

Enrolled
House Bill 2978

Sponsored by COMMITTEE ON BUSINESS AND LABOR

CHAPTER

AN ACT

Relating to the state building code; creating new provisions; and amending ORS 446.405, 455.070, 455.125, 455.129, 455.770, 455.775, 455.895 and 480.530.

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

SECTION 1. Sections 2 to 4 of this 2013 Act are added to and made a part of ORS chapter 455.

SECTION 2. (1) Except as provided in subsection (2) of this section, the Department of Consumer and Business Services, or a municipality administering and enforcing a building inspection program, may assess an investigation fee against a person that is required to obtain a permit for work on the electrical, gas, mechanical, elevator, boiler, plumbing or other systems of a building or structure if the work is commenced before the permit required for the work is obtained. The amount of the investigation fee shall be the average or actual additional cost of ensuring that a building, structure or system is in conformance with state building code requirements that results from the person not obtaining a required permit before work for which the permit is required commences.

(2) This section does not apply to:

(a) An emergency repair required for health, safety, the prevention of property damage or the prevention of financial harm if the required building permit for the repair is obtained no later than five business days after commencement of the repair; or

(b) Any project for which construction, alteration, repair, maintenance or installation in a building or structure prior to obtaining a permit is expressly authorized by law.

(3) The department may adopt rules and establish policies and procedures for use by the department or municipalities in assessing an investigation fee under this section.

SECTION 3. If the Department of Consumer and Business Services has reason to believe that any person has been engaged, or is engaging, or is about to engage in any violation of the state building code or of ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.950 or 480.510 to 480.670 or this chapter or ORS chapter 447, 460 or 693 or any rule adopted under those statutes, the department may, without bond, bring suit in the name and on behalf of the State of Oregon in the circuit court of any county of this state to enjoin the acts or practices and to enforce compliance with the state building code and ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.950 and 480.510 to 480.670 and this chapter, and ORS chapter 447, 460 or 693 and any rule adopted under those statutes. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted.

SECTION 4. A person may not:

(1) Perform work without appropriate licensing, certification or registration or employ, allow, permit or suffer individuals to perform work for the person without appropriate licensing, certification or registration.

(2) Advertise or otherwise hold out as being a licensed, certified or registered specialty code contractor without holding the appropriate specialty code contractor license, certification or registration.

(3) As a partner, officer, member or employee of a business, advertise or hold out that the business is a licensed, certified or registered specialty code contractor if the business does not hold the appropriate specialty code contractor license, certification or registration.

(4) Engage in business as a specialty code contractor without holding a valid specialty code contractor license, certificate or registration required for the business.

(5) Perform work or operate equipment within the scope of a specialty code license, certificate or registration in a manner that violates an applicable minimum safety standard or a statute or rule regarding safety.

SECTION 5. ORS 446.405 is amended to read:

446.405. (1) If a manufactured dwelling or cabana is not installed in accordance with the rules adopted under ORS 446.003 and 446.395 to 446.420, the owner of the manufactured dwelling or cabana, at the time of installation, may, within one year of the completion date of such installation, file a written complaint with [*the Director of*] the Department of Consumer and Business Services. The [*director*] **department** shall provide a copy of the complaint to the installer and shall also notify the dealer, if any, that arranged for such installation and may then investigate the complaint. If [*it is determined by the director*] **the department determines** that the installation fails to comply with licensure requirements as provided by ORS 446.003 and 446.395 to 446.420 or the installation rules adopted by the Director **of the Department of Consumer and Business Services**, the [*director*] **department** shall provide notice of such failure to the installer and shall order the installer to bring the installation into compliance [*within 30 days of date of notice*].

(2) The director shall establish, by rule, fees and a procedure for inspection of manufactured dwellings and cabanas to carry out the provisions of this section.

(3) If the installer fails to bring the installation into compliance as ordered, the [*director*] **department** may suspend or revoke the installer's license as provided [*by Department of Consumer and Business Services rules adopted*] under ORS 455.129.

