiture.]

30 [(3) If any affidavits are filed by financial institutions as provided in ORS 475A.075 (2)(b), or if
 31 any claimants file an appearance, claim and bond as provided in ORS 475A.075 (2)(a) or an affidavit
 32 as provided in ORS 475A.075 (2)(c):]

33 [(a) The court shall foreclose all security interests, liens and vendor's interests of financial insti-
 34 tutions and claimants as to which the court determines that there is a legal or equitable basis for
 35 foreclosure; and]

36 [(b) All other interests applicable to the property, which are not foreclosed or otherwise eliminated
 37 through a judgment of foreclosure, shall, if and to the extent that they are valid and subsisting, remain
 38 in effect, and the property shall remain subject to them upon completion of the forfeiture proceeding.]

39 [(4) Notwithstanding the provisions of this chapter or other law, if a financial institution or other
 40 person has filed an affidavit described in ORS 475A.075, or if the court has upheld the claim of any
 41 claimant, then as to each item of property seized:]

42 [(a) If the court has determined that the property should not be forfeited and has not foreclosed the
 43 security interests, liens or other interests covering the property, the court shall render judgment in favor
 44 of the owner of the property, the property shall be returned to the owner and all security interests, liens
 45 and other interests applicable to the property shall remain in effect as though the property had never

1 *been seized. Upon the return of the property to the owner, the seizing agency shall pay all costs and*
2 *expenses relating to towing and storage of the property, and shall cause to be discharged any*
3 *possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to the*
4 *property since the seizure.]*

5 *[(b) If the court has determined that the property should not be forfeited and has foreclosed one*
6 *or more interests covering the property, including security interests or liens covering the property or*
7 *contracts for the transfer or conveyance of the property, the seizing agency shall pay all costs and ex-*
8 *periences relating to towing and storage of the property, and shall cause to be discharged any possessory*
9 *chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to the property*
10 *since the seizure and the court shall order the property sold pursuant to a sheriff's sale or other sale*
11 *authorized by the court within such time as may be prescribed by the court following entry of the*
12 *judgment. If any interests covering the property have not been foreclosed, including any liens or secu-*
13 *rity interests of a claimant whose claim has been upheld, or of a financial institution that has filed the*
14 *affidavit described in ORS 475A.075, the property shall be sold subject to those interests. The judg-*
15 *ment shall also order the proceeds of such sale applied in the following order:]*

16 *[(A) To the payment of the costs of the sale;]*

17 *[(B) To the satisfaction of the foreclosed liens, security interests and contracts in order of their*
18 *priority; and]*

19 *[(C) The excess, if any, to the owner of the property.]*

20 *[(c) If the court has determined that the property should be forfeited and has foreclosed one or more*
21 *security interests, liens, contracts or other interests covering the property, the seizing agency shall pay*
22 *all costs and expenses relating to towing and storage of the property, and shall cause to be discharged*
23 *any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to*
24 *the property since the seizure and the court shall order the property sold pursuant to a sheriff's sale*
25 *or other sale authorized by the court. If any interest in the property was claimed by a financial insti-*
26 *tution or other claimant and the interest was upheld but not foreclosed, the property shall be sold*
27 *subject to the interest. The sale of the property shall be held within such time as may be prescribed*
28 *by the court following entry of the judgment. The judgment shall also order the proceeds of such sale*
29 *applied in the following order:]*

30 *[(A) To the payment of the costs of the sale;]*

31 *[(B) To the satisfaction of the foreclosed liens, security interests and contracts in the order of their*
32 *priority; and]*

33 *[(C) The excess, if any, to the forfeiting agency to be disposed of as provided in ORS 475A.120.]*

34 *[(d) If the court has determined that the property should be forfeited and has not foreclosed the*
35 *interests of any party in the property, the seizing agency shall pay all costs and expenses relating to*
36 *towing and storage of the property and shall cause to be discharged any possessory chattel liens on the*
37 *property arising under ORS 87.152 to 87.162 that have attached to the property since the seizure, and*
38 *the court shall enter a judgment awarding the property to the forfeiting agency, subject to the interests*
39 *of any claimants whose claims or affidavits were upheld by the court, and subject to the interests of*
40 *any financial institutions that filed affidavits under ORS 475A.075 (2)(b), which shall remain in full*
41 *force and effect.]*

42 *[(5) The forfeiting agency shall not be liable to any person as a consequence of obedience to a*
43 *judgment directing conveyance to a financial institution.]*

44 *[(6) A copy of the judgment, including any judgment entered under the provisions of ORS 475A.055*
45 *(4), shall be sent by forfeiture counsel to the Asset Forfeiture Oversight Advisory Committee.]*

1 [(7)(a) *On entry of judgment for a claimant in any proceeding to forfeit property under this chapter,*
 2 *unless the court has foreclosed one or more security interests, liens or other interests covering the*
 3 *property, such property or interest in property shall be returned or conveyed immediately to the claim-*
 4 *ant designated by the court. The court, in the manner provided by ORCP 68, shall award costs, dis-*
 5 *bursements and attorney fees to the prevailing claimants and financial institutions, to be paid by the*
 6 *forfeiting agency.*]

7 [(b) *If it appears that there was reasonable suspicion that the property was subject to forfeiture, the*
 8 *court shall cause a finding to be entered, and no claimant or financial institution shall be entitled to*
 9 *damages, nor is the person who made the seizure, the seizing or forfeiting agency or forfeiture counsel*
 10 *liable to suit or judgment on account of such seizure or action. An order directing seizure issued un-*
 11 *der ORS 475A.035 (4) shall constitute a finding of reasonable suspicion that the property was subject*
 12 *to forfeiture.*]

