

A-Engrossed
House Bill 2134

Ordered by the House May 1
Including House Amendments dated May 1

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Human Services)

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.

[Transfers authority of Construction Contractors Board over lead-based paint activities to Department of Human Services. Requires department to adopt certain rules related to removal and disposal of lead-based paint. Makes violation subject to civil penalty.]

Directs Department of Human Services to adopt rules for regulation of lead-based paint activities, certification of individuals and firms to perform specified activities related to lead-based paint and accreditation of training providers to train those individuals and firms. Makes violation of rules or specified laws subject to civil penalty. Requires penalty moneys to be deposited in Public Health Account for purposes of lead poisoning prevention.

Directs Construction Contractors Board to establish system to license contractors as lead-based paint activities contractors and certified lead-based paint renovation contractors.

Establishes Construction Contractors Board Lead-Based Paint Activities Fund. Continuously appropriates moneys in fund to board for purposes of lead poisoning prevention.

Makes violation of board's rules or specified laws subject to civil penalty. Requires penalty moneys to be deposited in fund for purposes of lead poisoning prevention.

A BILL FOR AN ACT

1
2 Relating to lead-based paint activities; creating new provisions; amending ORS 431.920, 701.005,
3 701.505, 701.510 and 701.515; repealing ORS 701.500; and appropriating money.

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

5 **SECTION 1. (1) Lead poisoning is a significant health concern because lead is a potent**
6 **neurotoxin that affects every system of the human body. It is harmful to individuals of all**
7 **ages and is especially harmful to children, fetuses and women of childbearing age. Lead**
8 **poisoning is one of the most common and preventable pediatric health problems in Oregon.**

9 **(2) Common renovation activities such as sanding, cutting and demolition can create**
10 **hazardous lead dust and chips by disturbing lead-based paint, which can be harmful to adults**
11 **and children.**

12 **(3) The federal government assists states in preventing lead poisoning and reducing lead**
13 **hazards through:**

14 **(a)(A) The Lead-Based Paint Poisoning Prevention Act;**

15 **(B) The Lead Contamination Control Act of 1988;**

16 **(C) The Safe Drinking Water Act; and**

17 **(D) The Resource Conservation and Recovery Act of 1976.**

18 **(b) Implementing regulations of:**

19 **(A) The Department of Housing and Urban Development;**

20 **(B) The Environmental Protection Agency;**

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 (C) The Occupational Safety and Health Administration; and

2 (D) The Centers for Disease Control and Prevention.

3 (c) The Residential Lead-Based Paint Hazard Reduction Act of 1992, which:

4 (A) Requires that sellers and landlords of residential housing constructed before 1978
5 notify buyers and tenants of known lead-based paint hazards; and

6 (B) Allows states to receive authorization from the Environmental Protection Agency to
7 provide for the accreditation of lead-based paint activities and renovation training programs,
8 the certification of persons completing training programs and the certification of lead-based
9 paint activities and renovation contractors pursuant to standards developed by the agency.

10 **SECTION 2.** As used in ORS 431.920 and section 4 of this 2009 Act:

11 (1) "Certified" and "certification" means an action by the Department of Human Services
12 verifying the successful completion of a training program accredited by the department and
13 any other requirements.

14 (2) "Firm" has the meaning given that term in 40 C.F.R. 745.83 and as further defined
15 pursuant to the authorities described in section 1 of this 2009 Act.

16 (3) "Lead-based paint" has the meaning given that term in P.L. 102-550, section 1004, and
17 as further defined pursuant to the authorities described in section 1 of this 2009 Act.

18 (4) "Lead-based paint activities" has the meaning given that term in 40 C.F.R. 745.223 and
19 as further defined pursuant to the authorities described in section 1 of this 2009 Act.

20 (5) "Renovation" has the meaning given that term in 40 C.F.R. 745.83 and as further de-
21 fined pursuant to the authorities described in section 1 of this 2009 Act.

