

B-Engrossed House Bill 3624

Ordered by the Senate February 23
Including House Amendments dated February 12 and Senate Amendments
dated February 23

Sponsored by Representative HOLVEY; Representatives BUCKLEY, DEMBROW, KENNEMER, TOMEI,
VANORMAN (Presession filed.)

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.

Requires appraisal management companies to register with [*Appraiser Certification and Licensure Board*] **Department of Consumer and Business Services. Requires applicants for registration to file with department surety bond or irrevocable letter of credit. Authorizes department to require fingerprints of applicants.** Establishes standards for appraisal management companies. Prohibits appraisal management companies from attempting to influence appraisals or substantively altering completed appraisal reports.

Directs [*board*] **department** to adopt rules requiring appraisal management companies to establish dispute resolution process. Authorizes [*board to*] **department to suspend or revoke registration of and** impose civil penalties on appraisal management companies.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to appraisal management companies; creating new provisions; amending ORS 705.141; and
3 declaring an emergency.

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

SECTION 1. As used in sections 1 to 8 of this 2010 Act:

6 (1)(a) **“Appraisal management company” means a business entity that:**

7 (A) **Performs appraisal management services;**

8 (B) **Administers networks of independent contractor appraisers to perform real estate
9 appraisal activity for clients; or**

10 (C) **Otherwise serves as a third-party broker of real estate appraisal activity between
11 clients and appraisers.**

12 (b) **“Appraisal management company” does not include:**

13 (A) **An appraiser who in the normal course of business enters into an agreement with
14 another appraiser for the performance of real estate appraisal activity that the hiring ap-
15 praiser cannot complete;**

16 (B) **An appraiser who in the normal course of business enters into an agreement with
17 another appraiser for the performance of real estate appraisal activity and upon the com-
18 pletion of the activity, jointly signs the appraisal report with the appraiser performing the
19 activity; or**

20 (C) **A person who contracts for fewer than 10 appraisals in this state in a calendar year.**

21 (2) **“Appraisal management services” means the process of receiving a request for the
22 performance of real estate appraisal activity from a client and, for a fee paid by the client,**

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 entering into an agreement with an independent contractor appraiser to perform the real
2 estate appraisal activity contained in the request.

3 (3) "Appraiser" means a state certified appraiser or state licensed appraiser certified or
4 licensed under ORS 674.310.

5 (4) "Appraiser panel" means a group of independent contractor appraisers who have been
6 selected by an appraisal management company to perform real estate appraisal activity for
7 the appraisal management company.

8 (5) "Controlling person" means:

9 (a) An owner, officer or director of an appraisal management company;

10 (b) An individual employed, appointed or authorized by an appraisal management com-
11 pany to enter into an agreement with a client for the performance of appraisal management
12 services or to enter into an agreement with an independent contractor appraiser for the
13 performance of real estate appraisal activity; or

14 (c) An individual who possesses, directly or indirectly, the power to direct the manage-
15 ment or policies of an appraisal management company.

16 (6) "Financial institution" has the meaning given that term in ORS 674.010.

17 (7) "Real estate appraisal activity" means the activity described in ORS 674.100.

18 **SECTION 2.** (1)(a) A person may not provide appraisal management services unless the
19 person is registered as an appraisal management company with the Department of Consumer
20 and Business Services.

21 (b) Notwithstanding ORS 674.100 (3)(a), an affiliate of a financial institution or insurance
22 company may not provide appraisal management services unless the affiliate is registered
23 as an appraisal management company with the department.

24 (2) A business entity may apply for registration as an appraisal management company
25 on forms prescribed by rule by the department. The application must include:

26 (a) The name, address and contact information of the entity;

27 (b) The name, address and contact information of a controlling person of the entity;

28 (c) If the entity is not domiciled in this state, the name and contact information for the
29 entity's agent for service of process in this state;

30 (d) The name, address and contact information of any person that owns 10 percent or
31 more of the entity;

32 (e) A certification that:

33 (A) The entity has a system to verify that each appraiser on the entity's appraiser panel
34 is licensed or certified under ORS 674.310 and is competent to perform real estate appraisal
35 activity;

36 (B) If the entity reviews real estate appraisal activity performed by an appraiser, the
37 review is conducted by another appraiser; and

38 (C) The entity maintains and retains for at least five years, or as required under ORS
39 674.150, a detailed record of each appraisal management services request the entity receives
40 and the appraiser who performs the real estate appraisal activity contained in the request;

41 (f) The surety bond, letter of credit or deposit required by section 3 of this 2010 Act;

42 (g) Fees in an amount prescribed by rule by the department, which must be sufficient to
43 cover the costs of administering sections 1 to 8 and 9 of this 2010 Act;

44 (h) A description of the dispute resolution process required by section 7 of this 2010 Act;
45 and

1 (i) Any other information required by the department by rule.