13 [(8) *Nothing contained in this section shall prevent a claimant or financial institution from ob-*
 14 *taining any deficiency to which such claimant or financial institution would otherwise be entitled.*]

15 [(9) *Nothing in this section or in ORS 475A.045 shall prevent a seizing agency from entering into*
 16 *an agreement with a claimant or other person for the reimbursement of the seizing agency for the costs*
 17 *and expenses relating to towing and storage of property or the cost of discharging any possessory*
 18 *chattel lien on the property arising under ORS 87.152 to 87.162 that attached to the property between*
 19 *seizure of the property and release or forfeiture of the property.*]

20 **(1) A judgment of forfeiture shall recite the basis for the judgment.**

21 **(2) If no financial institutions have filed the affidavit described in ORS 475A.075 (2)(b),**
 22 **and if the court has failed to uphold the claim or affidavit of any other claimant, the effect**
 23 **of the judgment shall be that:**

24 **(a) Title to the property shall pass to the forfeiting agency free of any interest or**
 25 **encumbrance thereon in favor of any person who has been given notice;**

26 **(b) The forfeiting agency may transfer good and sufficient title to any subsequent pur-**
 27 **chaser or transferee, and the title shall be recognized by all courts, by the state, by the de-**
 28 **partments and agencies of the state, and by any political subdivision. In the case of real**
 29 **property, the forfeiting agency shall warrant the title against constitutional defect. A war-**
 30 **ranty under this section is limited to the purchase price of the real property; and**

31 **(c) Any department, agency or officer of the state or any political subdivision whose of-**
 32 **ficial functions include the issuance of certificates or other evidence of title shall be immune**
 33 **from civil or criminal liability when such issuance is pursuant to a judgment of forfeiture.**

34 **(3) If any affidavits are filed by financial institutions as provided in ORS 475A.075 (2)(b),**
 35 **or if any claimants file an appearance and claim as provided in ORS 475A.075 (2)(a) or an**
 36 **affidavit as provided in ORS 475A.075 (2)(c):**

37 **(a) The court shall foreclose all security interests, liens and vendor's interests of finan-**
 38 **cial institutions and claimants as to which the court determines that there is a legal or eq-**
 39 **uitable basis for foreclosure; and**

40 **(b) All other interests applicable to the property, which are not foreclosed or otherwise**
 41 **eliminated through a judgment of foreclosure, shall, if and to the extent that they are valid**
 42 **and subsisting, remain in effect, and the property shall remain subject to those interests**
 43 **upon completion of the civil forfeiture proceeding.**

44 **(4) Notwithstanding the provisions of this chapter or other law, if a financial institution**
 45 **or other person has filed an affidavit described in ORS 475A.075, or if the court has upheld**

1 the claim of any claimant, then as to each item of property seized:

2 (a) If the court has determined that the property should not be forfeited and has not
3 foreclosed the security interests, liens or other interests covering the property, the court
4 shall render judgment in favor of the owner of the property, the property shall be returned
5 to the owner and all security interests, liens and other interests applicable to the property
6 shall remain in effect as though the property had never been seized. Upon the return of the
7 property to the owner, the seizing agency shall pay all costs and expenses relating to towing
8 and storage of the property, and shall cause to be discharged any possessory chattel liens
9 on the property arising under ORS 87.152 to 87.162 that have attached to the property since
10 the seizure.

11 (b) If the court has determined that the property should not be forfeited and has fore-
12 closed one or more interests covering the property, including security interests or liens
13 covering the property or contracts for the transfer or conveyance of the property, the seiz-
14 ing agency shall pay all costs and expenses relating to towing and storage of the property,
15 and shall cause to be discharged any possessory chattel liens on the property arising under
16 ORS 87.152 to 87.162 that have attached to the property since the seizure and the court shall
17 order the property sold pursuant to a sheriff's sale or other sale authorized by the court
18 within such time as may be prescribed by the court following entry of the judgment. If any
19 interests covering the property have not been foreclosed, including any liens or security in-
20 terests of a claimant whose claim has been upheld, or of a financial institution that has filed
21 the affidavit described in ORS 475A.075, the property shall be sold subject to those interests.
22 The judgment shall also order the proceeds of such sale applied in the following order:

23 (A) To the payment of the costs of the sale;

24 (B) To the satisfaction of the foreclosed liens, security interests and contracts in order
25 of their priority; and

26 (C) The excess, if any, to the owner of the property.

27 (c) If the court has determined that the property should be forfeited and has foreclosed
28 one or more security interests, liens, contracts or other interests covering the property, the
29 seizing agency shall pay all costs and expenses relating to towing and storage of the prop-
30 erty, and shall cause to be discharged any possessory chattel liens on the property arising
31 under ORS 87.152 to 87.162 that have attached to the property since the seizure and the court
32 shall order the property sold in a commercially reasonable manner at a sheriff's sale or other
33 sale authorized by the court. If any interest in the property was claimed by a financial in-
34 stitution or other claimant and the interest was upheld but not foreclosed, the property shall
35 be sold subject to the interest. The sale of the property shall be held within such time as
36 may be prescribed by the court following entry of the judgment. The judgment shall also
37 order the proceeds of such sale to be first applied to the satisfaction of the foreclosed liens,
38 security interests and contracts in the order of their priority and the excess, if any, to be
39 awarded to the forfeiting agency for distribution as required by ORS 475A.120.