22 **SECTION 3.** ORS 431.920 is amended to read:

23 431.920. (1) The Department of Human Services shall:

24 *[(1) Develop accreditation programs for training providers;]*

25 *[(2) Prescribe the requirements for and the manner of testing the competency of license applicants*
26 *for the protection of the public and as required by federal law;]*

27 *[(3) Prescribe those actions or circumstances that constitute failure to achieve or maintain compe-*
28 *tency, or that otherwise are contrary to the public interest, for which the agency may refuse to issue*
29 *or renew or may suspend or revoke a certification;]*

30 *[(4) Develop and conduct programs to screen blood lead levels, to identify hazards and to educate*
31 *the public, including parents, residential dwelling owners and child care facility operators, about the*
32 *dangers of lead-based paint hazards and of appropriate precautions that should be taken to reduce the*
33 *possibility of childhood lead poisoning; and]*

34 *[(5) Impose fees to the extent necessary to pay the costs of the following:]*

35 *[(a) Certification of training curriculums, up to \$1,500;]*

36 *[(b) Annual renewal of training providers and curriculums, up to \$500;]*

37 *[(c) Certification of trainers, up to \$500;]*

38 *[(d) Annual renewal of trainer's certification, up to \$250; and]*

39 *[(e) Certification test, up to \$85.]*

40 (a) Certify individuals to perform lead-based paint activities;

41 (b) Certify firms to perform renovation;

42 (c) Accredite training providers to train individuals and firms to perform lead-based paint
43 activities and renovation;

44 (d) Develop and approve training programs for individuals and firms performing lead-
45 based paint activities and renovation;

1 (e) Establish standards based on best practices for the conduct of lead-based paint in-
2 spections, risk assessment and abatement services, renovation activities that disturb lead-
3 based paint and the disposal of lead-based paint that are in addition to, not inconsistent with
4 and not in lieu of any other workplace standards required by law;

5 (f) Develop and conduct programs to screen blood lead levels, identify hazards and edu-
6 cate the public, including but not limited to parents, residential dwelling owners, pediatric
7 medical providers and child care facility operators, about the dangers of lead-based paint and
8 about appropriate precautions that may reduce the probability of childhood lead poisoning;

9 (g) Adopt rules necessary to implement the provisions of this section and sections 4 and
10 5 of this 2009 Act; and

11 (h) Establish fees sufficient to recover the costs of implementing the provisions of this
12 section and sections 4 and 5 of this 2009 Act, including but not limited to:

13 (A) Fees for certification and recertification of individuals and firms to perform lead-
14 based paint activities and renovation; and

15 (B) Accreditation and reaccreditation of lead-based paint training providers.

16 (2) The Department of Human Services may:

17 (a) Enter private or public property at any reasonable time with consent of the owner
18 or custodian of the property to inspect, investigate, evaluate or conduct tests or take speci-
19 mens or samples for testing, as necessary to determine compliance with section 4 of this 2009
20 Act;

21 (b) Issue subpoenas to determine compliance with section 4 of this 2009 Act;

22 (c) Suspend, revoke or modify an individual's or firm's certification to perform lead-based
23 paint activities or renovation if the individual or firm fails to comply with state or federal
24 statutes or regulations related to lead-based paint; and

25 (d) Suspend, revoke or modify a certified renovator's certification if the renovator fails
26 to comply with state or federal statutes or regulations related to lead-based paint.

27 **SECTION 4.** A person may not perform, or offer to perform, lead-based paint activities
28 or renovation unless the person is certified as provided under ORS 431.920 or is performing
29 lead-based paint activities or renovation under the supervision of a person certified under
30 ORS 431.920.

31 **SECTION 5.** (1) Any person who violates any provision of, or any rule adopted under, ORS
32 431.920 or section 4 of this 2009 Act shall forfeit and pay to the Public Health Account es-
33 tablished under ORS 431.210 a civil penalty of not more than \$5,000 for each violation. Moneys
34 paid to the Public Health Account under this section may be used only for the purposes of
35 lead poisoning prevention, including consumer and industry outreach, public education, blood
36 lead screening and other activities.

