

House Bill 2086

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber for Department of Consumer and Business 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**.

Subjects person that advertises or purports to operate as appraisal management company to requirement to register with Department of Consumer and Business Services. Removes ability of appraisal management company to deposit cash or securities in lieu of bond or letter of credit.

Allows department to collect from appraisal management company expenses incurred by department in examination.

Permits department to deny, condition or refuse to renew registration. Subjects person that violates provisions of Act to civil penalty in amount not to exceed \$15,000. Caps penalty for continuing violation at \$60,000. Grants rulemaking authority and investigative powers to department.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to regulating appraisal management companies; creating new provisions; amending sections
3 1, 2, 3, 4, 8 and 9, chapter 87, Oregon Laws 2010; and declaring an emergency.

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

5 **SECTION 1.** Section 1, chapter 87, Oregon Laws 2010, is amended to read:

6 **Sec. 1.** As used in sections 1 to 8, **chapter 87, Oregon Laws 2010** [*of this 2010 Act*]:

7 (1)(a) "Appraisal management company" means a [*business entity*] **person** that:

8 (A) Performs appraisal management services;

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

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

13 (b) "Appraisal management company" does not include:

14 (A) An appraiser who in the normal course of business enters into an agreement with another
15 appraiser [*for the performance of*] **to perform** real estate appraisal activity that the hiring appraiser
16 cannot complete;

17 (B) An appraiser who in the normal course of business enters into an agreement with another
18 appraiser [*for the performance of*] **to perform** real estate appraisal activity and upon [*the completion*
19 *of*] **completing** the activity, jointly signs the appraisal report with the appraiser [*performing*] **who**
20 **performs** the activity; or

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

22 (2) "Appraisal management services" means the process of receiving a request [*for the perform-*
23 *ance of*] **from a client to perform** real estate appraisal activity [*from a client*] and, for a fee paid
24 by the client, entering into an agreement with an independent contractor appraiser to perform the
25 real estate appraisal activity [*contained*] **specified** in the request.

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

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 (4) “Appraiser panel” means a group of independent contractor appraisers [*who have been se-*
 2 *lected by*] **that** an appraisal management company **selects** to perform real estate appraisal activity
 3 for the appraisal management company.

4 (5) “Controlling person” means:

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

6 (b) An individual employed, appointed or authorized by an appraisal management company to
 7 enter into an agreement with a client [*for the performance of*] **to perform** appraisal management
 8 services or to enter into an agreement with an independent contractor appraiser [*for the performance*
 9 *of*] **to perform** real estate appraisal activity; or

10 (c) An individual who possesses, directly or indirectly, the power to direct the management or
 11 policies of an appraisal management company.

12 (6) “Financial institution” has the meaning given that term in ORS [674.010] **706.008**.

13 (7) “Real estate appraisal activity” means the activity described in ORS 674.100.

14 **SECTION 2.** Section 2, chapter 87, Oregon Laws 2010, is amended to read:

15 **Sec. 2.** (1)(a) [*A person may not provide appraisal management services unless the person is reg-*
 16 *istered as an appraisal management company*] **A person may not engage in business as an ap-**
 17 **praisal management company directly or indirectly, provide appraisal management services**
 18 **directly or indirectly, or advertise as engaging in or conducting or purport to engage in or**
 19 **conduct business as an appraisal management company unless the person has registered** with
 20 the Department of Consumer and Business Services.

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

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

27 (a) The **person’s** name, address and contact information [*of the entity*];

28 (b) The name, address and contact information of [*a controlling*] **each controlling person of the**
 29 **appraisal management company** [*of the entity*];

30 (c) [*If the entity is not domiciled in this state,*] The name and contact information for the
 31 [*entity’s*] **person’s** agent for service of process in this state **if the person is not domiciled in this**
 32 **state**;

33 (d) The name, address and contact information of any person that owns 10 percent or more of
 34 the [*entity*] **appraisal management company**;

35 (e) A certification that:

36 (A) The [*entity*] **person** has a system to verify that each appraiser on the [*entity’s*] **person’s**
 37 appraiser panel is licensed or certified under ORS 674.310 and is competent to perform real estate
 38 appraisal activity;

39 (B) If the [*entity*] **person** reviews real estate appraisal activity performed by an appraiser, the
 40 review is conducted by another appraiser; and

41 (C) The [*entity*] **person** maintains and retains for at least five years, or as required under ORS
 42 674.150, a detailed record of each appraisal management services request the [*entity*] **person** re-
 43 ceives and **of** the appraiser who performs the real estate appraisal activity [*contained*] **specified** in
 44 the request;

45 (f) The surety bond[,] **or** letter of credit [*or deposit*] required [*by*] **under** section 3, **chapter 87,**

1 **Oregon Laws 2010** [of this 2010 Act];

2 (g) Fees in an amount [prescribed] **the department prescribes** by rule [by the department],
3 which must be sufficient to cover the costs of administering sections 1 to 8 and 9, **chapter 87,**
4 **Oregon Laws 2010** [of this 2010 Act];

5 (h) A description of the dispute resolution process required [by] **under** section 7, **chapter 87,**
6 **Oregon Laws 2010** [of this 2010 Act]; and

7 (i) [Any] Other information [required by] the department **requires** by rule.