40 (d) If the court has determined that the property should be forfeited and has not fore-
41 closed the interests of any party in the property, the seizing agency shall pay all costs and
42 expenses relating to towing and storage of the property and shall cause to be discharged any
43 possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have at-
44 tached to the property since the seizure, and the court shall enter a judgment awarding the
45 property to the forfeiting agency, subject to the interests of any claimants whose claims or

1 affidavits were upheld by the court, and subject to the interests of any financial institutions
2 that filed affidavits under ORS 475A.075 (2)(b), which shall remain in full force and effect.

3 (5) The forfeiting agency shall not be liable to any person as a consequence of obedience
4 to a judgment directing conveyance to a financial institution.

5 (6) A copy of the judgment, including any judgment entered under the provisions of ORS
6 475A.055 (4), shall be sent by forfeiture counsel to the Asset Forfeiture Oversight Advisory
7 Committee.

8 (7) On entry of judgment for a claimant in any proceeding to forfeit property under this
9 chapter, unless the court has foreclosed one or more security interests, liens or other in-
10 terests covering the property, such property or interest in property shall be returned or
11 conveyed immediately to the claimant designated by the court. The court, in the manner
12 provided by ORCP 68, shall award costs, disbursements and attorney fees to the prevailing
13 claimants and financial institutions, to be paid by the forfeiting agency.

14 (8) Nothing contained in this section shall prevent a claimant or financial institution
15 from obtaining any deficiency to which such claimant or financial institution would otherwise
16 be entitled.

17 (9) Nothing in this section or in ORS 475A.045 shall prevent a seizing agency from en-
18 tering into an agreement with a claimant or other person for the reimbursement of the
19 seizing agency for the costs and expenses relating to towing and storage of property or the
20 cost of discharging any possessory chattel lien on the property arising under ORS 87.152 to
21 87.162 that attached to the property between seizure of the property and release or civil
22 forfeiture of the property.

23 **SECTION 19.** ORS 475A.115, as amended by section 13a, chapter 780, Oregon Laws 2001, is
24 amended to read:

25 475A.115. *[Distribution of property or proceeds in accordance with this chapter shall be made*
26 *equitably and may be pursuant to intergovernmental agreement under ORS chapter 190. Intergovern-*
27 *mental agreements providing for such distributions and in effect July 24, 1989, shall remain valid un-*
28 *less changed by the parties.]* **Distribution of property or proceeds in accordance with this**
29 **chapter shall be made equitably and may be pursuant to intergovernmental agreement under**
30 **ORS chapter 190. Intergovernmental agreements providing for such distributions and in ef-**
31 **fect July 24, 1989, shall remain valid unless changed by the parties. An intergovernmental**
32 **agreement providing for the distribution of forfeited property may not provide for a distrib-**
33 **ution that is inconsistent with the requirements of this chapter.**

34 **SECTION 20.** ORS 475A.120, as amended by section 14a, chapter 780, Oregon Laws 2001, is
35 amended to read:

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

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

1 ***[(b) The balance of the property shall be credited to the general fund of the political jurisdiction***
2 ***that operates the forfeiting agency.]***

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

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

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

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

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

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

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

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

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

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

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

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

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

1 *posits to the Asset Forfeiture Oversight Account under this paragraph shall be made once every three*
2 *months and are due within 20 days of the end of each quarter. No interest shall accrue on amounts that*
3 *are paid within the period specified by this paragraph.]*

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

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

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

15 *[(4) Law enforcement agencies shall supply to forfeiture counsel all information requested by*
16 *forfeiture counsel necessary for the preparation of the report required by subsection (3) of this*
17 *section.]*

18 *[(5) Political subdivisions of the state who receive forfeiture proceeds under this section shall sub-*
19 *mit a report to the Asset Forfeiture Oversight Advisory Committee for any year in which those proceeds*
20 *are received. The committee shall develop and make available forms for the purpose of those reports.*
21 *The forms shall require the political subdivision to report on how proceeds received by the political*
22 *subdivision have been or will be used, and such other information as may be requested by the com-*
23 *mittee. Reports shall be submitted each December 15 for the last ending fiscal year of the political*
24 *subdivision.]*

25 *[(6) This section applies only to forfeiture proceeds arising out of prohibited conduct as defined by*
26 *ORS 475A.005 (11), and does not apply to proceeds from forfeiture based on other conduct.]*

27 **(1) Except as otherwise provided by intergovernmental agreement, the forfeiting agency**
28 **may retain or sell any property awarded to the agency under ORS 475A.110. Amounts realized**
29 **from any sale of forfeited property must be distributed as provided in this section. The for-**
30 **feiting agency may destroy forfeited firearms or controlled substances if the district attorney**
31 **for the forfeiting agency's jurisdiction gives written authorization for destruction of the**
32 **property.**

33 **(2) Property awarded to a forfeiting agency under ORS 475A.110 may not be used for law**
34 **enforcement purposes. The property must be applied first to the actual and reasonable ex-**
35 **penditures incurred by the forfeiting agency in the forfeiture proceeding, including attorney fees,**
36 **storage, maintenance, management and disposition of the forfeited property incurred in**
37 **connection with the sale of the property. The amount applied under this subsection may not**
38 **exceed 25 percent of the total proceeds in any single forfeiture.**

39 **(3) After application of the amounts required under subsection (2) of this section, the**
40 **balance of the property awarded to the forfeiting agency under ORS 475A.110 must be dis-**
41 **tributed by the forfeiting agency in the manner provided by any intergovernmental agree-**
42 **ment that applies to the property. After distribution of property under intergovernmental**
43 **agreements, any property held by the forfeiting agency that is in the form of money must**
44 **be deposited:**

45 **(a) In the Forfeiture Account established under ORS 475A.130, to be expended for the**

1 purposes specified in this section and ORS 475A.130, if the forfeiting agency to which the
2 property is awarded is the state; and

3 (b) In a local forfeiture account established under section 25, chapter 780, Oregon Laws
4 2001, to be expended for the purposes specified in this section and section 25, chapter 780,
5 Oregon Laws 2001, if the forfeiting agency to which the property is awarded is not the state.