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

38 (3) A civil penalty imposed under this section is in addition to and not in lieu of any other
39 penalty or sanction provided by law.

40 (4) The Department of Human Services shall report all civil penalties or sanctions im-
41 posed under this section or a rule adopted under ORS 431.920 to each of the following state
42 agencies:

43 (a) The Construction Contractors Board;

44 (b) The Occupational Safety and Health Division of the Department of Consumer and
45 Business Services; and

1 **(c) The Department of Environmental Quality.**

2 **SECTION 6.** ORS 701.005 is amended to read:

3 701.005. As used in this chapter:

4 (1) “Board” means the Construction Contractors Board.

5 (2) “Commercial contractor” means a licensed contractor that holds an endorsement as a:

6 (a) Commercial general contractor level 1;

7 (b) Commercial specialty contractor level 1;

8 (c) Commercial general contractor level 2;

9 (d) Commercial specialty contractor level 2; or

10 (e) Commercial developer.

11 (3) “Commercial developer” means a developer of property that is zoned for or intended for use
12 compatible with a small commercial or large commercial structure.

13 (4) “Construction debt” means an amount owed under:

14 (a) An order or arbitration award issued by the board that has become final by operation of law;

15 (b) A judgment or civil penalty that has become final by operation of law arising from con-
16 struction activities within the United States; or

17 (c) A judgment or civil penalty that has become final by operation of law arising from a failure
18 to comply with ORS 656.017.

19 (5) “Contractor” means any of the following:

20 (a) A person who, for compensation or with the intent to sell, arranges or undertakes or offers
21 to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect,
22 move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other
23 structure, project, development or improvement attached to real estate, or to clean or service
24 chimneys, or to do any part thereof.

25 (b) A person that purchases or owns property and constructs or for compensation arranges for
26 the construction of one or more residential structures or small commercial structures with the in-
27 tent of selling the structures.

28 (c) A school district, as defined in ORS 332.002, that permits students to construct a residential
29 structure or small commercial structure as an educational experience to learn building techniques
30 and sells the completed structure.

31 (d) A community college district, as defined in ORS 341.005, that permits students to construct
32 a residential structure or small commercial structure as an educational experience to learn building
33 techniques and sells the completed structure.

34 (e) Any person except a landscape contracting business, nurseryman, gardener or person en-
35 gaged in the commercial harvest of forest products, that is engaged as an independent contractor
36 to remove trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying.

37 (f) A business that supplies the services of a home inspector certified under ORS 701.350[*a*
38 *lead-based paint inspector licensed under ORS 701.515*] or a cross connection inspector and backflow
39 assembly tester certified under ORS 448.279.

40 (6) “Developer” means a contractor that owns property or an interest in property and engages
41 in the business of arranging for construction work or performing other activities associated with the
42 improvement of real property, with the intent to sell the property.

43 (7) “General contractor”:

44 (a) Means a contractor whose business operations require the use of more than two unrelated
45 building trades or crafts that the contractor supervises or performs in whole or part, whenever the

1 sum of all contracts on any single property, including materials and labor, exceeds an amount es-
2 tablished by rule by the board.

3 (b) Does not mean a specialty contractor or a residential limited contractor.

4 (8) "Home inspector" means a person who, for a fee, inspects and provides written reports on
5 the overall physical condition of a residential structure and the appurtenances thereto. "Home in-
6 spector" does not include persons certified under ORS chapter 455 to inspect new, repaired or al-
7 tered structures for compliance with the state building code.

8 (9) "Key employee" means an employee or owner of a contractor who is a corporate officer,
9 manager, superintendent, foreperson or lead person or any other employee identified by the board
10 by rule.

11 (10) "Large commercial structure" means a structure that is not a residential structure or small
12 commercial structure.

