

A-Engrossed Senate Bill 385

Ordered by the Senate April 14
Including Senate Amendments dated April 14

Sponsored by COMMITTEE ON GENERAL GOVERNMENT (at the request of Greater Oregon Chapter of the Appraisal Institute, American Society of Appraisers -- Oregon Chapter, National Association of Independent Fee Appraisers -- Rose City Chapter, Oregon Society of Farm Managers and Rural Appraisers)

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.

[Directs Appraiser Certification and Licensure Board to use standard procedures in conducting nationwide criminal records checks.] Authorizes **Appraiser Certification and Licensure** Board to discipline state registered appraiser assistants. Reorganizes board's enforcement powers.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to real estate appraisal activity; amending ORS 58.015, 674.010, 674.020, 674.100, 674.140, 674.310, 674.320, 674.364, 674.850, 674.990, 701.010 and 701.350; and declaring an emergency.

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

SECTION 1. ORS 674.010 is amended to read:

674.010. For purposes of this chapter:

(1) "Appraisal Foundation" means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(2) "Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council established pursuant to the federal Act.

[(3) "Appraiser assistant" means an individual who has been registered as an appraiser assistant under ORS 674.310.]

[(4)] **(3)** "Board" means the Appraiser Certification and Licensure Board established under ORS 674.305.

[(5) "Department" means the Department of Consumer and Business Services.]

[(6) "Director" means the Director of the Department of Consumer and Business Services.]

[(7)] **(4)** "Federal Act" means Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3310 et seq.).

[(8)] **(5)** "Federal financial institution regulatory agency" means:

(a) The Board of Governors of the Federal Reserve System;

(b) The Federal Deposit Insurance Corporation;

(c) The Office of the Comptroller of the Currency;

(d) The Office of Thrift Supervision; or

(e) The National Credit Union Administration.

[(9)] **(6)** "Federally related transaction" means any real estate-related financial transaction that:

(a) A federal financial institution regulatory agency or the Resolution Trust Corporation en-

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.

gages in, contracts for or regulates; and

(b) Requires the services of an appraiser.

[(10)] (7) "Financial institution" means an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act or an insured credit union as defined in section 101 of the Federal Credit Union Act.

[(11)] (8) "Mortgage banker" has the meaning given that term in ORS 59.840.

[(12)] (9) "Professional real estate activity" has the meaning given that term in ORS 696.010.

[(13)] (10) "Real estate appraisal activity" means the activity described in ORS 674.100.

[(14)] (11) "Real estate-related financial transaction" means any transaction involving:

(a) The sale, lease, purchase, investment in or exchange of real property, including interests in real property, or the financing thereof;

(b) The refinancing of real property or interests in real property; and

(c) The use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities.

[(15)] (12) "State certified appraiser" means an individual who has been certified as a state certified appraiser under ORS 674.310.

[(16)] (13) "State licensed appraiser" means an individual who has been licensed as a state licensed appraiser under ORS 674.310.

(14) **"State registered appraiser assistant" means an individual who has been registered as a state registered appraiser assistant under ORS 674.310.**

[(17) "State certified residential appraiser" means an individual who has been certified as a state certified residential appraiser under ORS 674.310.]

SECTION 2. ORS 674.020 is amended to read:

674.020. The purposes of this chapter are to:

(1) Require that all real estate appraisals be performed in accordance with uniform standards by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

(2) Conform the law of this state to the requirements of federal law.

(3) [Assure] **Ensure** the availability of state certified [and] **appraisers**, state licensed appraisers **and state registered appraiser assistants** for the performance of real estate appraisal activity, including the performance of appraisals in federally related transactions, and to [assure] **ensure** effective supervision of the activities of state certified [and] **appraisers**, state licensed appraisers **and state registered appraiser assistants**.

SECTION 3. ORS 674.100 is amended to read:

674.100. (1)(a) [No person shall] **A person may not** engage in, carry on, advertise or purport to engage in or carry on real estate appraisal activity within this state without first obtaining certification, [or] licensure **or registration** as provided for in ORS 674.310.

(b) Real estate appraisal activity is the preparation, completion and issuance of an opinion as to the value on a given date or at a given time of real property or [any] **an** interest in real property, whether [such] **the** activity is performed in connection with a federally related transaction or is not performed in connection with a federally related transaction. Notwithstanding any other provision of law, a state certified appraiser or a state licensed appraiser:

(A) Is not required to be licensed under ORS 696.022 to perform [any] real estate appraisal activity or any other activity that constitutes the giving of an opinion as to the value of real property or [any] **an** interest in real property; and

(B) Is not subject to regulation under ORS 696.010 to 696.495 and 696.600 to 696.995 in connection with the performance of *[any]* real estate appraisal activity or the performance of any **other** activity *[which]* **that** constitutes the giving of an opinion as to the value of real estate or *[any]* **an** interest in real estate.