6 (4)(a) Upon deposit of moneys in the Forfeiture Account under the provisions of sub-
7 section (3)(a) of this section, the state must deduct an amount equal to three percent of the
8 value of all property received by the state, not to exceed \$50,000 in any biennium, and deposit
9 that amount, in the manner provided by subsection (8) of this section, in the Asset Forfeiture
10 Oversight Account established by ORS 475A.160.

11 (b) Upon deposit of moneys in a local forfeiture account under the provisions of sub-
12 section (3)(b) of this section, the forfeiting agency must deduct an amount equal to 2.5 per-
13 cent of the value of all property received by the forfeiting agency and deposit that amount,
14 in the manner provided by subsection (8) of this section, in the Asset Forfeiture Oversight
15 Account established by ORS 475A.160.

16 (5)(a) The deductions required by this subsection must be made from all moneys depos-
17 ited in the Forfeiture Account or local forfeiture account that are attributable to forfeitures
18 based on violation of, solicitation to violate, attempt to violate or conspiracy to violate any
19 provisions of ORS 475.005 to 475.285 or 475.805 to 475.999.

20 (b) When the forfeiting agency is not the state, upon deposit of moneys described in
21 paragraph (a) of this subsection, the forfeiting agency must deduct an amount equal to five
22 percent of the value of all property received by the forfeiting agency from forfeitures de-
23 scribed in paragraph (a) of this subsection and deposit that amount, in the manner provided
24 by subsection (8) of this section, in the Illegal Drug Cleanup Fund established by ORS 475.495,
25 to be used for the purposes specified in ORS 475.495 (5).

26 (c) When the state is the forfeiting agency, upon deposit of moneys described in para-
27 graph (a) of this subsection, the state must deduct an amount equal to 10 percent of the
28 value of all property received by the state from forfeitures described in paragraph (a) of this
29 subsection, not to exceed \$250,000 in any biennium, and deposit that amount, in the manner
30 provided by subsection (8) of this section, in the Illegal Drug Cleanup Fund established by
31 ORS 475.495, to be used for the purposes specified in ORS 475.495 (5).

32 (6) Notwithstanding subsection (1) of this section, a forfeiting agency must sell as much
33 property as may be needed to fund the requirements of subsections (4) and (5) of this section.

34 (7) Notwithstanding any other provision of this section, growing equipment and labora-
35 tory equipment awarded to a forfeiting agency that was used in the manufacturing of con-
36 trolled substances may be donated to a public school, community college or institution of
37 higher education.

38 (8) Deposits in the Illegal Drug Cleanup Fund and the Asset Forfeiture Oversight Ac-
39 count under subsections (4) and (5) of this section must be made once every three months
40 and are due within 20 days of the end of each quarter. No interest shall accrue on amounts
41 that are paid within the period specified by this subsection.

42 **SECTION 21.** ORS 475A.130, as amended by section 9a, chapter 834, Oregon Laws 2001, is
43 amended to read:

44 475A.130. *[The Special Crime and Forfeiture Account is established in the General Fund of the*
45 *State Treasury. The account shall consist of all forfeiture proceeds received or retained by agencies of*

1 *the state under this chapter, except as otherwise provided by section 38, chapter 780, Oregon Laws*
 2 *2001. All moneys in the account are continuously appropriated and shall be used for enforcement of*
 3 *laws relating to the unlawful delivery, distribution, manufacture or possession of controlled substances,*
 4 *including but not limited to use of the proceeds for controlled substance crime prevention, drug inter-*
 5 *vention, drug treatment and drug education programs. Except as specifically provided by this section,*
 6 *forfeiture proceeds in the Special Crime and Forfeiture Account may not be used for payment of the*
 7 *wages of peace officers, as defined in ORS 161.015, the purchase, construction, expansion, remodeling*
 8 *or maintenance of buildings, or the funding of all or part of any position that was in existence before*
 9 *August 23, 1993, and that was previously funded out of revenues other than forfeiture proceeds.*
 10 *Forfeiture proceeds may be used for the following:]*

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

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

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

16 **(1) The Forfeiture Account is established in the General Fund of the State Treasury. The**
 17 **account shall consist of all forfeiture proceeds received or retained by agencies of the state**
 18 **by reason of civil forfeitures conducted under this chapter, except as otherwise provided by**
 19 **ORS 475A.120.**

20 **(2) At least once every three months, the moneys in the Forfeiture Account must be**
 21 **distributed to the Drug Prevention and Education Fund established in section 4, chapter 834,**
 22 **Oregon Laws 2001.**

23 **(3) Before distribution of any moneys from the Forfeiture Account pursuant to sub-**
 24 **section (2) of this section, the state must deduct from the Forfeiture Account all amounts**
 25 **required by ORS 475A.120 (4)(a) and (5)(b).**

26 **SECTION 22.** ORS 475A.155, as amended by section 21, chapter 666, Oregon Laws 2001, is
 27 amended to read:

28 475A.155. *[(1) The Asset Forfeiture Oversight Advisory Committee is created. The committee con-*
 29 *sists of 12 members to be appointed as follows:]*

30 *[(a) The President of the Senate and the Speaker of the House of Representatives shall appoint six*
 31 *legislators to the committee. Three shall be Senators appointed by the President. Three shall be Rep-*
 32 *resentatives appointed by the Speaker.]*

