

House Bill 4118

Sponsored by Representative HEARD (Pre-session 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 **as introduced**.

Allows person to contest civil penalty in circuit court.

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A BILL FOR AN ACT

Relating to appeals of agency orders; amending ORS 183.400, 183.415, 183.745, 418.993, 441.712, 443.795, 527.687, 536.905, 603.995, 616.997, 619.996, 621.995, 622.996, 625.995, 628.995, 632.995, 634.905, 635.995, 645.215, 673.732, 688.715, 689.832, 697.832, 704.900 and 822.080.

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

SECTION 1. ORS 183.745 is amended to read:

183.745. (1) Except as otherwise provided by law, an agency may [*only*] impose a civil penalty **only** as provided in this section.

(2) A civil penalty imposed under this section shall become due and payable 10 days after the order imposing the civil penalty becomes final by operation of law or on appeal. A person against whom a civil penalty is to be imposed shall be served with a notice in the form provided in ORS 183.415. Service of the notice shall be accomplished in the manner provided by ORS 183.415.

(3) The person to whom the notice is addressed shall have 20 days from the date of service of the notice provided for in subsection (2) of this section in which to [*make written application for a hearing*] **file an appeal of the order**. The agency may by rule provide for a longer period of time in which [*application for a hearing may be made*] **an appeal may be filed**. If [*no application for a hearing is made*] **the person does not file an appeal** within the time allowed, the agency may make a final order imposing the penalty. A final order entered under this subsection need not be delivered or mailed to the person against whom the civil penalty is imposed.

[(4) *Any person who makes application as provided for in subsection (3) of this section shall be entitled to a hearing. The hearing shall be conducted as*]

(4) A person may file an appeal:

(a) By requesting a contested case hearing pursuant to the applicable provisions of ORS 183.413 to 183.470[.];

(b) If the order proposes a civil penalty of \$10,000 or greater, by filing a petition for judicial review of the order in the appropriate circuit court; or

(c) If the order proposes a civil penalty of less than \$10,000, by commencing an action, as provided in ORS 46.425, in the small claims department of the Circuit Court for Marion County or the circuit court for the county in which the person resides or has a principal place of business.

(5)(a) Judicial review of an order made after a hearing under subsection [(4)] **(4)(a)** of this section shall be as provided in ORS 183.480 to 183.497 for judicial review of contested cases.

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 **(b) Judicial review under subsection (4)(b) or (c) of this section shall be as provided in**
 2 **ORS 183.484, 183.486, 183.490, 183.497 and 183.500 for judicial review of an order in other than**
 3 **a contested case except that the petitioner has a right to a jury trial if the action is filed**
 4 **pursuant to subsection (4)(b) of this section.**

5 (6) When an order assessing a civil penalty under this section becomes final by operation of law
 6 or on appeal, and the amount of penalty is not paid within 10 days after the order becomes final,
 7 the order may be recorded with the county clerk in any county of this state. The clerk shall there-
 8 upon record the name of the person incurring the penalty and the amount of the penalty in the
 9 County Clerk Lien Record.

10 (7) This section does not apply to penalties:

- 11 (a) Imposed under the tax laws of this state;
- 12 (b) Imposed under the provisions of ORS 646.760 or 652.332;
- 13 (c) Imposed under the provisions of ORS chapter 654, 656 or 659A; or
- 14 (d) Imposed by the Public Utility Commission.

15 (8) This section creates no new authority in any agency to impose civil penalties.

16 (9) This section does not affect:

17 (a) Any right under any other law that an agency may have to bring an action in a court of this
 18 state to recover a civil penalty; or

19 (b) The ability of an agency to collect a properly imposed civil penalty under the provisions of
 20 ORS 305.830.

21 (10) The notice provided for in subsection (2) of this section may be made part of any other
 22 notice served by the agency under ORS 183.415.

23 (11) Informal disposition of proceedings under this section, whether by stipulation, agreed
 24 settlement, consent order or default, may be made at any time.

25 (12) In addition to any other remedy provided by law, recording an order in the County Clerk
 26 Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125
 27 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

28 (13) As used in this section:

- 29 (a) “Agency” has that meaning given in ORS 183.310.
- 30 (b) “Civil penalty” includes only those monetary penalties that are specifically denominated as
 31 civil penalties by statute.