(4) If the installer fails to bring the installation into compliance, the [*director*] **department** shall order the dealer, if any, that arranged for such installation to bring the installation into compliance with the provisions of ORS 446.003 and 446.395 to 446.420 and the rules adopted [*pursuant thereto*] **under ORS 446.003 and 446.395 to 446.420**. The dealer is responsible to bring only those installation activities into compliance [*which*] **that** the dealer arranged. The dealer shall have 30 days from the date of the order to bring the installation into compliance. If the dealer fails to bring the installation into compliance within 30 days of the date of the order, the dealer shall be subject to civil penalties as provided by ORS 446.416.

(5) Hearings, penalties and appeals resulting from violation of this section shall be carried out in conformance with ORS 183.325 to 183.497 and this section.

SECTION 6. ORS 455.070 is amended to read:

455.070. (1) Any person may report a suspected violation of the state building code[, *which*] **that** poses an imminent threat to public health or safety[,] to the local building official or, where the code is state-administered, to the Department of Consumer and Business Services. The complaint shall be in writing and submitted under rules adopted by the department. The rules of the department shall provide for the disposition of frivolous or harassing complaints by requiring detailed descriptions of the alleged violation and reference to the code sections allegedly violated. [*A copy of the complaint shall be given by the municipality or agency*]

(2) **The municipality or the department shall give notice of the complaint** to the contractor, building owner and subcontractor, if any, involved in the project alleged to be in violation. The

municipality or [agency] **the department** may charge the complainant for the necessary costs of supplying, copying and distributing the complaint form.

(3) If, after five working days, no remedial action has taken place, the complainant has standing to appeal the matter to the appeals board of the municipality, where one is established, or directly to the [applicable state] **appropriate** advisory board where there is no local appeals board. The municipal appeals board or state advisory board shall reach a final decision within 14 days of the complainant's appeal. A municipal appeals board decision shall then be subject to appeal to a state advisory board under ORS 455.690, provided that the state advisory board shall reach a final determination within 14 days of notice of an appeal. A record of the written complaint and the findings of the appeals and advisory boards may be introduced into evidence in any judicial proceeding for damages brought against the complainant by any person suffering damages as a result of the complaint.

SECTION 7. ORS 455.125 is amended to read:

455.125. (1) **As used in this section, "person" includes individuals, corporations, associations, firms, partnerships, limited liability companies, joint stock companies, public agencies and an owner or holder of a direct or indirect interest in a corporation, association, firm, partnership, limited liability company or joint stock company.**

[(1)] (2) In addition to any other sanction, remedy or penalty provided by law, the Director of the Department of Consumer and Business Services or an appropriate advisory board may deny, suspend, condition or revoke a registration, certification, license or other authority **of a person** to perform work or conduct business issued under laws administered by the Department of Consumer and Business Services or advisory board if the [holder] **person**:

(a) Fails to comply with a provision of ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.950 or 480.510 to 480.670 or this chapter or ORS chapter 447, 460 or 693, or with any rule adopted under those statutes or under ORS 455.117; or

(b) Engages in an act for which the Construction Contractors Board imposes a sanction on the holder under ORS 701.098.

[(2)] (3) For purposes of ORS [701.100] **701.106**, a compliance failure described in subsection [(1)(a)] (2)(a) of this section for which the director or an advisory board denies, suspends, conditions or revokes a registration, certification, license or other authority **of a person** to perform work or conduct business may be treated as a failure to be in conformance with this chapter.

SECTION 8. ORS 455.129 is amended to read:

455.129. (1) **As used in this section, "relative" means an individual related within the third degree as determined by the common law, a spouse, an individual related to a spouse within the third degree as determined by the common law or an individual in an adoptive relationship within the third degree as determined by the common law.**

[(1)] (2) Subject to ORS chapter 183, [except as provided in subsection (4) of this section,] a regulatory body listed in subsection [(2)] (3) of this section may deny a license, certificate, registration or application or may suspend, revoke, condition or refuse to renew a license, certificate or registration if the regulatory body finds that the licensee, certificate holder, registrant or applicant:

(a) Has failed to comply with the laws administered by the regulatory body or with the rules adopted by the regulatory body.

(b) Has failed to comply with an order of the regulatory body or the Director of the Department of Consumer and Business Services, including but not limited to the failure to pay a civil penalty.