33 *[(b) The Governor shall appoint three members to the committee.]*

34 *[(c) The Attorney General shall appoint three members to the committee.]*

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

40 *[(3)(a) The members of the committee shall select from among themselves a chairperson and vice*
 41 *chairperson.]*

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

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

45 *[(5) The committee shall:]*

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

5 *[(b) In consultation with forfeiture counsel, review and, if necessary, modify the reports required*
 6 *from forfeiture counsel and political subdivisions to ensure that information necessary for oversight is*
 7 *being obtained and is gathered in an efficient and effective manner.]*

8 *[(c) Make any recommendations it deems necessary to increase the effectiveness, fairness and effi-*
 9 *ciency of forfeiture actions brought under this chapter.]*

10 *[(d) Make any recommendations for additional legislation governing forfeiture actions brought un-*
 11 *der this chapter.]*

12 *[(e) Conduct studies or other activities as necessary to accomplish the purposes of this*
 13 *subsection.]*

14 *[(6) The Executive Director of the Oregon Criminal Justice Commission shall provide the committee*
 15 *with staff, subject to funds available for that purpose.]*

16 **(1) The Asset Forfeiture Oversight Advisory Committee is created. The committee con-**
 17 **sists of 12 members to be appointed as follows:**

18 **(a) The President of the Senate and the Speaker of the House of Representatives shall**
 19 **appoint six legislators to the committee. Three shall be Senators appointed by the President.**
 20 **Three shall be Representatives appointed by the Speaker.**

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

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

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

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

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

32 **(4) Legislative members shall be entitled to payment of compensation and expense re-**
 33 **imbursement under ORS 171.072, payable from funds appropriated to the Legislative Assem-**
 34 **bly.**

35 **(5) The committee shall:**

36 **(a) Prepare reports detailing the number and nature of forfeitures carried out under this**
 37 **chapter and sections 1 to 18, chapter 666, Oregon Laws 2001, including the disposition and**
 38 **use of the proceeds from the forfeitures. The reports shall be submitted on or before March**
 39 **31 of each year to the Speaker of the House of Representatives, President of the Senate,**
 40 **Attorney General and Governor.**

41 **(b) In consultation with forfeiture counsel, review and, if necessary, modify the reports**
 42 **required from forfeiture counsel and political subdivisions to ensure that information nec-**
 43 **essary for oversight is being obtained and is gathered in an efficient and effective manner.**

44 **(c) Make any recommendations it deems necessary to increase the effectiveness, fairness**
 45 **and efficiency of forfeiture actions brought under this chapter and sections 1 to 18, chapter**

1 **666, Oregon Laws 2001.**

2 (d) **Make any recommendations for additional legislation governing forfeiture actions**
3 **brought under this chapter and sections 1 to 18, chapter 666, Oregon Laws 2001.**

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

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

8 (7) **For purposes of this section, “forfeiture counsel” includes forfeiture counsel as de-**
9 **defined in section 1, chapter 666, Oregon Laws 2001.**

10 **SECTION 23.** ORS 475A.160, as amended by section 16a, chapter 780, Oregon Laws 2001, is
11 amended to read:

12 475A.160. *[(1) The Asset Forfeiture Oversight Account is established in the State Treasury separate*
13 *and distinct from the General Fund.]*

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

16 *[(a) Moneys received from a state agency or political subdivision under the provisions of ORS*
17 *475A.120 and section 38, chapter 780, Oregon Laws 2001; and]*

18 *[(b) Any other moneys appropriated to the Asset Forfeiture Oversight Account.]*

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

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

23 *[(5) If at the end of a biennium the Asset Forfeiture Oversight Account has received amounts under*
24 *the provisions of ORS 475A.120 (1)(g) and section 38 (6), chapter 780, Oregon Laws 2001, that are in*
25 *excess of 115 percent of the biennial expenditure limitation established for expenditures from the ac-*
26 *count, the Oregon Criminal Justice Commission shall refund to each state agency or political subdivi-*
27 *sion that made payment into the account during the biennium a pro rata share of the amounts that are*
28 *in excess of 115 percent of the expenditure limitation for the account, based on the amount of forfeiture*
29 *proceeds paid into the account by the state agency or political subdivision. The commission is not re-*
30 *quired to issue any refund under this subsection if the amount of the refund is less than \$25.]*

31 **(1) The Asset Forfeiture Oversight Account is established in the State Treasury separate**
32 **and distinct from the General Fund.**

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

35 **(a) Moneys received from a state agency or political subdivision under the provisions of**
36 **ORS 475A.120; and**

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

38 **(3) The State Treasurer may invest and reinvest moneys in the Asset Forfeiture Over-**
39 **sight Account in the manner provided by law. Interest earned by the account shall be**
40 **credited to the account.**

41 **(4) The moneys in the Asset Forfeiture Oversight Account are continuously appropriated**
42 **to the Oregon Criminal Justice Commission to be used for the purposes specified in ORS**
43 **475A.155.**

44 **(5) If at the end of a biennium the Asset Forfeiture Oversight Account has received**
45 **amounts under the provisions of ORS 475A.120 that are in excess of 115 percent of the**

1 **biennial expenditure limitation established for expenditures from the account, the Oregon**
 2 **Criminal Justice Commission shall refund to each state agency or political subdivision that**
 3 **made payment into the account during the biennium a pro rata share of the amounts that**
 4 **are in excess of 115 percent of the expenditure limitation for the account, based on the**
 5 **amount of forfeiture proceeds paid into the account by the state agency or political subdivi-**
 6 **sion. The commission is not required to issue any refund under this subsection if the amount**
 7 **of the refund is less than \$25.**