32 **SECTION 2.** ORS 183.400 is amended to read:

33 183.400. (1) The validity of any rule may be determined upon a petition by any person to the
 34 Court of Appeals in the manner provided for review of orders in contested cases. The court shall
 35 have jurisdiction to review the validity of the rule whether or not the petitioner has first requested
 36 the agency to pass upon the validity of the rule in question, but not when the petitioner is a party
 37 to an order or a contested case in which the validity of the rule may be determined by a court.

38 (2) The validity of any applicable rule may also be determined by a court, upon review of an
 39 order in any manner provided by law or pursuant to ORS 183.480 **or 183.745** or upon enforcement
 40 of such rule or order in the manner provided by law.

41 (3) Judicial review of a rule shall be limited to an examination of:

- 42 (a) The rule under review;
- 43 (b) The statutory provisions authorizing the rule; and
- 44 (c) Copies of all documents necessary to demonstrate compliance with applicable rulemaking
 45 procedures.

1 (4) The court shall declare the rule invalid only if it finds that the rule:

2 (a) Violates constitutional provisions;

3 (b) Exceeds the statutory authority of the agency; or

4 (c) Was adopted without compliance with applicable rulemaking procedures.

5 (5) In the case of disputed allegations of irregularities in procedure which, if proved, would
6 warrant reversal or remand, the Court of Appeals may refer the allegations to a master appointed
7 by the court to take evidence and make findings of fact. The court's review of the master's findings
8 of fact shall be de novo on the evidence.

9 (6) The court shall not declare a rule invalid solely because it was adopted without compliance
10 with applicable rulemaking procedures after a period of two years after the date the rule was filed
11 in the office of the Secretary of State, if the agency attempted to comply with those procedures and
12 its failure to do so did not substantially prejudice the interests of the parties.

13 **SECTION 3.** ORS 183.415 is amended to read:

14 183.415. (1) The Legislative Assembly finds that persons affected by actions taken by state
15 agencies have a right to be informed of their rights and remedies with respect to the actions.

16 (2) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable
17 notice, served personally or by registered or certified mail.

18 (3) Notice under this section must include:

19 (a) A statement of the party's right to hearing, with a description of the procedure and time to
20 request a hearing, or a statement of the time and place of the hearing;

21 (b) A statement of the authority and jurisdiction under which the hearing is to be held;

22 (c) A reference to the particular sections of the statutes and rules involved;

23 (d) A short and plain statement of the matters asserted or charged;

24 (e) A statement indicating whether and under what circumstances an order by default may be
25 entered; and

26 (f) A statement that active duty servicemembers have a right to stay proceedings under the
27 federal Servicemembers Civil Relief Act and may contact the Oregon State Bar or the Oregon Mil-
28 itary Department for more information. The statement must include the toll-free telephone numbers
29 for the Oregon State Bar and the Oregon Military Department and the Internet address for the
30 United States Armed Forces Legal Assistance Legal Services Locator website.

31 **(4) If a contested case order includes a civil penalty, the notice must include a statement**
32 **of the party's rights under ORS 183.745.**

33 **SECTION 4.** ORS 418.993 is amended to read:

34 418.993. (1) Any civil penalty under ORS 418.992 shall be imposed in the manner provided in
35 ORS 183.745.

36 (2) Notwithstanding ORS 183.745, the private child-caring agency to whom the notice is ad-
37 dressed shall have 10 days from the date of service of the notice in which to [*make written applica-*
38 *tion for a hearing*] **file an appeal:**

39 **(a) Requesting a hearing** before the Director of Human Services[.] **in accordance with ORS**
40 **183.745 (4)(a); or**

41 **(b) In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

42 **SECTION 5.** ORS 441.712 is amended to read:

43 441.712. (1) Any civil penalty under ORS 441.710 shall be imposed in the manner provided by
44 ORS 183.745.