(2) Real estate appraisal activity excludes *[any]* activity that is not performed in connection with a federally related transaction and that:

(a) Is performed by a nonlicensed regular full-time employee of a single owner of real estate, if the activity involves the real estate of the employer and is incidental to the employee's normal, nonreal estate activities;

(b) Is performed by a nonlicensed regular full-time employee whose activity involves the real estate of the employer, when *[such]* **the** activity is the employee's principal activity, but the employer's principal activity or business is not the appraisal of real estate;

(c) Is performed by *[any]* **an** attorney at law rendering services in the performance of duties as an attorney at law;

(d) Is performed by *[any]* **a** registered geologist, registered professional engineer or architect rendering services as a registered geologist, registered professional engineer or architect;

(e) Is performed by a certified public accountant rendering services as a certified public accountant;

(f) Is performed by a mortgage banker rendering services as a mortgage banker;

(g) Constitutes a letter opinion or a competitive market analysis as those terms are defined in ORS 696.010 that, by administrative or judicial order or subpoena, is compelled from a person licensed to engage in real estate activity under ORS 696.022;

(h) Is performed by *[any]* **a** salaried employee of **the federal government**, the State of Oregon or *[any of its political subdivisions]* **a political subdivision of the federal government or the State of Oregon** while engaged in the performance of the duties of *[such]* **the** employee;

(i) Is limited to analyzing or advising of permissible land use alternatives, environmental impact, building and use permit procedures or demographic market studies, if the performance of *[such]* **the** activities does not involve the rendering of an opinion as to the value of the real estate in question;

(j) Is performed by a professional forester appraising or valuing timber, timberland or both as part of services performed as a private consultant in forest management, but only if, in the case of timberland, the appraisal or valuation is limited to the use of the land as forestland;

(k) Is limited to *[the]* giving *[of]* an opinion in *[any]* **an** administrative or judicial proceeding regarding the value of real estate for taxation;

(L) Is limited to *[a person not licensed under ORS chapter 696 who is]* giving an opinion regarding the value of real estate **by a person who is not licensed under ORS chapter 696**, if the person's business is not the appraisal, selling or listing of real estate[,] and *[such]* **the** activity is performed without compensation. This paragraph does not apply to a person conducting transactional negotiations on behalf of another person for transfer of an interest in real property;

(m) Is limited to *[a person not licensed under ORS chapter 696 who is]* transferring or acquiring an interest in real estate **by a person who is not licensed under ORS chapter 696**; or

(n) Is performed by a home inspector acting within the scope of a certificate or license issued under ORS chapter 701.

(3)(a) *[“]Real estate appraisal activity[”]* does not include an analysis, evaluation, opinion, conclusion, notation or compilation of data prepared by a financial institution or affiliate, a consumer finance company licensed under ORS chapter 725[,] or *[by]* an insurance company or affiliate, made

for internal use only by the financial institution or affiliate, consumer finance company or [by] the insurance company or affiliate, concerning an interest in real estate for ownership or collateral purposes by the financial institution or affiliate, [by] the consumer finance company licensed under ORS chapter 725[,] or [by] the insurance company or affiliate. Nothing in this subsection shall be construed to excuse a financial institution or affiliate from complying with the provisions of Title XI of the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3310 et seq.).

(b) As used in this [section] **subsection**, “evaluation” means a study of the nature, quality or utility of a parcel of real estate or interests in, or aspects of, real property in which a value estimate is not necessarily required.

(4)(a) As used in this section, “purport to engage in or carry on real estate appraisal activity” means the display of a card, sign, advertisement or other printed, engraved or written instrument bearing the person’s name in conjunction with the term “appraiser,” “licensed appraiser,” “certified appraiser,” **“appraiser assistant,” “registered appraiser assistant”** or “appraisal” or [any] **an** oral statement or representation of certification, [or] licensure **or registration** by the Appraiser Certification and Licensure Board made by a person.

(b) Each display or statement described in paragraph (a) of this subsection by a person not licensed, [or] certified **or registered** by the board is a separate violation under ORS **674.850 or 674.990**.

(c) In [any] **a** proceeding under ORS **674.850 or 674.990**, a display or statement described in paragraph (a) of this subsection shall be considered prima facie evidence that the person named in the display or making the statement purports to engage in or carry on real estate appraisal activity.

SECTION 4. ORS 674.140 is amended to read:

674.140. The Appraiser Certification and Licensure Board may suspend or revoke the certificate, [or] license **or registration** of [any] **a** state certified [or] **appraiser, a** state licensed appraiser **or a state registered appraiser assistant**, reprimand [any] **a** state certified [or] **appraiser, a** state licensed appraiser **or a state registered appraiser assistant**, require additional education of [any] **a** state certified [or] **appraiser, a** state licensed appraiser **or a state registered appraiser assistant** or deny the issuance or renewal of a certificate, [or] license **or registration** to an applicant [who] **if the state certified appraiser, state licensed appraiser or state registered appraiser assistant or applicant** has done any of the following:

(1) Knowingly or negligently pursued a continued course of material misrepresentation in matters related to real estate appraisal activity, whether or not damage or injury resulted, or knowingly or negligently made [any] **a** material misrepresentation or false **material** promise in a matter related to real estate appraisal activity, if the material misrepresentation or material false promise created a reasonable probability of damage or injury, whether or not damage or injury actually resulted.