(c) Has filed an application for a license, certificate or registration that, as of the date the license, certificate or registration was issued or the date of an order denying the application, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was incorrect or misleading in any respect.

(d) Has performed work without appropriate licensing, certification or registration or has employed individuals to perform work without appropriate licensing, certification or registration.

(e) Has advertised or otherwise held out as being a licensed, certified or registered specialty code contractor without holding the appropriate specialty code contractor license, certificate or registration.

(f) As a partner, officer, member or employee of a business, has advertised or held out that the business is a licensed, certified or registered specialty code contractor if the business does not possess the appropriate specialty code contractor license, certificate or registration.

(g) Has engaged in business as a specialty code contractor without holding a valid specialty code contractor license, certificate or registration required for the business.

[(e)] **(h)** Has failed to meet any condition or requirement to obtain or maintain a license, certificate or registration.

[(f)] **(i)** Has acted in a manner creating a serious danger to the public health or safety.

(j) Has performed work or operated equipment within the scope of a specialty code license, certificate or registration in a manner that violates an applicable minimum safety standard or a statute or rule regarding safety.

[(g)] **(k)** Has been subject to a revocation, cancellation or suspension order or to other disciplinary action by the Construction Contractors Board or has failed to pay a civil penalty imposed by the board.

[(h)] **(L)** Has been subject to a revocation, cancellation or suspension order or to other disciplinary action by another state in regard to construction standards, permit requirements or construction-related licensing violations or has failed to pay a civil penalty imposed by the other state in regard to construction standards, permit requirements or construction-related licensing violations.

[(i)] **(m)** Has, while performing work that requires or that is related to work that requires a valid license or certificate under ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.950 or 480.510 to 480.670[,] **or** this chapter or ORS chapter 447, 460 or 693, violated any statute or rule related to the state building code.

(n) Has performed a code inspection or plan review on a project to construct, alter, repair or make an installation in a structure if the inspector or reviewer, or an employer or relative of the inspector or reviewer, has a financial interest in or business affiliation with the project or structure.

[(j)] **(o)** Is a business, the owner or an officer of which has an outstanding obligation to pay a civil penalty assessed under ORS 455.895 or has been the subject of action against the license, certificate or registration by the Department of Consumer and Business Services, the director or [any] **an appropriate** advisory board.

[(k)] **(p)** Is a business, owner or officer of a reorganized business entity as defined in ORS 657.682, if an owner, officer, shareholder or partner of the reorganized business entity, or a member if the reorganized business entity is a member-managed limited liability company, has been subject to a revocation or suspension order or to a condition or civil penalty under ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.950 or 480.510 to 480.670[,] **or** this chapter or ORS chapter 447, 460, 693 or 701, or by another state in regard to construction standards, permit requirements or construction-related licensing violations.

[(L)] **(q)** Is ordered to pay damages under a judgment or arbitration award that relates to construction and that has become final by operation of law or on appeal.

[(m)] **(r)** Is a business, the owner or an officer of which was an owner or officer in another business at the time:

(A) The other business was assessed a civil penalty under ORS 455.895 that remains unpaid; or

(B) An act or failure to act by any owner or officer of the other business resulted in action being taken against the license, certificate or registration of the other business by the department, the director or any advisory board.

[(2)] **(3)** Subsection [(1)] **(2)** of this section applies to:

(a) The State Plumbing Board for purposes of licenses issued under ORS 447.010 to 447.156 or ORS chapter 693.

(b) The Electrical and Elevator Board for purposes of licenses issued under ORS 446.210 or 479.510 to 479.945.

(c) The Board of Boiler Rules for purposes of licenses issued under ORS 480.510 to 480.670.

(d) The department for purposes of licenses issued under this chapter.

(e) The department, subject to Electrical and Elevator Board approval, for purposes of licenses issued under ORS 460.005 to 460.175.

(f) The department, subject to Residential and Manufactured Structures Board approval, for purposes of licenses, certificates and registrations issued under ORS 446.003 to 446.200, 446.225 to 446.285 and 446.395 to 446.420.

[3] (4) The department may administer and enforce subsection [(1)] (2) of this section in the same manner and to the same extent as any advisory board.