45 (2) Notwithstanding ORS 183.745, the person to whom the notice is addressed shall have 10 days

1 from the date of service of the notice in which to *[make written application for]* **file an appeal:**

2 **(a) Requesting** a hearing, **in accordance with ORS 183.745 (4)(a)**, before:

3 *[(a)]* **(A)** The Director of Human Services if the facility is a long term care facility, residential
4 care facility, residential training facility or residential training home; or

5 *[(b)]* **(B)** The Director of the Oregon Health Authority if the facility is a residential treatment
6 facility or residential treatment home[.]; **or**

7 **(b) In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

8 **SECTION 6.** ORS 443.795 is amended to read:

9 443.795. (1) Any civil penalty under ORS 443.790 shall be imposed as provided in ORS 183.745.

10 (2) Notwithstanding ORS 183.745, the person to whom the notice is addressed shall have 10 days
11 from the date of service of the notice in which to *[make written application for]* **file an appeal:**

12 **(a) Requesting** a hearing, **in accordance with ORS 183.745 (4)(a)**, before the director of the
13 licensing agency[.]; **or**

14 **(b) In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

15 (3) **If the person requests a hearing**, the licensing agency shall conduct the hearing and issue
16 the final order within 180 days after any hearing request.

17 **SECTION 7.** ORS 527.687 is amended to read:

18 527.687. (1) Subject to the notice provisions of ORS 527.683, any civil penalty under ORS 527.992
19 shall be imposed in the manner provided in ORS 183.745.

20 (2) In no case shall a hearing requested under ORS 183.745 (4)(a) be held less than 45 days from
21 the date of service of the notice of penalty to allow the party to prepare testimony. The hearing
22 shall be held not more than 180 days following issuance of the notice unless all parties agree on an
23 extension.

24 (3) Hearings under this section shall be conducted by an administrative law judge assigned from
25 the Office of Administrative Hearings established under ORS 183.605.

26 (4) Except as provided in subsection (5) of this section, all civil penalties recovered under ORS
27 527.610 to 527.770, 527.990 and 527.992 shall be paid to the General Fund.

28 (5) Civil penalties recovered under ORS 527.685 (5) shall be deposited in the State Forestry De-
29 partment Account under ORS 526.060 and used, consistently with ORS 527.690, by the State Forester
30 to reforest the land that is the subject of a violation of ORS 527.745 or rules for reforestation
31 adopted pursuant to ORS 527.745. Civil penalties described in this subsection that exceed the costs
32 of reforestation shall be paid to the General Fund.

33 **SECTION 8.** ORS 536.905 is amended to read:

34 536.905. (1) Any civil penalty under ORS 536.900 shall be imposed as provided in ORS 183.745.

35 (2) Notwithstanding ORS 183.745, the person to whom the notice is addressed shall have 10 days
36 from the date of service of the notice in which to *[make written application for]* **file an appeal:**

37 **(a) Requesting** a hearing before the commission[.] **in accordance with ORS 183.745 (4)(a); or**

38 **(b) In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

39 **SECTION 9.** ORS 603.995 is amended to read:

40 603.995. (1) In addition to any penalty available under ORS 561.190 or 603.992, the State De-
41 partment of Agriculture may impose a civil penalty for a violation of this chapter or of rules adopted
42 under this chapter. For the purposes of this section, each day a violation continues after the period
43 of time established for compliance shall be considered a separate violation unless the department
44 finds that a different period of time is more appropriate to describe a specific violation event.

45 (2) The department may adopt rules establishing a schedule of civil penalties that may be im-

1 posed under this section. Civil penalties imposed under this section may not exceed \$10,000 for each
 2 violation.

3 (3) When the department imposes a civil penalty under subsection (1) of this section, the de-
 4 partment shall impose the penalty in the manner provided by ORS 183.745, except that the [*written*
 5 *application for a hearing must be received by the department*] **person to whom the notice is ad-**
 6 **dressed must**, no later than 10 days after the date of mailing or personal service of the notice of
 7 civil penalty[.], **file an appeal:**

8 (a) **Requesting a hearing before the department in accordance with ORS 183.745 (4)(a);**
 9 **or**

10 (b) **In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

11 (4) Moneys received by the department from civil penalties imposed under this section shall be
 12 deposited in the General Fund to the credit of the Department of Agriculture Account.

