

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2978**

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the  
2 line and lines 3 through 5 and insert “446.405, 455.070, 455.125, 455.129,  
3 455.770, 455.775, 455.895 and 480.530.”.

4 Delete lines 7 through 25 and delete pages 2 through 17 and insert:

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

7 **“SECTION 2. Notwithstanding any fee amounts established in, or  
8 adopted by rule under, ORS 446.062, 446.175, 446.430, 447.095, 455.020,  
9 455.046, 455.154, 455.210, 455.220, 455.380, 455.465, 455.466, 455.471 (2),  
10 455.705, 460.165 (1), 479.560, 479.565, 480.525 (4)(b), 480.595, 480.600 or  
11 480.605, if the construction, alteration, repair, maintenance or instal-  
12 lation of a structure, or of a device or equipment regulated under the  
13 state building code, is commenced without a required plan review or  
14 building permit, the Department of Consumer and Business Services  
15 or a municipality administering and enforcing a building inspection  
16 program under ORS 455.148 or 455.150 may impose, in addition to any  
17 other sanction or penalty allowed by law, an investigative fee and in-  
18 creased plan review fees and building permit fees at the time of permit  
19 application for the project. However, the investigative fee and in-  
20 creased plan review fees and building permit fees may not total more  
21 than twice the amount of the plan review fees and building permit fees  
22 that would otherwise have been charged. This section does not apply**

1 to an emergency repair required for health, safety, the prevention of  
2 property damage or the prevention of financial harm if the required  
3 building permit for the repair is obtained no later than five business  
4 days after commencement of the repair. This section does not apply  
5 to any project for which construction, alteration, repair, maintenance  
6 or installation in a structure prior to obtaining a permit is expressly  
7 authorized by law.

8 **“SECTION 3. If the Department of Consumer and Business Services**  
9 **has reason to believe that any person has been engaged, or is engag-**  
10 **ing, or is about to engage in any violation of the state building code**  
11 **or of ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510**  
12 **to 479.945, 479.950 or 480.510 to 480.670 or this chapter or ORS chapter**  
13 **447, 460 or 693 or any rule adopted under those statutes, the depart-**  
14 **ment may, without bond, bring suit in the name and on behalf of the**  
15 **State of Oregon in the circuit court of any county of this state to en-**  
16 **join the acts or practices and to enforce compliance with the state**  
17 **building code and ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to**  
18 **446.420, 479.510 to 479.945, 479.950 and 480.510 to 480.670 and this chapter,**  
19 **and ORS chapter 447, 460 or 693 and any rule adopted under those**  
20 **statutes. Upon a proper showing, a permanent or temporary injunc-**  
21 **tion, restraining order or writ of mandamus shall be granted.**

22 **“SECTION 4. A person may not:**

23 **“(1) Perform work without appropriate licensing, certification or**  
24 **registration or employ, allow, permit or suffer individuals to perform**  
25 **work for the person without appropriate licensing, certification or**  
26 **registration.**

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

30 **“(3) As a partner, officer, member or employee of a business, ad-**

1 **vertise or hold out that the business is a licensed, certified or regis-**  
2 **tered specialty code contractor if the business does not hold the**  
3 **appropriate specialty code contractor license, certification or regis-**  
4 **tration.**

5 **“(4) Engage in business as a specialty code contractor without**  
6 **holding a valid specialty code contractor license, certificate or regis-**  
7 **tration required for the business.**

8 **“(5) Perform work or operate equipment within the scope of a spe-**  
9 **cialty code license, certificate or registration in a manner that violates**  
10 **an applicable minimum safety standard or a statute or rule regarding**  
11 **safety.**

12 **“SECTION 5.** ORS 446.405 is amended to read:

13 **“446.405. (1) If a manufactured dwelling or cabana is not installed in ac-**  
14 **cordance with the rules adopted under ORS 446.003 and 446.395 to 446.420,**  
15 **the owner of the manufactured dwelling or cabana, at the time of installa-**  
16 **tion, may, within one year of the completion date of such installation, file**  
17 **a written complaint with [the Director of] the Department of Consumer and**  
18 **Business Services. The [director] **department** shall provide a copy of the**  
19 **complaint to the installer and shall also notify the dealer, if any, that ar-**  
20 **ranged for such installation and may then investigate the complaint. If [it**  
21 **is determined by the director] **the department determines** that the instal-**  
22 **lation fails to comply with licensure requirements as provided by ORS**  
23 **446.003 and 446.395 to 446.420 or the installation rules adopted by the Di-**  
24 **rector **of the Department of Consumer and Business Services**, the [di-**  
25 **rector] **department** shall provide notice of such failure to the installer and**  
26 **shall order the installer to bring the installation into compliance [within 30**  
27 **days of date of notice].**

28 **“(2) The director shall establish, by rule, fees and a procedure for in-**  
29 **spection of manufactured dwellings and cabanas to carry out the provisions**  
30 **of this section.**

1 “(3) If the installer fails to bring the installation into compliance as or-  
2 dered, the [*director*] **department** may suspend or revoke the installer’s li-  
3 cense as provided [*by department of Consumer and Business Services rules*  
4 *adopted*] under ORS 455.129.