[(4) This section does not apply to licenses, certificates, registrations or applications for licensure, certification or registration involving inspectors or involving persons engaged in the manufacture, conversion or repair of prefabricated structures, prefabricated components or recreational vehicles.]

SECTION 9. ORS 455.770 is amended to read:

455.770. (1) In addition to any other authority and power granted to the Director of the Department of Consumer and Business Services under ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.995 and 480.510 to 480.670 and this chapter and ORS chapters 447, 460 and 693, with respect to municipalities, building officials and inspectors, if the director has reason to believe that there is a failure to enforce or a violation of any provision of **the state building code or** ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.995 [and] **or** 480.510 to 480.670 [and] **or** this chapter or ORS chapter 447, 460 or 693 or any rule adopted [thereunder] **under those statutes**, the director may:

(a) Examine building code activities of the municipality;

(b) Take sworn testimony; and

(c) With the authorization of the Office of the Attorney General, subpoena persons and records to obtain testimony on official actions that were taken or omitted or to obtain documents otherwise subject to public inspection under ORS 192.410 to 192.505.

(2) The investigative authority authorized in subsection (1) of this section covers the violation or omission by a municipality related to enforcement of codes or administrative rules, certification of inspectors or financial transactions dealing with permit fees and surcharges under any of the following circumstances when:

(a) The duties are clearly established by law, rule or agreement;

(b) The duty involves procedures for which the means and methods are clearly established by law, rule or agreement; or

(c) The duty is described by clear performance standards.

(3) Prior to starting an investigation under subsection (1) of this section, the director shall notify the municipality in writing setting forth the allegation and the rules or statutes pertaining to the allegation and give the municipality 30 days to respond to the allegation. If the municipality does not satisfy the director's concerns, the director may then commence an investigation.

(4) If the Department of Consumer and Business Services **or the director** directs corrective action, the following shall be done:

(a) The corrective action shall be in writing and served on the building official and the chief executive officers of all municipalities affected;

(b) The corrective action shall identify the facts and law relied upon for the required action; and

(c) A reasonable time shall be provided to the municipality for compliance.

(5) The director may revoke any authority of the municipality to administer any part of **the state building code or** ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.995 [and] **or** 480.510 to 480.670 [and] **or** this chapter or ORS chapter 447, 460 or 693 or

any rule adopted *[thereunder]* **under those statutes** if the director determines after a hearing conducted under ORS 183.413 to 183.497 that:

- (a) All of the requirements of this section and ORS 455.775 and 455.895 were met; and
- (b) The municipality did not comply with the corrective action required.

[(6) Nothing in ORS 455.775 shall be construed to grant any authority over a municipality or inspector employed by a municipality.]

SECTION 10. ORS 455.775 is amended to read:

455.775. In addition to any other authority and power granted *[to the Director of the Department of Consumer and Business Services]* under this chapter and ORS chapters 446, 447, 460, 479, 480 and 693:

(1) The Director of the Department of Consumer and Business Services[.]

[(1) Except where inconsistent with other provisions of law, the director] may, **at the discretion of the director**, enforce the provisions of **the state building code and** ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.950, 479.995 and 480.510 to 480.670 and this chapter and ORS chapters 447, 460 and 693 against any person regardless of whether a permit, certificate, license or other indicia of authority has been issued. The director may:

- (a) Make an investigation;
- (b) Take sworn testimony;
- (c) With the authorization of the Office of the Attorney General, subpoena persons and records;
- (d) Order corrective action; and
- (e) If an immediate hazard to health and safety is imminent, issue an order to stop all or any part of the work under the applicable specialty code.

(2) If the director has reason to believe that any person has been engaged, or is engaging, or is about to engage in any violation of **the state building code, or** ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.950 *[and]* **or** 480.510 to 480.670 *[and]* **or** this chapter *[and]* **or** ORS *[chapters]* **chapter** 447, 460 *[and]* **or** 693 *[and]* **or** any rule adopted *[thereunder]* **under those statutes**, the director may issue an order, subject to ORS 183.413 to 183.497, directed to the person to cease and desist from the violation or threatened violation.