13 **SECTION 10.** ORS 616.997 is amended to read:

14 616.997. (1) In addition to any penalty available under ORS 561.190, 616.992 or 616.994, the State
 15 Department of Agriculture may impose a civil penalty for a violation of this chapter or of rules,
 16 regulations or standards adopted under this chapter. For the purposes of this section, each day a
 17 violation continues after the period of time established for compliance shall be considered a separate
 18 violation unless the department finds that a different period of time is more appropriate to describe
 19 a specific violation event.

20 (2) The department may adopt rules establishing a schedule of civil penalties that may be im-
 21 posed under this section. Civil penalties imposed under this section may not exceed \$10,000 for each
 22 violation.

23 (3) When the department imposes a civil penalty under subsection (1) of this section, the de-
 24 partment shall impose the penalty in the manner provided by ORS 183.745, except that the [*written*
 25 *application for a hearing must be received by the department*] **person to whom the notice is ad-**
 26 **dressed must**, no later than 10 days after the date of mailing or personal service of the notice of
 27 civil penalty[.], **file an appeal:**

28 (a) **Requesting a hearing before the department in accordance with ORS 183.745 (4)(a);**
 29 **or**

30 (b) **In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

31 (4) Moneys received by the department from civil penalties imposed under this section shall be
 32 deposited in the General Fund to the credit of the Department of Agriculture Account.

33 **SECTION 11.** ORS 619.996 is amended to read:

34 619.996. (1) In addition to any penalty available under ORS 561.190 or 619.993, the State De-
 35 partment of Agriculture may impose a civil penalty for a violation of this chapter or of rules adopted
 36 under this chapter. For the purposes of this section, each day a violation continues after the period
 37 of time established for compliance shall be considered a separate violation unless the department
 38 finds that a different period of time is more appropriate to describe a specific violation event.

39 (2) The department may adopt rules establishing a schedule of civil penalties that may be im-
 40 posed under this section. Civil penalties imposed under this section may not exceed \$10,000 for each
 41 violation.

42 (3) When the department imposes a civil penalty under subsection (1) of this section, the de-
 43 partment shall impose the penalty in the manner provided by ORS 183.745, except that the [*written*
 44 *application for a hearing must be received by the department*] **person to whom the notice is ad-**
 45 **dressed must**, no later than 10 days after the date of mailing or personal service of the notice of

1 civil penalty[.], **file an appeal:**

2 (a) **Requesting a hearing before the department in accordance with ORS 183.745 (4)(a);**

3 **or**

4 (b) **In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

5 (4) Moneys received by the department from civil penalties imposed under this section shall be
6 deposited in the General Fund to the credit of the Department of Agriculture Account.

7 **SECTION 12.** ORS 621.995 is amended to read:

8 621.995. (1) In addition to any penalty available under ORS 561.190 or 621.991, the State De-
9 partment of Agriculture may impose a civil penalty for a violation of ORS 621.056, 621.057, 621.062,
10 621.070, 621.072, 621.076, 621.084, 621.088, 621.117, 621.122, 621.124, 621.161, 621.166, 621.183, 621.198,
11 621.207, 621.226, 621.259, 621.335, 621.340, 621.345, 621.418, 621.445 or 621.730 or of rules, regulations
12 or standards adopted under ORS 621.060, 621.083, 621.096, 621.224 or 621.261. For the purposes of
13 this section, each day a violation continues after the period of time established for compliance shall
14 be considered a separate violation unless the department finds that a different period of time is more
15 appropriate to describe a specific violation event.

16 (2) The department may adopt rules establishing a schedule of civil penalties that may be im-
17 posed under this section. Civil penalties imposed under this section may not exceed \$10,000 for each
18 violation.

19 (3) When the department imposes a civil penalty under subsection (1) of this section, the de-
20 partment shall impose the penalty in the manner provided by ORS 183.745, except that the [*written*
21 *application for a hearing must be received by the department*] **person to whom the notice is ad-**
22 **dressed must**, no later than 10 days after the date of mailing or personal service of the notice of
23 civil penalty[.], **file an appeal:**

24 (a) **Requesting a hearing before the department in accordance with ORS 183.745 (4)(a);**

25 **or**

26 (b) **In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

27 (4) Moneys received by the department from civil penalties imposed under this section shall be
28 deposited in the General Fund to the credit of the Department of Agriculture Account.