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

15 “(5) Hearings, penalties and appeals resulting from violation of this sec-  
16 tion shall be carried out in conformance with ORS 183.325 to 183.497 and this  
17 section.

18 **“SECTION 6.** ORS 455.070 is amended to read:

19 “455.070. (1) Any person may report a suspected violation of the state  
20 building code[, *which*] **that** poses an imminent threat to public health or  
21 safety[,] to the local building official or, where the code is state-  
22 administered, to the Department of Consumer and Business Services. The  
23 complaint shall be in writing and submitted under rules adopted by the de-  
24 partment. The rules of the department shall provide for the disposition of  
25 frivolous or harassing complaints by requiring detailed descriptions of the  
26 alleged violation and reference to the code sections allegedly violated. [A  
27 *copy of the complaint shall be given by the municipality or agency*]

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

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

3 “(3) If, after five working days, no remedial action has taken place, the  
4 complainant has standing to appeal the matter to the appeals board of the  
5 municipality, where one is established, or directly to the [applicable state]  
6 **appropriate** advisory board where there is no local appeals board. The mu-  
7 nicipal appeals board or state advisory board shall reach a final decision  
8 within 14 days of the complainant’s appeal. A municipal appeals board deci-  
9 sion shall then be subject to appeal to a state advisory board under ORS  
10 455.690, provided that the state advisory board shall reach a final determi-  
11 nation within 14 days of notice of an appeal. A record of the written com-  
12 plaint and the findings of the appeals and advisory boards may be introduced  
13 into evidence in any judicial proceeding for damages brought against the  
14 complainant by any person suffering damages as a result of the complaint.

15 **“SECTION 7.** ORS 455.125 is amended to read:

16 “455.125. (1) **As used in this section, ‘person’ includes individuals,**  
17 **corporations, associations, firms, partnerships, limited liability com-**  
18 **panies, joint stock companies, public agencies and an owner or holder**  
19 **of a direct or indirect interest in a corporation, association, firm,**  
20 **partnership, limited liability company or joint stock company.**

21 “[1] (2) In addition to any other sanction, remedy or penalty provided  
22 by law, the Director of the Department of Consumer and Business Services  
23 or an appropriate advisory board may deny, suspend, condition or revoke a  
24 registration, certification, license or other authority **of a person** to perform  
25 work or conduct business issued under laws administered by the Department  
26 of Consumer and Business Services or advisory board if the [holder]  
27 **person:**

28 “(a) Fails to comply with a provision of ORS 446.003 to 446.200, 446.225  
29 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.950 or 480.510 to 480.670  
30 or this chapter or ORS chapter 447, 460 or 693, or with any rule adopted

1 under those statutes or under ORS 455.117; or

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

4 “[2] (3) For purposes of ORS [701.100] **701.106**, a compliance failure de-  
5 scribed in subsection [(1)(a)] **(2)(a)** of this section for which the director or  
6 an advisory board denies, suspends, conditions or revokes a registration,  
7 certification, license or other authority **of a person** to perform work or  
8 conduct business may be treated as a failure to be in conformance with this  
9 chapter.

10 **“SECTION 8.** ORS 455.129 is amended to read:

11 **“455.129. (1) As used in this section, ‘relative’ means an individual**  
12 **related within the third degree as determined by the common law, a**  
13 **spouse, an individual related to a spouse within the third degree as**  
14 **determined by the common law or an individual in an adoptive re-**  
15 **lationship within the third degree as determined by the common law.**

16 “[1] (2) Subject to ORS chapter 183, except as provided in subsection  
17 [(4)] **(5)** of this section, a regulatory body listed in subsection [(2)] **(3)** of this  
18 section may deny a license, certificate, registration or application or may  
19 suspend, revoke, condition or refuse to renew a license, certificate or regis-  
20 tration if the regulatory body finds that the licensee, certificate holder, reg-  
21 istrant or applicant:

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

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

27 “(c) Has filed an application for a license, certificate or registration that,  
28 as of the date the license, certificate or registration was issued or the date  
29 of an order denying the application, was incomplete in any material respect  
30 or contained a statement that, in light of the circumstances under which it

1 was made, was incorrect or misleading in any respect.