13 (11) "Officer" means any of the following persons:

14 (a) A president, vice president, secretary, treasurer or director of a corporation.

15 (b) A general partner in a limited partnership.

16 (c) A manager in a manager-managed limited liability company.

17 (d) A member of a member-managed limited liability company.

18 (e) A trustee.

19 (f) A person defined as an officer under board rules. The definition of officer adopted by board
20 rule may include persons not listed in this subsection who may exercise substantial control over a
21 business.

22 (12) "Residential contractor" means a licensed contractor that holds an endorsement as a:

23 (a) Residential general contractor;

24 (b) Residential specialty contractor;

25 (c) Residential limited contractor; or

26 (d) Residential developer.

27 (13) "Residential developer" means a developer of property that is zoned for or intended for use
28 compatible with a residential or small commercial structure.

29 (14) "Residential structure":

30 (a) Means:

31 (A) A residence that is a site-built home;

32 (B) A structure that contains one or more dwelling units and is four stories or less above grade;

33 (C) A condominium, rental residential unit or other residential dwelling unit that is part of a
34 larger structure, if the property interest in the unit is separate from the property interest in the
35 larger structure;

36 (D) A modular home constructed off-site;

37 (E) A manufactured dwelling; or

38 (F) A floating home as defined in ORS 830.700.

39 (b) Does not mean:

40 (A) Subject to paragraph (a)(C) of this subsection, a structure that contains both residential and
41 nonresidential units;

42 (B) Transient lodging;

43 (C) A residential school or residence hall;

44 (D) A state or local correctional facility other than a local facility for persons enrolled in work
45 release programs maintained under ORS 144.460;

1 (E) A youth correction facility as defined in ORS 420.005;

2 (F) A youth care center operated by a county juvenile department under administrative control
3 of a juvenile court pursuant to ORS 420.855 to 420.885;

4 (G) A detention facility as defined in ORS 419A.004;

5 (H) A nursing home;

6 (I) A hospital; or

7 (J) A place constructed primarily for recreational activities.

8 (15) "Responsible managing individual" means an individual who:

9 (a) Is an owner described in ORS 701.094 or an employee of the business;

10 (b) Exercises management or supervisory authority, as defined by the board by rule, over the
11 construction activities of the business; and

12 (c)(A) Has successfully completed the training and testing required for licensing under ORS
13 701.122 within a period identified by the board by rule;

14 (B) Has demonstrated experience required by the board by rule; or

15 (C) Has complied with the licensing requirements of ORS 446.395.

16 (16) "Small commercial structure" means:

17 (a) A nonresidential structure that has a ground area of 10,000 square feet or less, including
18 exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to
19 the highest interior overhead finish of the structure;

20 (b) A nonresidential leasehold, rental unit or other unit that is part of a larger structure, if the
21 unit has a ground area of 12,000 square feet or less, excluding exterior walls, and a height of not
22 more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish
23 of the unit; or

24 (c) A nonresidential structure of any size for which the contract price of all construction con-
25 tractor work to be performed on the structure as part of a construction project does not total more
26 than \$250,000.

27 (17) "Specialty contractor" means a contractor who performs work on a structure, project, de-
28 velopment or improvement and whose operations as such do not fall within the definition of "general
29 contractor." "Specialty contractor" includes a person who performs work regulated under ORS
30 446.395.

31 (18) "Zero-lot-line dwelling" means a single-family dwelling unit constructed in a group of at-
32 tached units in which:

33 (a) Each attached unit extends from foundation to roof with open space on two sides; and

34 (b) Each dwelling unit is separated by a property line.

35 **SECTION 7.** ORS 701.505 is amended to read:

36 701.505. For the purposes of ORS [431.920 and] 701.500 to 701.515:

37 (1) "Abatement" has the meaning given that term in P.L. 102-550, section 1004, 40 C.F.R. 745.223
38 and as further defined pursuant to the authorities described in [ORS 701.500] **section 1 of this 2009**
39 **Act.**

40 (2) "Accredited training program" means a training program that has been accredited by the
41 Department of Human Services to provide training for individuals engaged in lead-based paint ac-
42 tivities.