29 **SECTION 13.** ORS 622.996 is amended to read:

30 622.996. (1) In addition to any penalty available under ORS 561.190 or 622.992, the State De-
31 partment of Agriculture may impose a civil penalty for a violation of ORS 622.010 to 622.180 or of
32 rules adopted under ORS 622.180. For the purposes of this section, each day a violation continues
33 after the period of time established for compliance shall be considered a separate violation unless
34 the department finds that a different period of time is more appropriate to describe a specific vi-
35 olation event.

36 (2) The department may adopt rules establishing a schedule of civil penalties that may be im-
37 posed under this section. Civil penalties imposed under this section may not exceed \$10,000 for each
38 violation.

39 (3) When the department imposes a civil penalty under subsection (1) of this section, the de-
40 partment shall impose the penalty in the manner provided by ORS 183.745, except that the [*written*
41 *application for a hearing must be received by the department*] **person to whom the notice is ad-**
42 **dressed must**, no later than 10 days after the date of mailing or personal service of the notice of
43 civil penalty[.], **file an appeal:**

44 (a) **Requesting a hearing before the department in accordance with ORS 183.745 (4)(a);**

45 **or**

1 **(b) In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

2 (4) Moneys received by the department from civil penalties imposed under this section shall be
3 deposited in the General Fund to the credit of the Department of Agriculture Account.

4 **SECTION 14.** ORS 625.995 is amended to read:

5 625.995. (1) In addition to any penalty available under ORS 561.190 or 625.990, the State De-
6 partment of Agriculture may impose a civil penalty for a violation of ORS 625.010 to 625.270 or of
7 rules or regulations adopted under ORS 625.010 to 625.270. For the purposes of this section, each
8 day a violation continues after the period of time established for compliance shall be considered a
9 separate violation unless the department finds that a different period of time is more appropriate to
10 describe a specific violation event.

11 (2) The department may adopt rules establishing a schedule of civil penalties that may be im-
12 posed under this section. Civil penalties imposed under this section may not exceed \$10,000 for each
13 violation.

14 (3) When the department imposes a civil penalty under subsection (1) of this section, the de-
15 partment shall impose the penalty in the manner provided by ORS 183.745, except that the [*written*
16 *application for a hearing must be received by the department*] **person to whom the notice is ad-**
17 **ressed must**, no later than 10 days after the date of mailing or personal service of the notice of
18 civil penalty[.], **file an appeal:**

19 **(a) Requesting a hearing before the department in accordance with ORS 183.745 (4)(a);**
20 **or**

21 **(b) In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

22 (4) Moneys received by the department from civil penalties imposed under this section shall be
23 deposited in the General Fund to the credit of the Department of Agriculture Account.

24 **SECTION 15.** ORS 628.995 is amended to read:

25 628.995. (1) In addition to any penalty available under ORS 561.190 or 628.990, the State De-
26 partment of Agriculture may impose a civil penalty for a violation of ORS 628.210 to 628.370 or of
27 rules or regulations adopted under ORS 628.210 to 628.370. For the purposes of this section, each
28 day a violation continues after the period of time established for compliance shall be considered a
29 separate violation unless the department finds that a different period of time is more appropriate to
30 describe a specific violation event.

31 (2) The department may adopt rules establishing a schedule of civil penalties that may be im-
32 posed under this section. Civil penalties imposed under this section may not exceed \$10,000 for each
33 violation.

34 (3) When the department imposes a civil penalty under subsection (1) of this section, the de-
35 partment shall impose the penalty in the manner provided by ORS 183.745, except that the [*written*
36 *application for a hearing must be received by the department*] **person to whom the notice is ad-**
37 **ressed must**, no later than 10 days after the date of mailing or personal service of the notice of
38 civil penalty[.], **file an appeal:**

39 **(a) Requesting a hearing before the department in accordance with ORS 183.745 (4)(a);**
40 **or**

41 **(b) In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

42 (4) Moneys received by the department from civil penalties imposed under this section shall be
43 deposited in the General Fund to the credit of the Department of Agriculture Account.