2 “(d) Has performed work without appropriate licensing, certification or  
3 registration or has employed individuals to perform work without appropri-  
4 ate licensing, certification or registration.

5 “(e) **Has advertised or otherwise held out as being a licensed, certi-**  
6 **fied or registered specialty code contractor without holding the ap-**  
7 **propriate specialty code contractor license, certificate or registration.**

8 “(f) **As a partner, officer, member or employee of a business, has**  
9 **advertised or held out that the business is a licensed, certified or reg-**  
10 **istered specialty code contractor if the business does not possess the**  
11 **appropriate specialty code contractor license, certificate or registra-**  
12 **tion.**

13 “(g) **Has engaged in business as a specialty code contractor without**  
14 **holding a valid specialty code contractor license, certificate or regis-**  
15 **tration required for the business.**

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

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

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

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

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

1 regard to construction standards, permit requirements or construction-related  
2 licensing violations.

3 “[(i)] (m) Has, while performing work that requires or that is related to  
4 work that requires a valid license or certificate under ORS 446.003 to 446.200,  
5 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.950 or 480.510 to  
6 480.670[,] or this chapter or ORS chapter 447, 460 or 693, violated any statute  
7 or rule related to the state building code.

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

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

18 “[(k)] (p) Is a business, owner or officer of a reorganized business entity  
19 as defined in ORS 657.682, if an owner, officer, shareholder or partner of the  
20 reorganized business entity, or a member if the reorganized business entity  
21 is a member-managed limited liability company, has been subject to a revo-  
22 cation or suspension order or to a condition or civil penalty under ORS  
23 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945,  
24 479.950 or 480.510 to 480.670[,] or this chapter or ORS chapter 447, 460, 693  
25 or 701, or by another state in regard to construction standards, permit re-  
26 quirements or construction-related licensing violations.

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

30 “[(m)] (r) Is a business, the owner or an officer of which was an owner



1 or officer in another business at the time:

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

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

7 “[2] (3) Subsection [(1)] (2) of this section applies to:

8 “(a) The State Plumbing Board for purposes of licenses issued under ORS  
9 447.010 to 447.156 or ORS chapter 693.

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

12 “(c) The Board of Boiler Rules for purposes of licenses issued under ORS  
13 480.510 to 480.670.

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

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

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

20 “[3] (4) The department may administer and enforce subsection [(1)] (2)  
21 of this section in the same manner and to the same extent as any advisory  
22 board.

23 “[4] (5) This section does not apply to licenses, certificates, registrations  
24 or applications for licensure, certification or registration involving inspec-  
25 tors or involving persons engaged in the manufacture, conversion or repair  
26 of prefabricated structures, prefabricated components or recreational vehi-  
27 cles.

28 **“SECTION 9.** ORS 455.770 is amended to read:

29 “455.770. (1) In addition to any other authority and power granted to the  
30 Director of the Department of Consumer and Business Services under ORS

1 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945,  
2 479.995 and 480.510 to 480.670 and this chapter and ORS chapters 447, 460 and  
3 693, with respect to municipalities, building officials and inspectors, if the  
4 director has reason to believe that there is a failure to enforce or a violation  
5 of any provision of **the state building code or** ORS 446.003 to 446.200,  
6 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.995 [*and*] **or**  
7 480.510 to 480.670 [*and*] **or** this chapter or ORS chapter 447, 460 or 693 or  
8 any rule adopted [*thereunder*] **under those statutes**, the director may:

9 “(a) Examine building code activities of the municipality;

10 “(b) Take sworn testimony; and

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

15 “(2) The investigative authority authorized in subsection (1) of this sec-  
16 tion covers the violation or omission by a municipality related to enforce-  
17 ment of codes or administrative rules, certification of inspectors or financial  
18 transactions dealing with permit fees and surcharges under any of the fol-  
19 lowing circumstances when:

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

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

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

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

30 “(4) If the Department of Consumer and Business Services **or the direc-**

1 **tor** directs corrective action, the following shall be done:

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

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

6 “(c) A reasonable time shall be provided to the municipality for compli-  
7 ance.

8 “(5) The director may revoke any authority of the municipality to ad-  
9 minister any part of **the state building code** or ORS 446.003 to 446.200,  
10 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.995 [*and*] **or**  
11 480.510 to 480.670 [*and*] **or** this chapter or ORS chapter 447, 460 or 693 or  
12 any rule adopted [*thereunder*] **under those statutes** if the director deter-  
13 mines after a hearing conducted under ORS 183.413 to 183.497 that:

14 “(a) All of the requirements of this section and ORS 455.775 and 455.895  
15 were met; and

16 “(b) The municipality did not comply with the corrective action required.

