

# House Bill 2134

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 **as introduced**.

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.

## A BILL FOR AN ACT

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

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

5 **SECTION 1. The Legislative Assembly finds that:**

6 **(1) The federal government regulates lead poisoning and lead hazard reduction through:**

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

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

9 **(C) The Safe Drinking Water Act;**

10 **(D) The Resource Conservation and Recovery Act of 1976; and**

11 **(E) The Residential Lead-Based Paint Hazard Reduction Act of 1992; and**

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

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

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

15 **(C) The Occupational Safety and Health Administration; and**

16 **(D) The Centers for Disease Control and Prevention.**

17 **(2) In 1992, Congress passed the federal Residential Lead-Based Paint Hazard Reduction**

18 **Act, which requires that:**

19 **(a) States provide for the accreditation of lead-based paint activities and renovation**  
20 **training programs, the certification of persons completing such training programs and the**  
21 **certification of lead-based paint activities and renovation contractors pursuant to standards**  
22 **developed by the Environmental Protection Agency.**

23 **(b) Sellers and landlords of residential housing constructed before 1978 notify buyers and**  
24 **tenants of known lead-based paint hazards.**

25 **(3) Lead affects every system of the body. It is harmful to individuals of all ages and is**  
26 **especially harmful to children, fetuses and women of childbearing age. Lead poisoning is one**  
27 **of the most common and preventable pediatric health problems today.**

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

29 **(1) "Certified" and "certification" means an action by the Department of Human Services**  
30 **verifying the successful completion of a training program accredited by the department and**

**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 **any other requirements.**

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

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

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

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

9 431.920. The Department of Human Services shall:

10 (1) Develop a **program for the accreditation of lead-based paint activities and renovation**  
 11 **programs for training providers;**

12 (2) Prescribe **by rule** the requirements for and the manner of testing the competency of  
 13 *[license]* applicants **for certification in performing lead-based paint activities and renovation** for  
 14 the protection of the public and as required by federal law;

15 (3) Prescribe **by rule** those actions or circumstances that constitute failure to achieve or main-  
 16 tain competency, or that otherwise are contrary to the public interest, for which the agency may  
 17 refuse to issue *[or renew or may]*, **recertify**, suspend or revoke a certification;

18 (4) Develop and conduct programs to screen blood lead levels, to identify hazards and to educate  
 19 the public, including **but not limited to** parents, residential dwelling owners and child care facility  
 20 operators, about the dangers of lead-based paint hazards and of appropriate precautions that should  
 21 be taken to reduce the possibility of childhood lead poisoning; *[and]*

22 (5) *[Impose]* **Adopt by rule** fees *[to the extent]* necessary to pay the costs of **issuing and ad-**  
 23 **ministering** *[the following]:*

24 (a) *[Certification]* **Accreditation of lead-based paint activities and renovation training pro-**  
 25 **viders and training curriculums***[, up to \$1,500];*

26 (b) *[Annual renewal]* **Reaccreditation of lead-based paint activities and renovation training**  
 27 **providers and training curriculums***[, up to \$500]; and*

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

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

30 *[(e)]* (c) **Certification** *[test, up to \$85.]* **of individuals and businesses performing lead-based**  
 31 **paint activities and renovation; and**

32 (6) **Establish by rule workplace standards based on best practices for the removal and**  
 33 **disposal of lead-based paint.**

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

38 **SECTION 5.** (1) Any person who violates any provision of, or any rule adopted under, ORS  
 39 431.920 or section 4 of this 2009 Act shall forfeit and pay to the Public Health Account es-  
 40 tablished under ORS 431.210 a civil penalty of not more than \$5,000 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 or rule adopted under ORS 431.920.

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

1 **agencies:**

2 (a) **The Construction Contractors Board;**

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

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

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

7 701.005. As used in this chapter:

8 (1) "Board" means the Construction Contractors Board.