44 **SECTION 16.** ORS 632.995 is amended to read:

45 632.995. (1) In addition to any penalty available under ORS 561.190 or 632.990, the State De-

1 partment of Agriculture may impose a civil penalty for a violation of ORS 632.216, 632.226, 632.275
 2 to 632.290, 632.450 to 632.490, 632.625, 632.705 to 632.815 or 632.900 to 632.985 or of rules adopted
 3 under ORS 632.216, 632.226, 632.275 to 632.290, 632.450 to 632.490, 632.625, 632.705 to 632.815 or
 4 632.900 to 632.985. For the purposes of this section, each day a violation continues after the period
 5 of time established for compliance shall be considered a separate violation unless the department
 6 finds that a different period of time is more appropriate to describe a specific violation event.

7 (2) The department may adopt rules establishing a schedule of civil penalties that may be im-
 8 posed under this section. Civil penalties imposed under this section may not exceed \$10,000 for each
 9 violation.

10 (3) When the department imposes a civil penalty under subsection (1) of this section, the de-
 11 partment shall impose the penalty in the manner provided by ORS 183.745, except that the [*written*
 12 *application for a hearing must be received by the department*] **person to whom the notice is ad-**
 13 **ressed must**, no later than 10 days after the date of mailing or personal service of the notice of
 14 civil penalty[.], **file an appeal:**

15 (a) **Requesting a hearing before the department in accordance with ORS 183.745 (4)(a);**
 16 **or**

17 (b) **In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

18 (4) Moneys received by the department from civil penalties imposed under this section shall be
 19 deposited in the General Fund to the credit of the Department of Agriculture Account.

20 **SECTION 17.** ORS 634.905 is amended to read:

21 634.905. (1) Any civil penalty under ORS 634.900 shall be imposed as provided in ORS 183.745.

22 (2) Notwithstanding ORS 183.745, the person to whom the notice is addressed shall have 10 days
 23 from the date of service of the notice in which to [*make written application for*] **file an appeal:**

24 (a) **Requesting** a hearing before the Director of Agriculture **in accordance with ORS 183.745**
 25 **(4)(a); or**

26 (b) **In circuit court in accordance with ORS 183.745 (4)(c).**

27 **SECTION 18.** ORS 635.995 is amended to read:

28 635.995. (1) In addition to any penalty available under ORS 561.190 or 635.991, the State De-
 29 partment of Agriculture may impose a civil penalty for a violation of this chapter or of rules or
 30 regulations adopted under this chapter. For the purposes of this section, each day a violation con-
 31 tinues after the period of time established for compliance shall be considered a separate violation
 32 unless the department finds that a different period of time is more appropriate to describe a specific
 33 violation event.

34 (2) The department may adopt rules establishing a schedule of civil penalties that may be im-
 35 posed under this section. Civil penalties imposed under this section may not exceed \$10,000 for each
 36 violation.

37 (3) When the department imposes a civil penalty under subsection (1) of this section, the de-
 38 partment shall impose the penalty in the manner provided by ORS 183.745, except that the [*written*
 39 *application for a hearing must be received by the department*] **person to whom the notice is ad-**
 40 **ressed must**, no later than 10 days after the date of mailing or personal service of the notice of
 41 civil penalty[.], **file an appeal:**

42 (a) **Requesting a hearing before the department in accordance with ORS 183.745 (4)(a);**
 43 **or**

44 (b) **In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

45 (4) Moneys received by the department from civil penalties imposed under this section shall be

1 deposited in the General Fund to the credit of the Department of Agriculture Account.

2 **SECTION 19.** ORS 645.215 is amended to read:

3 645.215. (1) [*Except as provided in*] **Notwithstanding** ORS 183.745, upon the entry of an order
4 under this chapter, the director shall promptly give to all interested persons notice of the order and
5 notice that a hearing will be held on the order if a written demand for a hearing is filed with the
6 director within 20 days after the date of service of the order.

7 (2) If timely demand for a hearing is filed, the director shall hold a hearing on the order as
8 provided by ORS chapter 183. In the absence of a timely demand for a hearing, no person shall be
9 entitled to judicial review of the order.

10 (3) After the hearing, the director shall enter a final order vacating, modifying or affirming the
11 order.