8 (3) The department may not issue a registration to a [business entity] **person** as an appraisal
9 management company unless the department determines that each individual who owns 10 percent
10 or more of the [entity] **appraisal management company** and [the] **each** controlling person [identi-
11 fied by the entity] **for the appraisal management company that the person identifies** in the ap-
12 plication:

13 (a) Are of good moral character; and

14 (b) Have never had a license, certification or registration to act as an appraiser or appraisal
15 management company refused, denied, canceled or revoked in this [state or in any other] **or another**
16 state.

17 (4) An appraisal management company registration expires two years after the date [of the is-
18 suance of] **on which** the registration **was issued**. The department shall adopt rules establishing the
19 requirements for renewal or reactivation of a registration. The rules must include a requirement
20 that the appraisal management company must certify that:

21 (a) The **appraisal management** company has a system to verify that each appraiser on the
22 **appraisal management** company's appraiser panel is licensed or certified under ORS 674.310 and
23 is competent to perform real estate appraisal activity;

24 (b) If the **appraisal management** company reviews real estate appraisal activity performed by
25 an appraiser, the review is conducted by another appraiser; and

26 (c) The **appraisal management** company maintains and retains for at least five years, or as
27 required under ORS 674.150, a detailed record of each appraisal management services request the
28 company receives and **of** the appraiser who performs the real estate appraisal activity [contained]
29 **specified** in the request.

30 **SECTION 3.** Section 3, chapter 87, Oregon Laws 2010, is amended to read:

31 **Sec. 3.** (1) [An applicant for issuance or renewal of an appraisal management company
32 registration] **A person that applies for registration as an appraisal management company or**
33 **an appraisal management company that applies to renew a registration** shall file with the
34 Department of Consumer and Business Services a surety bond with one or more corporate sureties
35 authorized to do business in this state, or an irrevocable letter of credit issued by an insured insti-
36 tution, as defined in ORS 706.008, in the amount of \$25,000.

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

38 (a) Be conditioned **to require** that the applicant pays:

39 (A) [All] Amounts owing to persons who perform real estate appraisal activity for the appraisal
40 management company; and

41 (B) [All] Amounts adjudged against the appraisal management company by reason of negligent
42 or improper real estate appraisal activity or appraisal management services or breach of contract
43 in performing real estate appraisal activity or appraisal management services; and

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

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

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

3 [(3) *In lieu of the surety bond or letter of credit required under subsection (1) of this section, the*
4 *appraisal management company may file with the department, under the same terms and conditions as*
5 *when a bond is filed, a deposit in cash or negotiable securities acceptable to the department.*]

6 [(4) (3) The surety bond[,] **or** letter of credit [*or deposit required by*] this section **requires** must
7 be continuously on file with the department in the amount of \$25,000 and is for the exclusive pur-
8 pose of [*payment of*] **paying** the obligations listed in subsection (2) of this section. [*Upon termination*
9 *or cancellation of the bond, withdrawal of the deposit or reduction of the bond, letter of credit or de-*
10 *posit to less than \$25,000, a registered*] **If the bond or letter of credit is terminated, canceled or**
11 **reduced to an amount less than \$25,000, an** appraisal management company shall:

12 (a) File a replacement bond[,] **or** letter of credit [*or deposit*] within the time period [*established*
13 *by*] the department **establishes** by rule; or

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

16 [(5) (4) [*Any*] **A** person damaged by an appraisal management company's failure to pay an ob-
17 ligation listed in subsection (2) of this section has a right of action under the bond. An action under
18 the bond must be commenced within one year after the appraisal management company fails to pay
19 the amount owing or the amount adjudged against the appraisal management company.

20 **SECTION 4.** Section 4, chapter 87, Oregon Laws 2010, is amended to read:

21 **Sec. 4.** (1) The Department of Consumer and Business Services shall adopt rules [*establishing*]
22 **that establish** a procedure for [*auditing*] **examining** an appraisal management company registered
23 under section 2, **chapter 87, Oregon Laws 2010, and evaluating** [*of this 2010 Act to examine*] the
24 appraisal management company's compliance with sections 1 to 8, **chapter 87, Oregon Laws 2010**
25 [*of this 2010 Act*]. **The department may collect from an appraisal management company that**
26 **is subject to an examination the actual expenses the department incurs in the examination.**

27 (2) The department shall [*audit each*] **examine an** appraisal management company registered
28 under section 2, **chapter 87, Oregon Laws 2010,** [*of this 2010 Act*] at least every two years.