43 [(3) "Certified" means an action by the Department of Human Services verifying the successful
44 completion of a training program accredited by the department and any other requirements.]

45 (3) **"Certified lead-based paint renovation contractor" means a contractor that is licensed**

1 **by the Construction Contractors Board to conduct lead-based paint renovation under ORS**
2 **701.515.**

3 [(4) “Discipline” means a specific type or category of lead-based paint activity.]

4 [(5) “Evaluation” has the meaning given that term in P.L. 102-550, section 1004, and as further
5 defined pursuant to the authorities described in ORS 701.500.]

6 [(6) (4) “Inspection” has the meaning given that term in P.L. 102-550, section 1004, 40 C.F.R.
7 745.223 and as further defined pursuant to the authorities described in [ORS 701.500] **section 1 of**
8 **this 2009 Act.**

9 [(7) (5) “Lead-based paint” has the meaning given that term in P.L. 102-550, section 1004, and
10 as further defined pursuant to the authorities described in [ORS 701.500] **section 1 of this 2009**
11 **Act.**

12 [(8) (6) “Lead-based paint activities” has the meaning given that term in 40 C.F.R. 745.223 and
13 as further defined pursuant to the authorities described in [ORS 701.500] **section 1 of this 2009**
14 **Act.**

15 [(9) “Lead-based paint hazard” means any condition that causes exposure to lead from lead-
16 contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in
17 accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health ef-
18 fects as established by the appropriate federal agency.]

19 [(10) “Licensed” means a person who has been certified by the Department of Human Services in
20 one or more disciplines and has completed the requirements of the Construction Contractors Board.]

21 [(11) “Registered” means a person or business that has met the requirements for registration under
22 this chapter.]

23 **(7) “Lead-based paint activities contractor” means a contractor that is licensed by the**
24 **Construction Contractors Board to conduct lead-based paint activities under ORS 701.515.**

25 **(8) “Renovation” has the meaning given that term in 40 C.F.R. 745.83 and as further de-**
26 **defined pursuant to the authorities described in section 1 of this 2009 Act.**

27 **SECTION 8.** ORS 701.510 is amended to read:

28 701.510. (1) A [person] **contractor** may not perform lead-based paint activities in this state un-
29 less the [person] **contractor** is [licensed in the appropriate lead-based paint discipline under ORS
30 701.515] **a lead-based paint activities contractor.**

31 **(2) A contractor may not perform lead-based paint renovation in this state unless the**
32 **contractor is a certified lead-based paint renovation contractor.**

33 [(2) (3) A [person required by subsection (1) of this section to obtain a license] **lead-based paint**
34 **activities contractor or certified lead-based paint renovation contractor** must comply with the
35 provisions of ORS 431.920 and 701.500 to 701.515 [or] **and** any rules adopted pursuant thereto.

36 [(3) A person registered to conduct a lead-based paint activities business may not employ any in-
37 dividual to perform lead-based paint activities unless the person is licensed in the appropriate lead-
38 based paint discipline under ORS 701.515.]

39 (4) A construction contractor who successfully completes an accredited training program in
40 lead-based paint activities qualifies to have certification in that activity included in the professional
41 credentials of the contractor as described in ORS 701.120. The provisions of this subsection do not
42 affect the licensing requirements established in ORS 701.515.

43 **SECTION 9.** ORS 701.515 is amended to read:

44 701.515. [(1) In accordance with any applicable provisions of ORS chapter 183, the Construction
45 Contractors Board by rule shall establish a system to license persons and individuals in lead-based

1 *paint disciplines required to be licensed under ORS 701.510. Such licensing shall include disciplines*
2 *and requirements described in 40 C.F.R. 745.225. Such a system shall include but not be limited to*
3 *provisions:]*

4 [(a) Prescribing the form and content of the times and procedures for submitting applications for
5 license issuance or renewal.]