12 **SECTION 20.** ORS 673.732 is amended to read:

13 673.732. (1) [*Except as provided in*] **Notwithstanding** ORS 183.745, upon entry of a cease and
14 desist order under ORS 673.605 to 673.740, the State Board of Tax Practitioners shall promptly give
15 appropriate notice of the cease and desist order as provided in this section. The notice shall state
16 that a hearing will be held on the cease and desist order if written demand for a hearing is filed
17 with the board within 20 days after the date of service of the cease and desist order.

18 (2) If timely demand for a hearing is filed under subsection (1) of this section, the board shall
19 hold a contested case hearing on the cease and desist order as provided by ORS chapter 183. In the
20 event of a contested case hearing, the civil penalties assessed in the cease and desist order are
21 suspended until issuance of a final order, but the remaining provisions of the cease and desist order
22 shall remain in full force and effect until issuance of the final order. A person is not entitled to ju-
23 dicial review of a cease and desist order unless the person has made a timely demand for a hearing.

24 (3) After the hearing, the board shall enter a final order vacating, modifying or affirming the
25 cease and desist order.

26 (4) A person aggrieved by a cease and desist order of the board that was the subject of a timely
27 application for hearing shall be entitled to judicial review of the cease and desist order under ORS
28 chapter 183.

29 (5) A judgment of a reviewing court under ORS chapter 183 does not bar the board from there-
30 after vacating or modifying a cease and desist order involved in the proceeding for review, or en-
31 tering any new order, for a proper cause that was not decided by the reviewing court.

32 (6) The board may file an injunction against a person for failure to comply with a cease and
33 desist order.

34 **SECTION 21.** ORS 688.715 is amended to read:

35 688.715. The Health Licensing Office is granted authority to carry out the following duties:

36 (1) Adopt rules that are necessary to conduct business, carry out duties and administer the
37 provisions of ORS 688.701 to 688.734.

38 (2) Issue registrations, including temporary registrations, permits, waivers and other authori-
39 zations to practice athletic training as determined by the Board of Athletic Trainers.

40 (3) Authorize all necessary disbursements to carry out the provisions of ORS 688.701 to 688.734,
41 including but not limited to payment for necessary supplies, office equipment, books and expenses
42 for the conduct of examinations, payment for legal and investigative services rendered to the office
43 and such other expenditures as are provided for in ORS 688.701 to 688.734.

44 (4) Employ inspectors, examiners, special agents, investigators, clerical assistants and account-
45 ants as are necessary for the investigation and prosecution of alleged violations and the enforcement

1 of ORS 688.701 to 688.734, and for such other purposes as the office may require. Nothing in ORS
 2 688.701 to 688.734 shall be construed to prevent assistance being rendered by an employee of the
 3 office in any hearing called by it. However, all obligations for salaries and expenses incurred under
 4 ORS 688.701 to 688.734 shall be paid only from the fees accruing to the office under ORS 688.701 to
 5 688.734.

6 (5) Provide the board with such administrative services and employees as the board requires to
 7 carry out its duties.

8 (6) Maintain an accurate record of all proceedings of the board and of all its meetings, receipts
 9 and disbursements, civil penalties and orders for violation of ORS 688.701 to 688.734, records for
 10 registration to practice athletic training together with the addresses of those registered, and the
 11 names of all persons whose registration has been subject to disciplinary action.

12 (7) Investigate complaints, take disciplinary action, including assessment of civil penalties, and
 13 provide opportunity [*for hearing*] **to file an appeal** according to ORS 183.745.

14 (8) Administer oaths, issue notices and subpoenas in the name of the board, enforce subpoenas
 15 in the manner authorized by ORS 183.440, hold hearings and perform such other acts as are rea-
 16 sonably necessary to carry out duties of the board granted under ORS 688.701 to 688.734.

17 **SECTION 22.** ORS 689.832 is amended to read:

18 689.832. (1) In addition to any other liability or penalty provided by law, the State Board of
 19 Pharmacy may impose a civil penalty for any violation of the provisions of this chapter or ORS
 20 chapter 475 or any rule of the board. A civil penalty imposed under this subsection may not exceed
 21 \$1,000 for each violation by an individual and \$10,000 for each violation by a drug outlet.

22 (2) All penalties recovered under this section shall be deposited into the State Board of Phar-
 23 macy Account established in ORS 689.139.