8 **SECTION 24.** ORS 475.495, as amended by section 19a, chapter 780, Oregon Laws 2001, is
 9 amended to read:

10 475.495. [(1) *The Illegal Drug Cleanup Fund is established separate and distinct from the General*
 11 *Fund in the State Treasury.*]

12 [(2) *The following moneys shall be deposited into the State Treasury and credited to the Illegal*
 13 *Drug Cleanup Fund:*]

14 [(a) *Moneys recovered or otherwise received from responsible parties for cleanup costs;*]

15 [(b) *Moneys received from a state agency, local government unit or any agency of a local govern-*
 16 *ment unit for cleanup of illegal drug manufacturing sites, including moneys received from forfeiture*
 17 *proceeds under the provisions of ORS 475A.120 and section 38, chapter 780, Oregon Laws 2001;*]

18 [(c) *Moneys received from the federal government for cleanup of illegal drug manufacturing sites;*
 19 *and*]

20 [(d) *Any penalty, fine or punitive damages recovered under ORS 475.435, 475.455 or 475.485.*]

21 [(3) *The State Treasurer may invest and reinvest moneys in the Illegal Drug Cleanup Fund in the*
 22 *manner provided by law. Interest earned by the fund shall be credited to the fund.*]

23 [(4) *The moneys in the Illegal Drug Cleanup Fund are appropriated continuously to the Depart-*
 24 *ment of Environmental Quality to be used as provided for in subsection (5) of this section.*]

25 [(5) *Moneys in the Illegal Drug Cleanup Fund may be used for the following purposes:*]

26 [(a) *Payment of the state's cleanup costs; and*]

27 [(b) *Funding any action or activity authorized by ORS 475.415 to 475.455, 475.475 and 475.485.*]

28 [(6) *The department may not expend more than \$250,000 in each biennium of the forfeiture proceeds*
 29 *that are paid into the Illegal Drug Cleanup Fund by political subdivisions under the provisions of ORS*
 30 *475A.120. If at the end of a biennium more than \$250,000 has been paid into the Illegal Drug Cleanup*
 31 *Fund under the provisions of ORS 475A.120, the department shall refund to each political subdivision*
 32 *that made payments into the fund a pro rata share of the excess amount, based on the amount of*
 33 *forfeiture proceeds paid into the fund by the political subdivision.*]

34 **(1) The Illegal Drug Cleanup Fund is established separate and distinct from the General**
 35 **Fund in the State Treasury.**

36 **(2) The following moneys shall be deposited into the State Treasury and credited to the**
 37 **Illegal Drug Cleanup Fund:**

38 **(a) Moneys recovered or otherwise received from responsible parties for cleanup costs;**

39 **(b) Moneys received from a state agency, local government unit or any agency of a local**
 40 **government unit for cleanup of illegal drug manufacturing sites, including moneys received**
 41 **from forfeiture proceeds under the provisions of ORS 475A.120;**

42 **(c) Moneys received from the federal government for cleanup of illegal drug manufac-**
 43 **turing sites; and**

44 **(d) Any penalty, fine or punitive damages recovered under ORS 475.435, 475.455 or 475.485.**

45 **(3) The State Treasurer may invest and reinvest moneys in the Illegal Drug Cleanup Fund**

1 in the manner provided by law. Interest earned by the fund shall be credited to the fund.

2 (4) The moneys in the Illegal Drug Cleanup Fund are appropriated continuously to the
3 Department of Environmental Quality to be used as provided for in subsection (5) of this
4 section.

5 (5) Moneys in the Illegal Drug Cleanup Fund may be used for the following purposes:

6 (a) Payment of the state's cleanup costs; and

7 (b) Funding any action or activity authorized by ORS 475.415 to 475.455, 475.475 and
8 475.485.

9 (6) The department may not expend more than \$250,000 in each biennium of the forfeiture
10 proceeds that are paid into the Illegal Drug Cleanup Fund by political subdivisions under the
11 provisions of ORS 475A.120. If at the end of a biennium more than \$250,000 has been paid into
12 the Illegal Drug Cleanup Fund under the provisions of ORS 475A.120, the department shall
13 refund to each political subdivision that made payments into the fund a pro rata share of the
14 excess amount, based on the amount of forfeiture proceeds paid into the fund by the political
15 subdivision.

16 **SECTION 25.** ORS 647.155, as amended by section 17a, chapter 780, Oregon Laws 2001, is
17 amended to read:

18 647.155. *[(1) The following are subject to seizure and forfeiture in the same manner as the proceeds
19 of prohibited conduct under ORS chapter 475A:]*

20 *[(a) All raw materials and equipment that are used, or intended for use, in providing, manufac-
21 turing and delivering items bearing a counterfeit mark or services identified by a counterfeit mark;]*

22 *[(b) All conveyances that are used, or intended for use, to transport items bearing a counterfeit
23 mark;]*

24 *[(c) All books, records, computers and data that are used or intended for use in the production,
25 manufacture, sale or delivery of items bearing a counterfeit mark or services identified by a counterfeit
26 mark; and]*

27 *[(d) All moneys, negotiable instruments, balances in deposit or other accounts, securities or other
28 things of value furnished or intended to be furnished by any person in the course of activity constitut-
29 ing a violation of ORS 647.140, 647.145 or 647.150.]*

30 *[(2) Items bearing a counterfeit mark are subject to seizure and disposition as provided in ORS
31 133.525 to 133.703. However, if the registrant so requests, the agency holding the seized items shall
32 release the seized items to the registrant or make such other disposition as the registrant directs. If the
33 registrant does not direct disposition of the seized items, the agency shall destroy the items.]*