29 (3) The department shall issue written findings on the results of the [*audit*] **examination.**

30 (4) If an appraisal management company fails an [*audit*] **examination,** the department may im-
31 pose a civil penalty under section 9, **chapter 87, Oregon Laws 2010** [*of this 2010 Act*].

32 **SECTION 5.** Section 8, chapter 87, Oregon Laws 2010, is amended to read:

33 **Sec. 8.** (1) The Department of Consumer and Business Services may **deny, condition,** suspend,
34 [*or*] revoke **or refuse to renew** an appraisal management company registration for a violation of
35 sections 1 to 8, **chapter 87, Oregon Laws 2010,** [*of this 2010 Act*] or of rules adopted by the de-
36 partment.

37 (2) The **denial, conditioning, suspension,** revocation, [*lapsing or suspension*] **failure to renew**
38 **or other lapse** of an appraisal management company registration does not deprive the department
39 of jurisdiction to proceed with [*any*] **an** investigation of or [*any*] action or disciplinary proceedings
40 against the appraisal management company, or to revise or render null and void an order [*sus-*
41 *pending or revoking*] **that suspends or revokes** the registration.

42 **SECTION 6.** Section 9, chapter 87, Oregon Laws 2010, is amended to read:

43 **Sec. 9.** (1) [*In accordance with ORS chapter 183, the Department of Consumer and Business Ser-*
44 *VICES may impose a civil penalty not to exceed \$15,000 on a person who violates a provision of sections*
45 *1 to 8 of this 2010 Act.*] **A person that violates a provision of sections 1 to 8, chapter 87, Oregon**

1 Laws 2010, or a rule or order the Director of the Department of Consumer and Business
 2 Services adopts or issues is subject to a civil penalty in an amount not to exceed \$15,000 for
 3 each violation.

4 (2) Each violation is a separate offense and, in the case of a continuing violation, each
 5 day's continuance is a separate violation, but the maximum penalty for each continuing vi-
 6 olation may not exceed \$60,000.

7 [(2)] (3) The civil penalty under this section **must be imposed in accordance with ORS**
 8 **chapter 183 and** is in addition to and not in lieu of any other penalty or sanction provided by law.

9 **SECTION 7.** Sections 8 and 9 of this 2011 Act are added to and made a part of sections
 10 1 to 8, chapter 87, Oregon Laws 2010.

11 **SECTION 8.** (1) The Director of the Department of Consumer and Business Services may:

12 (a) Investigate whether a person has violated or is about to violate a provision of sections
 13 1 to 8, chapter 87, Oregon Laws 2010, or a rule adopted or an order issued under sections 1
 14 to 8, chapter 87, Oregon Laws 2010;

15 (b) Require a person to file a statement in writing, under oath or otherwise as the di-
 16 rector determines, concerning the facts and circumstances of the matter the director is in-
 17 vestigating; and

18 (c) Publish information concerning a violation of sections 1 to 8, chapter 87, Oregon Laws
 19 2010, or of a rule adopted or an order issued under sections 1 to 8, chapter 87, Oregon Laws
 20 2010.

21 (2) The director may issue an order to a person that the director believes has engaged,
 22 is engaging or is about to engage in a violation of sections 1 to 8, chapter 87, Oregon Laws
 23 2010, or a rule adopted or an order issued under sections 1 to 8, chapter 87, Oregon Laws
 24 2010, directing the person to cease and desist from the violation or threatened violation.

25 (3)(a) The director may administer oaths and affirmations, subpoena witnesses and com-
 26 pel the witnesses to attend, take evidence and require the production of books, papers, cor-
 27 respondence, memoranda, agreements or other documents or records that the director
 28 deems relevant or material to an investigation under this section. A witness that appears
 29 before the director under a subpoena shall receive the fees and mileage provided for wit-
 30 nesses under ORS 44.415 (2).

31 (b) A circuit court, upon application from the director, shall compel obedience with a
 32 subpoena issued under paragraph (a) of this subsection or direct a witness to testify as to a
 33 matter related to an investigation under this section in the same manner in which the court
 34 may compel obedience or direct testimony in a matter before the court.

35 **SECTION 9.** The Department of Consumer and Business Services may adopt rules to
 36 implement, administer and enforce sections 1 to 8, chapter 87, Oregon Laws 2010.

37 **SECTION 10.** This 2011 Act being necessary for the immediate preservation of the public
 38 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
 39 on its passage.