(3) If the director has reason to believe that any person has been engaged, or is engaging, or is about to engage in any violation of **the state building code or** ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.950 *[and]* **or** 480.510 to 480.670 *[and]* **or** this chapter *[and]* **or** ORS chapters 447, 460 and 693 *[and]* **or** any rule adopted *[thereunder]* **under those statutes**, the director may, without bond, bring suit in the name and on behalf of the State of Oregon in the circuit court of any county of this state to enjoin the acts or practices and to enforce compliance with **the state building code and** ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.950 and 480.510 to 480.670 and this chapter and ORS chapters 447, 460 and 693 and any rule adopted *[thereunder]* **under those statutes**. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted.

(4) This section does not grant any authority over a municipality or an inspector employed by a municipality.

SECTION 11. 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 are subject to ORS 480.670.

(2) The *[Director of the]* Department of Consumer and Business Services, *[in consultation with the]* **or an appropriate advisory** board, if any, may **at its discretion** impose a civil penalty against any person who violates *[any provision of]* **the state building code or** 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] or 480.510 to 480.670, [and] or this chapter [and] or ORS [chapters] **chapter** 447, 460 [and] or 693, or any rule adopted or order issued for the administration and enforcement of those [provisions] **statutes**. Except as provided in subsections (3), (4) and (9) of this section or ORS 446.995, a civil penalty imposed under this section must be in an amount determined by the appropriate **advisory** board or the [director] **department** 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] **under ORS 446.003 to 446.200 or 446.225 to 446.285**, 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 [director] **department** may impose a civil penalty of not more than \$25,000 against a public body responsible for administering and enforcing a building inspection program. As used in this subsection, "public body" has the meaning given that term in ORS 174.109.

(5) 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 (10) of this section, moneys received from any civil penalty under this section are appropriated continuously for and shall be used by the [director] **department** for enforcement and administration of provisions and rules described in subsection (2) of this section.

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

(7) A civil penalty imposed under this section may be remitted or reduced upon such terms and conditions as the [director] **department** or the appropriate **advisory** 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.

(8) 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.

(9) 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] **department** or the appropriate **advisory** board to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the [director] **department** or **advisory** board that [shall] **does** 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.

(10) 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 12. ORS 480.530 is amended to read:

480.530. The Department of Consumer and Business Services may:

(1) Where it appears that a person is engaging in or is about to engage in an act or practice in violation of any provision of ORS 480.510 to 480.670, obtain without furnishing a bond, a restraining order and injunction from the circuit court in the county where the act or practice is occurring, or is threatened, enjoining the act or practice. However, before obtaining a restraining order and injunction, unless the act or practice constitutes an immediate threat to health and safety, the department shall first notify the person concerned of the department's intentions. The notice shall be in writing, shall advise the person concerned of the department's intentions and shall advise the person concerned of the right to appeal in writing within 10 days and that the appeal will be heard by the Board of Boiler Rules. In case there is a timely request for an appeal, proceedings will be

stayed pending the appeal, unless the act or practice constitutes an immediate menace to health or safety or the person concerned fails to prosecute the appeal with diligence.

(2) Keep a complete record of the types, dimensions, maximum allowable working pressures, age, location and date of the last recorded inspection of all boilers and pressure vessels to which ORS 480.510 to 480.670 apply.

(3) Publish and distribute copies of the rules and [regulations] **codes applicable to boilers and pressure vessels.**

(4) Check or cause to be checked the authenticity, appropriateness and expiration dates of licenses and certificates issued under ORS 480.510 to 480.670.

(5) Administer written, oral or practical examinations to all applicants for certification as chief boiler inspector, deputy inspector or special inspector under ORS 480.565.

SECTION 13. Section 2 of this 2013 Act applies to amounts charged in the form of an investigation fee on or after the effective date of this 2013 Act for construction, alterations, repairs, maintenance and installations commenced before, on or after the effective date of this 2013 Act.

Passed by House April 16, 2013

Received by Governor:

Repassed by House May 30, 2013

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Approved:

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Ramona J. Line, Chief Clerk of House

.....M,....., 2013

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Tina Kotek, Speaker of House

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John Kitzhaber, Governor

Passed by Senate May 28, 2013

Filed in Office of Secretary of State:

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Peter Courtney, President of Senate

.....M,....., 2013

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Kate Brown, Secretary of State