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

19 **“SECTION 10.** ORS 455.775 is amended to read:

20 “455.775. In addition to any other authority and power granted [*to the*  
21 *Director of the Department of Consumer and Business Services*] under this  
22 chapter and ORS chapters 446, 447, 460, 479, 480 and 693:

23 **“(1) The Director of the Department of Consumer and Business**  
24 **Services[:]**

25 “[*(1) Except where inconsistent with other provisions of law, the director*]  
26 may enforce the provisions of **the state building code** and ORS 446.003 to  
27 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.950,  
28 479.995 and 480.510 to 480.670 and this chapter and ORS chapters 447, 460 and  
29 693 against any person regardless of whether a permit, certificate, license  
30 or other indicia of authority has been issued. The director may:

1       “(a) Make an investigation;

2       “(b) Take sworn testimony;

3       “(c) With the authorization of the Office of the Attorney General,  
4 subpoena persons and records;

5       “(d) **Subject to ORS 446.260 (2)**, order corrective action; and

6       “(e) If an immediate hazard to health and safety is imminent, issue an  
7 order to stop all or any part of the work under the applicable specialty code.

8       “(2) If the director has reason to believe that any person has been en-  
9 gaged, or is engaging, or is about to engage in any violation of **the state**  
10 **building code, or** ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to  
11 446.420, 479.510 to 479.945, 479.950 [and] **or** 480.510 to 480.670 [and] **or** this  
12 chapter [and] **or** ORS [chapters] **chapter** 447, 460 [and] **or** 693 [and] **or** any  
13 rule adopted [thereunder] **under those statutes**, the director may issue an  
14 order, subject to ORS 183.413 to 183.497, directed to the person to cease and  
15 desist from the violation or threatened violation.

16       “(3) If the director has reason to believe that any person has been en-  
17 gaged, or is engaging, or is about to engage in any violation of **the state**  
18 **building code or** ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to  
19 446.420, 479.510 to 479.945, 479.950 [and] **or** 480.510 to 480.670 [and] **or** this  
20 chapter [and] **or** ORS chapters 447, 460 and 693 [and] **or** any rule adopted  
21 [thereunder] **under those statutes**, the director may, without bond, bring  
22 suit in the name and on behalf of the State of Oregon in the circuit court  
23 of any county of this state to enjoin the acts or practices and to enforce  
24 compliance with **the state building code and** ORS 446.003 to 446.200, 446.225  
25 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.950 and 480.510 to 480.670  
26 and this chapter and ORS chapters 447, 460 and 693 and any rule adopted  
27 [thereunder] **under those statutes**. Upon a proper showing, a permanent or  
28 temporary injunction, restraining order or writ of mandamus shall be  
29 granted.

30       “(4) **This section does not grant any authority over a municipality**

1 **or an inspector employed by a municipality.**

2 **“SECTION 11.** ORS 455.895 is amended to read:

3 “455.895. (1)(a) The State Plumbing Board may impose a civil penalty  
4 against a person as provided under ORS 447.992 and 693.992. Amounts re-  
5 covered under this paragraph are subject to ORS 693.165.

6 “(b) The Electrical and Elevator Board may impose a civil penalty against  
7 a person as provided under ORS 479.995. Amounts recovered under this par-  
8 agraph are subject to ORS 479.850.

9 “(c) The Board of Boiler Rules may impose a civil penalty against a per-  
10 son as provided under ORS 480.670. Amounts recovered under this paragraph  
11 are subject to ORS 480.670.

12 “(2) The [*Director of the*] Department of Consumer and Business Services,  
13 [*in consultation with the*] **or an** appropriate **advisory** board, if any, may  
14 impose a civil penalty against any person who violates [*any provision of*] **the**  
15 **state building code** **or** ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to  
16 446.420, 446.566 to 446.646, 446.666 to 446.746, 479.510 to 479.945, 479.950  
17 [*and*] **or** 480.510 to 480.670, [*and*] **or** this chapter [*and*] **or** ORS [*chapters*]  
18 **chapter** 447, 460 [*and*] **or** 693, or any rule adopted or order issued for the  
19 administration and enforcement of those [*provisions*] **statutes**. Except as  
20 provided in subsections (3), (4) and (9) of this section or ORS 446.995, a civil  
21 penalty imposed under this section must be in an amount determined by the  
22 appropriate **advisory** board or the [*director*] **department** of not more than  
23 \$5,000 for each offense or, in the case of a continuing offense, not more than  
24 \$1,000 for each day of the offense.

