

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)

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**.

Requires person to identify to Oregon Health Authority third party that performs lead-based paint activities or renovation. Allows authority to order risk assessment and hazard control or abatement of lead-based paint activities and renovation when authority has reason to believe violation occurred. Allows authority to impose civil penalty for violation of order. Allows authority to impose costs related to risk assessment and hazard control or abatement and impose lien for costs. Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to lead-based paint; creating new provisions; amending ORS 431A.355 and 431A.363; and
3 prescribing an effective date.

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

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

6 431A.355. (1) The Oregon Health Authority shall:

7 (a) Certify firms and individuals to perform lead-based paint activities;

8 (b) Certify firms to perform renovation;

9 (c) Accredit training providers to provide lead-based paint activities and renovation training;

10 (d) Develop and approve training programs for lead-based paint activities and renovation;

11 (e) Establish standards based on best practices for the conduct of lead-based paint inspections,
12 risk assessment and **hazard control or** abatement services, renovation activities that disturb lead-
13 based paint and the disposal of lead-based paint that are in addition to, not inconsistent with and
14 not in lieu of any other workplace standards required by law;

15 (f) Develop and conduct programs to screen blood lead levels, identify hazards and educate the
16 public, including but not limited to parents, residential dwelling owners, pediatric medical providers
17 and child care facility operators, about the dangers of lead-based paint and about appropriate pre-
18 cautions that may reduce the probability of childhood lead poisoning;

19 (g) Adopt rules necessary to implement the provisions of this section and ORS 431A.358 and
20 431A.363; and

21 (h) Establish fees sufficient to recover the costs of implementing the provisions of this section
22 and ORS 431A.358 and 431A.363, including but not limited to fees for:

23 (A) Certification and recertification to perform lead-based paint activities and renovation; and

24 (B) Accreditation and reaccreditation of lead-based paint training providers.

25 **(2) The authority may contract with a third party to obtain a lead-based paint risk as-**
26 **essment or to abate or control lead-based paint hazards that are identified by a risk as-**
27 **essment.**

28 [(2)] **(3)** The [*Oregon Health*] authority may:

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

4 (b) Issue subpoenas to determine compliance with **this section and** ORS 431A.358;

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

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

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

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

14 431A.363. *[(1) Any person who violates any provision of, or any rule adopted under, ORS 431A.355*
 15 *or 431A.358 shall forfeit and pay to the Public Health Account established under ORS 431.210 a civil*
 16 *penalty of not more than \$5,000 for each violation. Moneys paid to the Public Health Account under*
 17 *this section may be used only for the purposes of lead poisoning prevention, including consumer and*
 18 *industry outreach, public education, blood lead screening and other activities.]*

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

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

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

24 *[(a) The Construction Contractors Board;]*

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

27 *[(c) The Department of Environmental Quality.]*

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

30 **(a) ORS 431A.358;**

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

32 **(c) An order issued by the authority pursuant to this section or ORS 431A.355 or**
 33 **431A.358.**

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

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

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

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

45 **(B) A property owner, or agent of the property owner, who knowingly contracted with a**

1 person who was not certified under ORS 431A.355 to perform lead-based paint activities or
 2 renovation when certification was required under ORS 431A.385.

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

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

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

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

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

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

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

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

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

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

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

38 (a) The Construction Contractors Board;

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

41 (c) The Department of Environmental Quality.

42 **SECTION 3.** (1) Costs imposed by the Oregon Health Authority pursuant to ORS 431A.363
 43 are due and payable 10 days after the order imposing the costs becomes final. A person
 44 against whom costs are imposed must be served with a notice in the manner provided in ORS
 45 183.415.

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

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

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

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

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

13 **(5) When an order imposing costs under this section becomes final, and the amount of**
 14 **costs is not paid within 10 days after the date on which the order becomes final, the order**
 15 **may be recorded with the county clerk in any county in this state. The clerk shall record the**
 16 **name of the person incurring the costs and the amount of costs in the County Clerk Lien**
 17 **Record. In addition to any other remedy provided by law, recording an order in the County**
 18 **Clerk Lien Record has the effect provided for in ORS 205.125 and 205.126 and the order may**
 19 **be enforced as provided for in ORS 205.125 and 205.126.**

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

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

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

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

32 **(A) A statement of the demand;**

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

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

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

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

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

45 **SECTION 4. Section 3 of this 2021 Act and the amendments to ORS 431A.355 and 431A.363**

1 by sections 1 and 2 of this 2021 Act apply to actions occurring on and after the operative date
2 specified in section 5 of this 2021 Act.

3 **SECTION 5.** (1) Section 3 of this 2021 Act and the amendments to ORS 431A.355 and
4 431A.363 by sections 1 and 2 of this 2021 Act become operative on January 1, 2022.

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

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

12