34 (1) **Violation of ORS 647.140, 647.145 or 647.150 is prohibited conduct for the purposes of
35 ORS chapter 475A, and any proceeds or instrumentalities of a violation of ORS 647.140,
36 647.145 or 647.150 may be seized for civil forfeiture in the manner provided by ORS chapter
37 475A.**

38 (2) **Items bearing a counterfeit mark are subject to seizure and disposition as provided
39 in ORS 133.525 to 133.703. However, if the registrant so requests, the agency holding the
40 seized items shall release the seized items to the registrant or make such other disposition
41 as the registrant directs. If the registrant does not direct disposition of the seized items, the
42 agency shall destroy the items.**

43 **SECTION 26.** ORS 809.730, as amended by section 18a, chapter 780, Oregon Laws 2001, is
44 amended to read:

45 809.730. *[(1) A motor vehicle may be seized and forfeited if the person operating the vehicle is ar-*

1 *rested or issued a citation for driving while under the influence of intoxicants in violation of ORS*
 2 *813.010 and the person, within three years prior to the arrest or issuance of the citation, has been*
 3 *convicted of:]*

4 *[(a) Driving while under the influence of intoxicants in violation of ORS 813.010, or its statutory*
 5 *counterpart in another jurisdiction; or]*

6 *[(b) Murder, manslaughter, criminally negligent homicide or assault that resulted from the opera-*
 7 *tion of a motor vehicle in this state or in another jurisdiction.]*

8 *[(2) All seizure and forfeiture proceedings under this section shall be conducted in accordance with*
 9 *ORS chapter 475A.]*

10 **(1) A motor vehicle may be seized for civil forfeiture if the person operating the vehicle**
 11 **is arrested or issued a citation for driving while under the influence of intoxicants in vio-**
 12 **lation of ORS 813.010 and the person, within three years prior to the arrest or issuance of**
 13 **the citation, has been convicted of:**

14 **(a) Driving while under the influence of intoxicants in violation of ORS 813.010, or its**
 15 **statutory counterpart in another jurisdiction; or**

16 **(b) Murder, manslaughter, criminally negligent homicide or assault that resulted from**
 17 **the operation of a motor vehicle in this state or in another jurisdiction.**

18 **(2) All seizure and civil forfeiture proceedings under this section shall be conducted in**
 19 **accordance with ORS chapter 475A.**

20
 21 **CRIMINAL FORFEITURE**

22
 23 **SECTION 27. ORS 163.696, 164.879, 165.586, 166.279 and 167.379 and sections 57 and 58,**
 24 **chapter 666, Oregon Laws 2001, section 11, chapter 834, Oregon Laws 2001, and section 14c,**
 25 **chapter 926, Oregon Laws 2001, are repealed.**

26 **SECTION 28. ORS 133.643, as amended by section 23, chapter 666, Oregon Laws 2001, is**
 27 **amended to read:**

28 133.643. A motion for the return or restoration of things seized shall be based on the ground that
 29 the movant has a valid claim to rightful possession thereof, because:

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

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

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

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

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

40 **SECTION 29. ORS 137.138, as amended by section 39, chapter 666, Oregon Laws 2001, is**
 41 **amended to read:**

42 137.138. (1) In addition to and not in lieu of any other sentence it may impose, a court shall
 43 require a defendant convicted under ORS 164.365, 166.663, 167.315, [167.320, 167.322,] 498.056 or
 44 498.146 or other state, county or municipal laws, for an act involving or connected with injuring,
 45 damaging, mistreating or killing a livestock animal, to forfeit any rights in weapons used in con-

1 nection with the act underlying the conviction.

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

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

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

8 **SECTION 30.** ORS 164.864, as amended by section 42, chapter 666, Oregon Laws 2001, is
 9 amended to read:

10 164.864. As used in ORS 164.865, 164.866, 164.868, 164.869, 164.872, 164.873[,] **and** 164.875 [*and*
 11 *164.879*] and this section, unless the context requires otherwise:

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

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

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

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

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

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

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

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

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

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

42 (10) "Videotape" means a reel of tape upon which a motion picture is electronically or magnet-
 43 ically imprinted by means of an electronic video recorder and which may be used in video playback
 44 equipment to project or display the motion picture on a television screen.

45 **SECTION 31.** ORS 164.866, as amended by section 43, chapter 666, Oregon Laws 2001, is

1 amended to read:

2 164.866. Nothing in ORS 164.864, 164.865, 164.868, 164.869, 164.872, 164.873[,] **or** 164.875 [*or*
3 *164.879*] or this section limits or impairs the right of a person injured by the criminal acts of a de-
4 fendant to sue and recover damages from the defendant in a civil action.

5 **SECTION 32.** ORS 166.282, as amended by section 37, chapter 666, Oregon Laws 2001, and
6 section 5, chapter 614, Oregon Laws 2003, is amended to read:

7 166.282. (1) A political subdivision in this state that sells a weapon described in subsection (2)
8 of this section shall pay the proceeds from the sale of the weapon, less the costs of the sale, to the
9 account of the police agency that received **or seized** the weapon, to be used for purposes of public
10 safety, law enforcement and crime prevention and detection.

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

12 **SECTION 33.** ORS 166.370, as amended by section 36, chapter 666, Oregon Laws 2001, and
13 section 6, chapter 614, Oregon Laws 2003, is amended to read:

14 166.370. (1) Any person who intentionally possesses a loaded or unloaded firearm or any other
15 instrument used as a dangerous weapon, while in or on a public building, shall upon conviction be
16 guilty of a Class C felony.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (5)(a) Any person who knowingly, or with reckless disregard for the safety of another, discharges
43 or attempts to discharge a firearm at a place that the person knows is a school shall upon con-
44 viction be guilty of a Class C felony.