6 [(b) Prescribing the fees for original issuance and renewal of the license in amounts that do not
7 exceed the cost of administering the program.]

8 [(c) Prescribing those actions or circumstances that constitute failure to achieve or maintain li-
9 censing requirements, or that otherwise are contrary to the public interest, for which the agency may
10 refuse to issue or renew or may suspend or revoke a license.]

11 [(2)] (1) In accordance with [any] applicable provisions of ORS chapter 183, the Construction
12 Contractors Board by rule shall establish a system to [register businesses that employ persons or in-
13 dividuals in lead-based paint disciplines required to be licensed under ORS 701.510] **license con-**
14 **tractors as lead-based paint activities contractors and certified lead-based paint renovation**
15 **contractors.** [Such registration shall] **The licensing system must** include the requirements de-
16 scribed in 40 C.F.R. 745.226. [Such a system shall] **The licensing system must** include but **need**
17 not be limited to provisions:

18 (a) Prescribing the form and content of the times and procedures for submitting applications for
19 [registration] **licensing** or renewal.

20 (b) Prescribing the fees for original [registration] **licensing** and renewal of the [registration] **li-**
21 **cence** in amounts that do not exceed the cost of administering the program.

22 (c) **Requiring an applicant for a certified lead-based paint renovation contractor license**
23 **to show that an employee of the applicant has completed an accredited training program.**

24 [(c)] (d) Prescribing [those] **the** actions or circumstances that constitute failure to achieve or
25 maintain licensing requirements, or that otherwise are contrary to the public interest, for which the
26 [agency] **board** may refuse to issue or renew or may suspend or revoke a **lead-based paint activ-**
27 **ities contractor or certified lead-based paint renovation contractor** license.

28 (2) **The board may establish by rule the requirements for specific types of licenses for**
29 **lead-based paint activities contractors.**

30 (3) The [Construction Contractors] board may impose the following licensing fees:

31 (a) Lead abatement contractor, up to \$50 per year;

32 (b) Lead inspection contractor, up to \$50 per year;

33 (c) Lead supervisor or lead contractor, up to \$50 per year;

34 (d) Lead inspector or assessor, up to \$50 per year; [and]

35 (e) Lead worker, up to \$25 per year[.]; **and**

36 (f) **Certified lead-based paint renovation contractor, up to \$50 per year.**

37 **SECTION 10.** (1) **A person who violates any provision of, or any rule adopted under, ORS**
38 **701.500 to 701.515 shall pay to the Construction Contractors Board Lead-Based Paint Activ-**
39 **ities Fund established under section 11 of this 2009 Act a civil penalty of not more than \$5,000**
40 **for each violation.**

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

42 (3) **A civil penalty imposed under this section is in addition to and not in lieu of any other**
43 **penalty or sanction provided by law.**

44 (4) **The board shall report all civil penalties or sanctions imposed under this section to**
45 **each of the following state agencies:**

1 (a) The Department of Human Services;

2 (b) The Occupational Safety and Health Division of the Department of Consumer and
3 Business Services; and

4 (c) The Department of Environmental Quality.

5 **SECTION 11.** The Construction Contractors Board Lead-Based Paint Activities Fund is
6 established in the State Treasury, separate and distinct from the General Fund. Interest
7 earned by the Construction Contractors Board Lead-Based Paint Activities Fund shall be
8 credited to the fund. The fund consists of moneys received by the Construction Contractors
9 Board under section 10 of this 2009 Act. Moneys in the fund are continuously appropriated
10 to the Construction Contractors Board for the purposes of lead poisoning prevention, in-
11 cluding consumer and industry outreach, public education and other activities.

12 **SECTION 12.** ORS 701.500 is repealed.
13 _____