2 (3) The department may not issue a registration to a business entity as an appraisal
3 management company unless the department determines that each individual who owns 10
4 percent or more of the entity and the controlling person identified by the entity in the ap-
5 plication:

6 (a) Are of good moral character; and

7 (b) Have never had a license, certification or registration to act as an appraiser or ap-
8 praisal management company refused, denied, canceled or revoked in this state or in any
9 other state.

10 (4) An appraisal management company registration expires two years after the date of
11 the issuance of the registration. The department shall adopt rules establishing the require-
12 ments for renewal or reactivation of a registration. The rules must include a requirement
13 that the appraisal management company must certify that:

14 (a) The company has a system to verify that each appraiser on the company's appraiser
15 panel is licensed or certified under ORS 674.310 and is competent to perform real estate ap-
16 praisal activity;

17 (b) If the company reviews real estate appraisal activity performed by an appraiser, the
18 review is conducted by another appraiser; and

19 (c) The company maintains and retains for at least five years, or as required under ORS
20 674.150, a detailed record of each appraisal management services request the company re-
21 ceives and the appraiser who performs the real estate appraisal activity contained in the
22 request.

23 **SECTION 3.** (1) An applicant for issuance or renewal of an appraisal management com-
24 pany registration shall file with the Department of Consumer and Business Services a surety
25 bond with one or more corporate sureties authorized to do business in this state, or an
26 irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, in the
27 amount of \$25,000.

28 (2) The surety bond or letter of credit required under subsection (1) of this section must:

29 (a) Be conditioned that the applicant pays:

30 (A) All amounts owing to persons who perform real estate appraisal activity for the ap-
31 praisal management company; and

32 (B) All amounts adjudged against the appraisal management company by reason of
33 negligent or improper real estate appraisal activity or appraisal management services or
34 breach of contract in performing real estate appraisal activity or appraisal management
35 services; and

36 (b) Require the surety company to provide written notice to the department by registered
37 or certified mail:

38 (A) At least 30 days before the surety company cancels or revokes the bond; or

39 (B) When the surety company pays for a loss under the bond.

40 (3) In lieu of the surety bond or letter of credit required under subsection (1) of this
41 section, the appraisal management company may file with the department, under the same
42 terms and conditions as when a bond is filed, a deposit in cash or negotiable securities ac-
43 ceptable to the department.

44 (4) The surety bond, letter of credit or deposit required by this section must be contin-
45 uously on file with the department in the amount of \$25,000 and is for the exclusive purpose

1 of payment of the obligations listed in subsection (2) of this section. Upon termination or
2 cancellation of the bond, withdrawal of the deposit or reduction of the bond, letter of credit
3 or deposit to less than \$25,000, a registered appraisal management company shall:

4 (a) File a replacement bond, letter of credit or deposit within the time period established
5 by the department by rule; or

6 (b) Surrender the company's registration to the department and cease operating as an
7 appraisal management company.

8 (5) Any person damaged by an appraisal management company's failure to pay an obli-
9 gation listed in subsection (2) of this section has a right of action under the bond. An action
10 under the bond must be commenced within one year after the appraisal management com-
11 pany fails to pay the amount owing or the amount adjudged against the appraisal manage-
12 ment company.

13 **SECTION 4.** (1) The Department of Consumer and Business Services shall adopt rules
14 establishing a procedure for auditing an appraisal management company registered under
15 section 2 of this 2010 Act to examine the appraisal management company's compliance with
16 sections 1 to 8 of this 2010 Act.

17 (2) The department shall audit each appraisal management company registered under
18 section 2 of this 2010 Act at least every two years.

19 (3) The department shall issue written findings on the results of the audit.

20 (4) If an appraisal management company fails an audit, the department may impose a
21 civil penalty under section 9 of this 2010 Act.

22 **SECTION 5.** (1) An appraisal management company or an employee, controlling person
23 or agent of an appraisal management company may not:

24 (a) Attempt to influence the development, reporting or review of an appraisal or appraisal
25 review assignment through coercion, extortion, collusion, compensation, instruction, in-
26 ducement, intimidation, bribery or any other manner, including but not limited to:

27 (A) Withholding or threatening to withhold timely payment for an appraisal;

28 (B) Withholding or threatening to withhold future business for an independent contractor
29 appraiser;

30 (C) Expressly or impliedly promising future business, promotions or increased compen-
31 sation for an appraiser;

32 (D) Conditioning the request for real estate appraisal activity or any payment on the
33 opinion, conclusion or valuation to be reached, or on a preliminary estimate or opinion re-
34 quested from an appraiser;

35 (E) Requesting that an appraiser provide an estimated, predetermined or desired valu-
36 ation in an appraisal report, or provide estimated values or comparable sales at any time
37 prior to the appraiser's completion of real estate appraisal activity;

38 (F) Providing to an appraiser an anticipated, estimated, encouraged or desired value for
39 a subject property or a proposed or target amount to be loaned to the borrower, except that
40 a copy of the sales contract for a purchase transaction may be provided;

41 (G) Providing to an appraiser, or any entity or individual related to the appraiser, stock
42 or other financial or nonfinancial benefits;

43 (H) Allowing the removal of an appraiser from an appraiser panel without prior written
44 notice to the appraiser;

45 (I) Obtaining, using or paying for a second or subsequent appraisal or ordering an auto-

1 mated valuation model in connection with a mortgage financing transaction unless there is
2 a reasonable basis to believe that the initial appraisal was flawed or tainted and such basis
3 is clearly and appropriately noted in the loan file, or unless such appraisal or automated
4 valuation model is done pursuant to an appraisal review or quality control process that is
5 completed by an appraiser before or after a loan is funded; or

6 (J) Any other act or practice that impairs or attempts to impair an appraiser's inde-
7 pendence, objectivity or impartiality.