9 (2) "Commercial contractor" means a licensed contractor that holds an endorsement as a:

10 (a) Commercial general contractor level 1;

11 (b) Commercial specialty contractor level 1;

12 (c) Commercial general contractor level 2;

13 (d) Commercial specialty contractor level 2; or

14 (e) Commercial developer.

15 (3) "Commercial developer" means a developer of property that is zoned for or intended for use  
 16 compatible with a small commercial or large commercial structure.

17 (4) "Construction debt" means an amount owed under:

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

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

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

23 (5) "Contractor" means any of the following:

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

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

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

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

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

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

44 (6) "Developer" means a contractor that owns property or an interest in property and engages  
 45 in the business of arranging for construction work or performing other activities associated with the

1 improvement of real property, with the intent to sell the property.

2 (7) "General contractor":

3 (a) Means a contractor whose business operations require the use of more than two unrelated  
4 building trades or crafts that the contractor supervises or performs in whole or part, whenever the  
5 sum of all contracts on any single property, including materials and labor, exceeds an amount es-  
6 tablished by rule by the board.

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

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

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

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

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

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

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

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

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

22 (e) A trustee.

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

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

27 (a) Residential general contractor;

28 (b) Residential specialty contractor;

29 (c) Residential limited contractor; or

30 (d) Residential developer.

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

33 (14) "Residential structure":

34 (a) Means:

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

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

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

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

41 (E) A manufactured dwelling; or

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

43 (b) Does not mean:

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

- 1 (B) Transient lodging;
- 2 (C) A residential school or residence hall;
- 3 (D) A state or local correctional facility other than a local facility for persons enrolled in work
- 4 release programs maintained under ORS 144.460;
- 5 (E) A youth correction facility as defined in ORS 420.005;
- 6 (F) A youth care center operated by a county juvenile department under administrative control
- 7 of a juvenile court pursuant to ORS 420.855 to 420.885;
- 8 (G) A detention facility as defined in ORS 419A.004;
- 9 (H) A nursing home;
- 10 (I) A hospital; or
- 11 (J) A place constructed primarily for recreational activities.
- 12 (15) "Responsible managing individual" means an individual who:
- 13 (a) Is an owner described in ORS 701.094 or an employee of the business;
- 14 (b) Exercises management or supervisory authority, as defined by the board by rule, over the
- 15 construction activities of the business; and
- 16 (c)(A) Has successfully completed the training and testing required for licensing under ORS
- 17 701.122 within a period identified by the board by rule;
- 18 (B) Has demonstrated experience required by the board by rule; or
- 19 (C) Has complied with the licensing requirements of ORS 446.395.
- 20 (16) "Small commercial structure" means:
- 21 (a) A nonresidential structure that has a ground area of 10,000 square feet or less, including
- 22 exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to
- 23 the highest interior overhead finish of the structure;
- 24 (b) A nonresidential leasehold, rental unit or other unit that is part of a larger structure, if the
- 25 unit has a ground area of 12,000 square feet or less, excluding exterior walls, and a height of not
- 26 more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish
- 27 of the unit; or
- 28 (c) A nonresidential structure of any size for which the contract price of all construction con-
- 29 tractor work to be performed on the structure as part of a construction project does not total more
- 30 than \$250,000.
- 31 (17) "Specialty contractor" means a contractor who performs work on a structure, project, de-
- 32 velopment or improvement and whose operations as such do not fall within the definition of "general
- 33 contractor." "Specialty contractor" includes a person who performs work regulated under ORS
- 34 446.395.
- 35 (18) "Zero-lot-line dwelling" means a single-family dwelling unit constructed in a group of at-
- 36 tached units in which:
- 37 (a) Each attached unit extends from foundation to roof with open space on two sides; and
- 38 (b) Each dwelling unit is separated by a property line.
- 39 **SECTION 7. ORS 701.500, 701.505, 701.510 and 701.515 are repealed.**
- 40