25 “(3) Each violation of ORS 446.003 to 446.200 or 446.225 to 446.285, or any  
26 rule or order issued [*thereunder*] **under ORS 446.003 to 446.200 or 446.225**  
27 **to 446.285**, constitutes a separate violation with respect to each manufac-  
28 tured structure or with respect to each failure or refusal to allow or perform  
29 an act required thereby, except that the maximum civil penalty may not ex-  
30 ceed \$1 million for any related series of violations occurring within one year

1 from the date of the first violation.

2 “(4) The [*director*] **department** may impose a civil penalty of not more  
3 than \$25,000 against a public body responsible for administering and enforc-  
4 ing a building inspection program. As used in this subsection, ‘public body’  
5 has the meaning given that term in ORS 174.109.

6 “(5) The maximum penalty established by this section for a violation may  
7 be imposed only upon a finding that the person has engaged in a pattern of  
8 violations. The department [*of Consumer and Business Services*], by rule,  
9 shall define what constitutes a pattern of violations. Except as provided in  
10 subsections (1) and (10) of this section, moneys received from any civil pen-  
11 alty under this section are appropriated continuously for and shall be used  
12 by the [*director*] **department** for enforcement and administration of pro-  
13 visions and rules described in subsection (2) of this section.

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

16 “(7) A civil penalty imposed under this section may be remitted or reduced  
17 upon such terms and conditions as the [*director*] **department** or the appro-  
18 priate **advisory** board considers proper and consistent with the public health  
19 and safety. In any judicial review of a civil penalty imposed under this sec-  
20 tion, the court may, in its discretion, reduce the penalty.

21 “(8) Any officer, director, shareholder or agent of a corporation, or mem-  
22 ber or agent of a partnership or association, who personally participates in  
23 or is an accessory to any violation by the partnership, association or corpo-  
24 ration of a provision or rule described in subsection (2) of this section is  
25 subject to the penalties prescribed in this section.

26 “(9) In addition to the civil penalty set forth in subsection (1) or (2) of  
27 this section, any person who violates a provision or rule described in sub-  
28 section (2) of this section may be required by the [*director*] **department** or  
29 the appropriate **advisory** board to forfeit and pay to the General Fund of the  
30 State Treasury a civil penalty in an amount determined by the [*director*]

1 **department** or **advisory** board that [*shall*] **does** not exceed five times the  
2 amount by which such person profited in any transaction that violates a  
3 provision or rule described in subsection (2) of this section.

4 “(10) If a civil penalty is imposed for a violation of a provision of ORS  
5 446.566 to 446.646 and the violation relates to a filing or failure to file with  
6 a county assessor functioning as agent of the department, the department,  
7 after deducting an amount equal to the department’s procedural, collection  
8 and other related costs and expenses, shall forward one-half of the remaining  
9 civil penalty amount to the county in which the manufactured structure is  
10 located at the time of the violation.

11 **“SECTION 12.** ORS 480.530 is amended to read:

12 “480.530. The Department of Consumer and Business Services may:

13 “(1) Where it appears that a person is engaging in or is about to engage  
14 in an act or practice in violation of any provision of ORS 480.510 to 480.670,  
15 obtain without furnishing a bond, a restraining order and injunction from  
16 the circuit court in the county where the act or practice is occurring, or is  
17 threatened, enjoining the act or practice. However, before obtaining a re-  
18 straining order and injunction, unless the act or practice constitutes an im-  
19 mediate threat to health and safety, the department shall first notify the  
20 person concerned of the department’s intentions. The notice shall be in  
21 writing, shall advise the person concerned of the department’s intentions and  
22 shall advise the person concerned of the right to appeal in writing within  
23 10 days and that the appeal will be heard by the Board of Boiler Rules. In  
24 case there is a timely request for an appeal, proceedings will be stayed  
25 pending the appeal, unless the act or practice constitutes an immediate  
26 menace to health or safety or the person concerned fails to prosecute the  
27 appeal with diligence.

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

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

3       “(4) Check or cause to be checked the authenticity, appropriateness and  
4 expiration dates of licenses and certificates issued under ORS 480.510 to  
5 480.670.

6       “(5) Administer written, oral or practical examinations to all applicants  
7 for certification as chief boiler inspector, deputy inspector or special in-  
8 spector under ORS 480.565.

9       “**SECTION 13. Section 2 of this 2013 Act applies to investigative fees,**  
10 **plan review fees and building permit fees that are assessed on or after**  
11 **the effective date of this 2013 Act for construction, alterations, repairs,**  
12 **maintenance and installations commenced before, on or after the ef-**  
13 **fective date of this 2013 Act.”.**

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