24 (3) Any civil penalty under this section shall be imposed in the manner provided in ORS 183.745.

25 (4) Notwithstanding ORS 183.745, the person to whom the notice is addressed shall have 10 days
 26 from the date of service of the notice in which to [*make written application for a hearing before the*
 27 *board.*] **file an appeal:**

28 (a) **Requesting a hearing before the board in accordance with ORS 183.745 (4)(a); or**

29 (b) **In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

30 **SECTION 23.** ORS 697.832 is amended to read:

31 697.832. (1) In addition to any other liability or penalty provided by law, the Director of the
 32 Department of Consumer and Business Services may impose a civil penalty on a person in an amount
 33 not to exceed \$5,000 for each violation of ORS 697.612 or 697.642 to 697.702, rules adopted under
 34 ORS 697.632 or order issued under ORS 697.825.

35 (2) The director shall impose a civil penalty on a person under this section in the manner pro-
 36 vided in ORS 183.745.

37 (3) Notwithstanding ORS 183.745, the person to whom the notice is addressed has 10 days from
 38 the date on which the notice was mailed in which to [*apply for a hearing before the director.*] **file**
 39 **an appeal:**

40 (a) **Requesting a hearing, in accordance with ORS 183.745 (4)(a), before the director; or**

41 (b) **In circuit court in accordance with ORS 183.745 (4)(c).**

42 (4) Paying or tendering payment for a civil penalty imposed under this section does not relieve
 43 a person from the obligation to comply with the applicable statute or rule.

44 (5) All penalties recovered under this section shall be paid into the State Treasury and credited
 45 to the General Fund and are available for general governmental expenses.

SECTION 24. ORS 704.900 is amended to read:

704.900. (1) In addition to any other penalty provided by law, the State Marine Board may impose a civil penalty for failure to comply with ORS 704.020, 704.021, 704.065 or 704.070 or for violation of ORS 704.030.

(2) Any civil penalty under this section shall be imposed in the manner provided by ORS 183.745.

(3) Notwithstanding ORS 183.745, the person to whom the notice is addressed shall have 30 days from the date of service of the notice in which to *[make written application for a hearing before the board.]* **file an appeal:**

(a) Requesting a hearing before the board in accordance with ORS 183.745 (4)(a); or

(b) In circuit court in accordance with ORS 183.745 (4)(b) or (c).

(4) The board shall adopt rules implementing these provisions, including a schedule of civil penalties. The civil penalty for each violation shall not exceed \$500.

(5) A civil penalty imposed under this section may be remitted or reduced upon such terms and conditions as the board considers proper and consistent with the public health and safety.

(6)(a) In imposing a penalty pursuant to the schedule adopted pursuant to this section, the board shall consider the following factors:

(A) Any prior violations of ORS 704.020, 704.021, 704.030, 704.065 or 704.070.

(B) The immediacy and extent to which the violation threatens the public health or safety.

(b) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the board determines to be proper and consistent with the public benefit. Upon the request of the person incurring the penalty, the board shall consider evidence of the economic and financial conditions of the person in determining whether a penalty shall be remitted or mitigated.

(7) All penalties recovered under this section shall be paid into the State Treasury and credited to the Outfitters and Guides Account.

SECTION 25. ORS 822.080 is amended to read:

822.080. (1) **Except as otherwise provided in this section,** civil penalties under ORS 822.009 shall be imposed in the manner provided in ORS 183.745.

(2) An application for a hearing on a civil penalty imposed under ORS 822.009:

(a) Must be in writing;

(b) Must be postmarked or received by the Department of Transportation within 20 days from the date of service of the notice provided for in ORS 183.745;

(c) Must state the name and address of the person requesting a hearing; and

(d) Must state the action being contested.

(3) Hearings on civil penalties imposed under ORS 822.009 shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605.

(4) The department may, at its option, assign any unpaid civil penalty to the Department of Revenue for collection. The Department of Revenue shall deduct reasonable expenses from any amounts collected.

(5) All civil penalties received under ORS 822.009 shall be paid into the State Treasury each month and credited to the Department of Transportation Operating Fund established by ORS 184.642 (1) and (2).