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

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

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

4 [(6) Any weapon carried in violation of this section is subject to the forfeiture provisions of ORS
 5 166.279.]

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

9 [(8)] (7) As used in this section, "dangerous weapon" means a dangerous weapon as that term
 10 is defined in ORS 161.015.

11 **SECTION 34.** ORS 166.660, as amended by section 38, chapter 666, Oregon Laws 2001, is
 12 amended to read:

13 166.660. (1) A person commits the crime of unlawful paramilitary activity if the person:

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

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

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

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

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

37 (4) As used in this section:

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

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

44 (c) "Explosive" means a chemical compound, mixture or device that is commonly used or in-
 45 tended for the purpose of producing a chemical reaction resulting in a substantially instantaneous

1 release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin,
 2 blasting caps and nitrojelly, but excluding fireworks as defined in ORS 480.110 (1), black powder,
 3 smokeless powder, small arms ammunition and small arms ammunition primers.

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

11 **SECTION 35.** ORS 167.350, as amended by section 14b, chapter 926, Oregon Laws 2001, is
 12 amended to read:

13 167.350. (1) In addition to and not in lieu of any other sentence it may impose, a court may re-
 14 quire a defendant convicted under ORS 167.315 to 167.333 or 167.340 to forfeit any rights of the
 15 defendant in the animal subjected to the violation, and to repay the reasonable costs incurred by
 16 any person or agency prior to judgment in caring for each animal subjected to the violation.

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

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

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

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

35 **SECTION 36.** ORS 475.245, as amended by section 10, chapter 834, Oregon Laws 2001, is
 36 amended to read:

37 475.245. Whenever any person pleads guilty to or is found guilty of possession of a controlled
 38 substance under ORS 475.992 (4) **or of a property offense that is motivated by a dependence on**
 39 **a controlled substance**, the court, without entering a judgment of guilt and with the consent of the
 40 district attorney and the accused, may defer further proceedings and place the person on probation.
 41 Upon violation of a term or condition of probation, the court may enter an adjudication of guilt and
 42 proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall dis-
 43 charge the person and dismiss the proceedings against the person. Discharge and dismissal under
 44 this section shall be without adjudication of guilt and is not a conviction for purposes of this section
 45 or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. [There

1 *may be only one discharge and dismissal under this section with respect to any person.]*
 2

3 **MISCELLANEOUS**
 4

5 **SECTION 37.** (1) If this 2005 Act does not become effective until after July 30, 2005, the
 6 repeal of section 57, chapter 666, Oregon Laws 2001, by section 25 of this 2005 Act acts to
 7 revive sections 1 to 19, chapter 666, Oregon Laws 2001, the repeal of section 33, chapter 780,
 8 Oregon Laws 2001, by section 1 of this 2005 Act acts to revive sections 5c, 25, 26, 27, 28, 29,
 9 30 and 31, chapter 780, Oregon Laws 2001, and the repeal of section 11, chapter 834, Oregon
 10 Laws 2001, by section 27 of this 2005 Act acts to revive sections 1 to 4, chapter 834, Oregon
 11 Laws 2001.

12 (2) If this 2005 Act does not become effective until after July 30, 2005, this 2005 Act is
 13 operative retroactively to that date, and the operation and effect of sections 1 to 19, chapter
 14 666, Oregon Laws 2001, sections 5c, 25, 26, 27, 28, 29, 30 and 31, chapter 780, Oregon Laws
 15 2001, and sections 1 to 4, chapter 834, Oregon Laws 2001, and of ORS 133.643, 137.138, 164.864,
 16 164.866, 166.282, 166.370, 166.660, 167.350, 475.245, 475.495, 475A.005, 475A.010, 475A.020,
 17 475A.030, 475A.035, 475A.040, 475A.045, 475A.050, 475A.055, 475A.060, 475A.075, 475A.080,
 18 475A.085, 475A.100, 475A.110, 475A.115, 475A.120, 475A.130, 475A.155, 475A.160, 647.155 and
 19 809.730 as in effect on July 30, 2005, continue unaffected from July 30, 2005, to the effective
 20 date of this 2005 Act and thereafter. Any otherwise lawful action taken after July 30, 2005,
 21 and before the effective date of this 2005 Act, or otherwise lawful obligation incurred after
 22 July 30, 2005, and before the effective date of this 2005 Act, under the authority of sections
 23 1 to 19, chapter 666, Oregon Laws 2001, section 5c, 25, 26, 27, 28, 29, 30 or 31, chapter 780,
 24 Oregon Laws 2001, or sections 1 to 4, chapter 834, Oregon Laws 2001, or ORS 133.643, 137.138,
 25 164.864, 164.866, 166.282, 166.370, 166.660, 167.350, 475.245, 475.495, 475A.005, 475A.010, 475A.020,
 26 475A.030, 475A.035, 475A.040, 475A.045, 475A.050, 475A.055, 475A.060, 475A.075, 475A.080,
 27 475A.085, 475A.100, 475A.110, 475A.115, 475A.120, 475A.130, 475A.155, 475A.160, 647.155 or
 28 809.730 as in effect on July 30, 2005, is ratified and approved.

29 **SECTION 38.** The unit captions used in this 2005 Act are provided only for the conven-
 30 ience of the reader and do not become part of the statutory law of this state or express any
 31 legislative intent in the enactment of this 2005 Act.

32 **SECTION 39.** This 2005 Act being necessary for the immediate preservation of the public
 33 peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect
 34 on its passage.
 35