

Enrolled House Bill 2077

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Oregon Health Authority)

CHAPTER

AN ACT

Relating to lead-based paint; creating new provisions; amending ORS 431A.355 and 431A.363; and prescribing an effective date.

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

SECTION 1. ORS 431A.355 is amended to read:

431A.355. (1) The Oregon Health Authority shall:

- (a) Certify firms and individuals to perform lead-based paint activities;
- (b) Certify firms to perform renovation;
- (c) Accredit training providers to provide lead-based paint activities and renovation training;
- (d) Develop and approve training programs for lead-based paint activities and renovation;
- (e) Establish standards based on best practices for the conduct of lead-based paint inspections, risk assessment and **hazard control or** abatement services, renovation activities that disturb lead-based paint and the disposal of lead-based paint that are in addition to, not inconsistent with and not in lieu of any other workplace standards required by law;
- (f) Develop and conduct programs to screen blood lead levels, identify hazards and educate the public, including but not limited to parents, residential dwelling owners, pediatric medical providers and child care facility operators, about the dangers of lead-based paint and about appropriate precautions that may reduce the probability of childhood lead poisoning;
- (g) Adopt rules necessary to implement the provisions of this section and ORS 431A.358 and 431A.363; and
- (h) Establish fees sufficient to recover the costs of implementing the provisions of this section and ORS 431A.358 and 431A.363, including but not limited to fees for:
 - (A) Certification and recertification to perform lead-based paint activities and renovation; and
 - (B) Accreditation and reaccreditation of lead-based paint training providers.

(2) The authority may contract with a third party to obtain a lead-based paint risk assessment or to abate or control lead-based paint hazards that are identified by a risk assessment.

[(2)] **(3)** The [*Oregon Health*] authority may:

- (a) Enter private or public property at any reasonable time with consent of the owner or custodian of the property to inspect, investigate, evaluate or conduct tests or take specimens or samples for testing, as necessary to determine compliance with **this section and** ORS 431A.358;
- (b) Issue subpoenas to determine compliance with **this section and** ORS 431A.358;

(c) Suspend, revoke or modify a certification to perform lead-based paint activities or renovation if the holder of the certification fails to comply with state or federal statutes or regulations related to lead-based paint; and

(d) Suspend, revoke or modify a certified renovator's certification if the renovator fails to comply with state or federal statutes or regulations related to lead-based paint.

(4) A person for whom a third party performs lead-based paint activities or renovation, or who compensates a third party to perform lead-based paint activities or renovation, shall identify the third party to the authority upon request.

SECTION 2. ORS 431A.363 is amended to read:

431A.363. *[(1) Any person who violates any provision of, or any rule adopted under, ORS 431A.355 or 431A.358 shall forfeit and pay to the Public Health Account established under ORS 431.210 a civil penalty of not more than \$5,000 for each violation. Moneys paid to the Public Health Account under this section may be used only for the purposes of lead poisoning prevention, including consumer and industry outreach, public education, blood lead screening and other activities.]*

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

[(3) A civil penalty imposed under this section is in addition to and not in lieu of any other penalty or sanction provided by law.]

[(4) The Oregon Health Authority shall report all civil penalties or sanctions imposed under this section or a rule adopted under ORS 431A.355 to each of the following state agencies:]

[(a) The Construction Contractors Board;]

[(b) The Occupational Safety and Health Division of the Department of Consumer and Business Services; and]

[(c) The Department of Environmental Quality.]

(1) The Oregon Health Authority may impose a civil penalty of not more than \$5,000 per violation per day on any person who violates:

(a) ORS 431A.358;

(b) A rule adopted under ORS 431A.355; or

(c) An order issued by the authority pursuant to this section or ORS 431A.355 or 431A.358.

(2)(a) If the authority has reason to believe that a person is engaging in an act or practice that violates ORS 431A.358 or a rule adopted under ORS 431A.355, the authority may order that all lead-based paint activities or renovation to which the person is connected stop immediately.

(b) A request for a hearing on the propriety of the order must be submitted to the authority in writing within 10 days of the date on which the order was served. The authority shall grant a hearing as soon as practicable after receipt of the hearing request, and shall conduct the hearing as provided for contested cases under ORS chapter 183.

(3)(a) The authority may issue an order to require the actions described in paragraph (b) of this subsection to:

(A) A person who has violated ORS 431A.358 or a rule adopted under ORS 431A.355; or

(B) A property owner, or agent of the property owner, who knowingly contracted with a person who was not certified under ORS 431A.355 to perform lead-based paint activities or renovation when certification was required under ORS 431A.385.

(b) An order issued under this subsection may require the recipient of the order to, as soon as reasonably practical:

(A) Obtain a risk assessment in accordance with ORS 431A.355 or 431A.358 and rules adopted under ORS 431A.355 or 431A.358; and

(B) Abate or control any lead-based paint hazards identified by the risk assessment. All lead-based paint abatement and hazard control services must be performed in accordance with ORS 431A.355 and 431A.358 and rules adopted under ORS 431A.355 and 431A.358.

