

Enrolled
Senate Bill 1049

Sponsored by Senators BROWN, DEVLIN

CHAPTER

AN ACT

Relating to civil penalties imposed by Board of Boiler Rules; creating new provisions; and amending ORS 455.895 and 480.670.

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

SECTION 1. ORS 455.895 is amended to read:

455.895. (1)(a) The State Plumbing Board may impose a civil penalty against a person as provided under ORS 447.992 and 693.992. Amounts recovered under this paragraph are subject to ORS 693.165.

(b) The Electrical and Elevator Board may impose a civil penalty against a person as provided under ORS 479.995. Amounts recovered under this paragraph are subject to ORS 479.850.

(c) The Board of Boiler Rules may impose a civil penalty against a person as provided under ORS 480.670. Amounts recovered under this paragraph [*shall be deposited to the General Fund*] **are subject to ORS 480.670.**

(2) The Director of the Department of Consumer and Business Services, in consultation with the appropriate board, if any, may impose a civil penalty against any person who violates any provision of ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 446.566 to 446.646, 446.666 to 446.746, 479.510 to 479.945, 479.950 and 480.510 to 480.670 and this chapter and ORS chapters 447, 460 and 693, or any rule adopted or order issued for the administration and enforcement of those provisions. Except as provided in subsections (3) and (8) of this section or ORS 446.995, a civil penalty imposed under this section must be in an amount determined by the appropriate board or the director of not more than \$5,000 for each offense or, in the case of a continuing offense, not more than \$1,000 for each day of the offense.

(3) Each violation of ORS 446.003 to 446.200 or 446.225 to 446.285, or any rule or order issued thereunder, constitutes a separate violation with respect to each manufactured structure or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed \$1 million for any related series of violations occurring within one year from the date of the first violation.

(4) The maximum penalty established by this section for a violation may be imposed only upon a finding that the person has engaged in a pattern of violations. The Department of Consumer and Business Services, by rule, shall define what constitutes a pattern of violations. Except as provided in subsections (1) and (9) of this section, moneys received from any civil penalty under this section are appropriated continuously for and shall be used by the director for enforcement and administration of provisions and rules described in subsection (2) of this section.

(5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(6) A civil penalty imposed under this section may be remitted or reduced upon such terms and conditions as the director or the appropriate board considers proper and consistent with the public health and safety. In any judicial review of a civil penalty imposed under this section, the court may, in its discretion, reduce the penalty.

(7) Any officer, director, shareholder or agent of a corporation, or member or agent of a partnership or association, who personally participates in or is an accessory to any violation by the partnership, association or corporation of a provision or rule described in subsection (2) of this section is subject to the penalties prescribed in this section.

(8) In addition to the civil penalty set forth in subsection (1) or (2) of this section, any person who violates a provision or rule described in subsection (2) of this section may be required by the director or the appropriate board to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the director or board that shall not exceed five times the amount by which such person profited in any transaction that violates a provision or rule described in subsection (2) of this section.

(9) If a civil penalty is imposed for a violation of a provision of ORS 446.566 to 446.646 and the violation relates to a filing or failure to file with a county assessor functioning as agent of the department, the department, after deducting an amount equal to the department's procedural, collection and other related costs and expenses, shall forward one-half of the remaining civil penalty amount to the county in which the manufactured structure is located at the time of the violation.

SECTION 2. ORS 480.670 is amended to read:

480.670. The Board of Boiler Rules may impose a civil penalty for a violation of ORS 480.510 to 480.670 or rules adopted for the administration and enforcement of those sections. [*The board shall impose a civil penalty authorized by this section as provided in ORS 455.895.*] **Moneys received by the Department of Consumer and Business Services or the board from civil penalties imposed under this section or ORS 455.895 (1)(c) shall be deposited to the Consumer and Business Services Fund created under ORS 705.145 and used only for the administration and enforcement of ORS 480.510 to 480.670 and 480.990 (8).**

SECTION 3. The amendments to ORS 455.895 and 480.670 by sections 1 and 2 of this 2007 Act apply to civil penalty moneys received on or after July 1, 2008, regardless of the date the Board of Boiler Rules imposed the civil penalty.

SECTION 4. The amendments to ORS 455.895 and 480.670 by sections 1 and 2 of this 2007 Act become operative July 1, 2008.

Passed by Senate May 24, 2007

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Secretary of Senate

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President of Senate

Passed by House June 19, 2007

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Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State