8 (b) Substantively alter in any way a completed appraisal report submitted by an ap-
9 praiser.

10 (2) This section does not prohibit an appraisal management company from requesting,
11 on behalf of a financial institution at the request of a consumer, that an appraiser:

12 (a) Provide additional information about the basis for the valuation;

13 (b) Correct objective factual errors in a completed appraisal report; or

14 (c) Consider the values of other comparable properties.

15 **SECTION 6.** Except in the case of breach of contract or substandard performance of real
16 estate appraisal activity, an appraisal management company shall make payment to an in-
17 dependent contractor appraiser for the completion of an appraisal or appraisal review as-
18 signment within 60 days after the appraiser provides the completed appraisal report to the
19 appraisal management company.

20 **SECTION 7.** The Department of Consumer and Business Services shall adopt rules re-
21 quiring an appraisal management company to establish a dispute resolution process that al-
22 lows a person with an interest in a real estate transaction for which an appraisal was
23 arranged by the appraisal management company to dispute the appraisal.

24 **SECTION 8.** (1) The Department of Consumer and Business Services may suspend or re-
25 voke an appraisal management company registration for a violation of sections 1 to 8 of this
26 2010 Act or of rules adopted by the department.

27 (2) The revocation, lapsing or suspension of an appraisal management company regis-
28 tration does not deprive the department of jurisdiction to proceed with any investigation of
29 or any action or disciplinary proceedings against the appraisal management company, or to
30 revise or render null and void an order suspending or revoking the registration.

31 **SECTION 9.** (1) In accordance with ORS chapter 183, the Department of Consumer and
32 Business Services may impose a civil penalty not to exceed \$15,000 on a person who violates
33 a provision of sections 1 to 8 of this 2010 Act.

34 (2) The civil penalty under this section is in addition to and not in lieu of any other
35 penalty or sanction provided by law.

36 **SECTION 10.** ORS 705.141 is amended to read:

37 705.141. For the purpose of requesting a state or nationwide criminal records check under ORS
38 181.534, the Department of Consumer and Business Services may require the fingerprints of a person
39 who is applying for a license **or registration**, or renewal of a license **or registration**, under ORS
40 744.001, 744.059 or 744.326 **or section 2 of this 2010 Act** or a person who:

41 (1)(a) Is employed or applying for employment by the department; or

42 (b) Provides services or seeks to provide services to the department as a contractor, vendor or
43 volunteer; and

44 (2) Is, or will be, working or providing services in a position:

45 (a) In which the person is providing information technology services and has control over, or

1 access to, information technology systems that would allow the person to harm the information
2 technology systems or the information contained in the systems;

3 (b) In which the person has access to information that state or federal laws, rules or regulations
4 prohibit disclosing or define as confidential;

5 (c) That has payroll functions or in which the person has responsibility for receiving, receipting
6 or depositing money or negotiable instruments, for billing, collections or other financial transactions
7 or for purchasing or selling property or has access to property held in trust or to private property
8 in the temporary custody of the state;

9 (d) That has mailroom duties as a primary duty or job function;

10 (e) In which the person has responsibility for auditing the department;

11 (f) That has personnel or human resources functions as a primary responsibility;

12 (g) In which the person has access to Social Security numbers, dates of birth or criminal back-
13 ground information of employees or members of the public; or

14 (h) In which the person has access to tax or financial information about individuals or business
15 entities.

16 **SECTION 11. Sections 1 to 8 and 9 of this 2010 Act and the amendments to ORS 705.141**
17 **by section 10 of this 2010 Act apply to persons who perform appraisal management services**
18 **as defined in section 1 of this 2010 Act on or after January 1, 2011.**

19 **SECTION 12. (1) Sections 1 to 8 and 9 of this 2010 Act and the amendments to ORS**
20 **705.141 by section 10 of this 2010 Act become operative on January 1, 2011.**

21 **(2) The Department of Consumer and Business Services may take any action before the**
22 **operative date specified in subsection (1) of this section that is necessary to enable the de-**
23 **partment to exercise, on and after the operative date specified in subsection (1) of this sec-**
24 **tion, all the duties, functions and powers conferred on the department by sections 1 to 8 and**
25 **9 of this 2010 Act and the amendments to ORS 705.141 by section 10 of this 2010 Act.**

26 **SECTION 13. This 2010 Act being necessary for the immediate preservation of the public**
27 **peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect**
28 **on its passage.**

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