(c) A request for a hearing on the propriety of the order must be submitted to the authority in writing within 10 days of the date on which the order was served. The authority

shall grant a hearing as soon as practicable after receipt of the hearing request, and shall conduct the hearing as provided for contested cases under ORS chapter 183.

(4) If a person described in subsection (3) of this section fails to timely comply with an order issued under subsection (3) of this section, the authority may take any necessary action to obtain a risk assessment or abate or control any lead-based paint hazards identified by a risk assessment.

(5) In addition to the civil penalty described in subsection (1) of this section, the authority may impose on a person who fails to timely comply with an order issued pursuant to subsection (3) of this section costs in an amount sufficient to cover any expenses incurred by the authority in obtaining a risk assessment and abating or controlling any hazards, as described in subsection (3) of this section. Costs imposed under this section must be imposed in compliance with section 3 of this 2021 Act.

(6) A person who fails to identify a third party as described in ORS 431A.355 is liable jointly and severally for any violation by the third party of ORS 431A.358 or a rule adopted under ORS 431A.355.

(7) All moneys collected by the authority under this section and section 3 of this 2021 Act shall be deposited into the Public Health Account established under ORS 431.210. Moneys deposited under this section shall be used for the purposes of lead poisoning prevention, including consumer and industry outreach, public education, blood lead screening, lead-based paint risk assessments, lead-based paint hazard abatement and control activities and other similar activities.

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

(9) A civil penalty imposed under this section is in addition to, and not in lieu of, any other penalty or sanction provided by law.

(10) The authority shall report all civil penalties and sanctions imposed under this section or a rule adopted under ORS 431A.355 to each of the following state agencies:

(a) The Construction Contractors Board;

(b) The Occupational Safety and Health Division of the Department of Consumer and Business Services; and

(c) The Department of Environmental Quality.

SECTION 3. (1) Costs imposed by the Oregon Health Authority pursuant to ORS 431A.363 are due and payable 10 days after the order imposing the costs becomes final. A person against whom costs are imposed must be served with a notice in the manner provided in ORS 183.415.

(2)(a) The person served under subsection (1) of this section may, within 20 days of the date of the notice, make a written request for a hearing.

(b) The authority may by rule provide for a longer period of time in which a hearing may be requested.

(c) If a hearing is not timely requested, the authority may issue a final order imposing costs.

(3) A person who makes a timely request for a hearing under subsection (2) of this section is entitled to a hearing. The hearing must be conducted as a contested case hearing pursuant to ORS chapter 183.

(4) Judicial review of an order made after a hearing described in subsection (3) of this section shall comply with the requirements for judicial review of a contested case under ORS chapter 183.

(5) When an order imposing costs under this section becomes final, and the amount of costs is not paid within 10 days after the date on which the order becomes final, the order may be recorded with the county clerk in any county in this state. The clerk shall record the name of the person incurring the costs and the amount of costs in the County Clerk Lien Record. In addition to any other remedy provided by law, recording an order in the County

Clerk Lien Record has the effect provided for in ORS 205.125 and 205.126 and the order may be enforced as provided for in ORS 205.125 and 205.126.

(6) The notice described in this section may be made part of any other notice served by the authority pursuant to ORS 183.415.

(7)(a) Costs in an amount sufficient to cover expenses incurred by the authority under ORS 431A.363 shall constitute a lien upon any real and personal property owned by a person who fails to timely comply with an order issued under this section.

(b) At any time after a person fails to comply with an order issued under this section, the authority may file a claim of lien on real property to be charged with a lien under this subsection with the recording officer of each county in which the real property is located, and a claim of lien on personal property to be charged with a lien under this section with the Secretary of State.

(c) A lien filed under this section shall attach and become enforceable on the date of the filing. The lien claim must contain:

(A) A statement of the demand;

(B) The name of the person against whose property the lien attaches;

(C) A description of the property charged with the lien sufficient for identification; and

(D) A statement of the failure of the person to perform the risk assessment, hazard abatement or hazard control as required.

(d) A lien created by this section may be foreclosed by a suit on real and personal property in the circuit court in the manner provided by law for the foreclosure of other liens. In an action to foreclose on a lien under this section in which the authority prevails, the court, at trial and on appeal, shall allow and fix a reasonable amount for attorney fees for prosecution of the action, if the court finds that a written demand for payment of the claim was made on the defendant not less than 20 days before the commencement of the action.

(8) This section does not affect the ability of the authority to bring other actions to recover costs described in ORS 431A.363, or as otherwise authorized by law.

SECTION 4. Section 3 of this 2021 Act and the amendments to ORS 431A.355 and 431A.363 by sections 1 and 2 of this 2021 Act apply to actions occurring on and after the operative date specified in section 5 of this 2021 Act.

SECTION 5. (1) Section 3 of this 2021 Act and the amendments to ORS 431A.355 and 431A.363 by sections 1 and 2 of this 2021 Act become operative on January 1, 2022.

(2) The Oregon Health Authority may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the authority to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the authority by section 3 of this 2021 Act and the amendments to ORS 431A.355 and 431A.363 by sections 1 and 2 of this 2021 Act.

SECTION 6. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by House March 15, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 12, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State