(2) Disregarded or violated [any provisions] **a provision** of ORS 674.130[,] **or 674.150[, 674.310 and 674.330, any rule adopted thereunder]** or the federal Act **or a rule adopted under ORS 674.310**.

(3) Knowingly or negligently made, printed, distributed or in any manner published materially misleading or untruthful advertising, descriptions or promises, of such character as reasonably to induce [any] **a** person to act to the damage or injury of the person, whether or not actual damage or injury resulted.

(4) Guaranteed, authorized or permitted [any] **a** person to guarantee future profits that may result in the resale of real property.

(5) Failed for any reason to pay to the board the annual registry fee provided for under ORS 674.330 (1) or the fees provided for under ORS 674.330 (2).

(6) Failed or refused upon demand by the board to produce or to supply for inspection by the board true copies of any document, book or record in the individual's possession or control or concerning *[any]* real estate appraisal activity transacted by the individual.

(7) Failed to maintain at all times any records *[which]* **that** the individual is required to maintain under ORS 674.150.

(8) Accepted employment or compensation for performing or agreeing to perform a real estate appraisal activity contingent upon the reporting of a predetermined value or performed real estate appraisal activity on real estate in which the individual had an undisclosed interest.

(9) Entered a plea of nolo contendere or been found guilty of, or been convicted of, a felony or misdemeanor substantially related to the individual's trustworthiness or competence to engage in real estate appraisal activity.

(10) Knowingly authorized, directed or aided in the publication, advertisement, distribution or circulation of *[any]* **a** material false statement or **material** misrepresentation concerning the individual's business.

(11) Demonstrated negligence or incompetence in performing *[any]* **an** act for which the individual is required to hold a certificate, *[or]* license **or registration**.

(12) Knowingly permitted *[any]* **an** individual whose certificate, *[or]* license **or registration** has been suspended or revoked to engage in real estate appraisal activity with or on behalf of a state certified appraiser or state licensed appraiser.

(13) Committed *[any]* **an** act or conduct, whether of the same or of a different character specified in this section and whether or not in the course of real estate appraisal activity, that:

(a) Constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealings; and

(b) Is substantially related to the fitness of the applicant or holder of a certificate, *[or]* license **or registration** to conduct real estate appraisal activity.

NOTE: Section 5 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 6. ORS 674.310 is amended to read:

674.310. (1) The Appraiser Certification and Licensure Board shall:

(a) Have the power to do all things necessary and convenient to carry into effect the provisions of this chapter and the federal Act and to regulate the activities of state licensed appraisers, *[and]* state certified appraisers **and state registered appraiser assistants** to ensure that *[all]* real estate appraisals conform to the law in effect on the date of the real estate appraisal activity.

(b) Certify *[and]* **or** license appraisers **and register appraiser assistants** as necessary to carry out the federal Act and the purposes set forth in ORS *[674.010]* **674.020**.

(c) Supervise the activities of state certified **appraisers**, *[and]* state licensed appraisers **and state registered appraiser assistants** as provided in this chapter, to ensure that they perform *[all]* real estate appraisal activity in strict conformance with the provisions of this chapter and of the federal Act, and that they otherwise comply with the provisions of this chapter in the conduct of their professional activities.

(d) Establish, keep current and, no less than annually, transmit to the Appraisal Subcommittee a roster listing state certified appraisers and state licensed appraisers.

(e) Collect and remit annual registry fees as required by ORS 674.330.

(2) *[All]* Rules adopted by the **Appraiser Certification and Licensure** Board to govern real

1 estate appraiser certification and licensure shall conform [*in all respects*] with the requirements of
 2 the federal Act. The board shall adopt rules including but not limited to:

3 (a) Establishing programs for the certification, [*and*] licensure **or registration** of individuals
 4 who engage in real estate appraisal activity.

5 (b) Establishing educational requirements for certification [*and*] **or** licensure of appraisers **and**
 6 **for the registration of appraiser assistants** that ensure protection of the public interest and
 7 comply [*in all respects*] with the requirements of the federal Act. Education requirements for state
 8 **licensed appraisers and state** certified appraisers [*shall specifically*] **must** meet the minimum cri-
 9 teria established by the Appraiser Qualification Board of the Appraisal Foundation.

10 (c) Establishing a professional code of responsibility for state certified appraisers and state li-
 11 censed appraisers that is in conformance with the federal Act.

12 (d) Providing for registration of out-of-state appraisers as provided for under ORS 674.120.

13 (3) [*No individual shall*] **An individual may not** be a state **licensed appraiser or a state** cer-
 14 tified appraiser unless the individual has achieved a passing grade upon a suitable examination
 15 equivalent to the Uniform Certification Examination issued or [*indorsed*] **endorsed** by the Appraisal
 16 Qualification Board of the Appraisal Foundation.

17 (4) The Appraiser Certification and Licensure Board, acting through the administrator, may is-
 18 sue subpoenas to compel the attendance of witnesses and the production of papers, books, records,
 19 correspondence, agreements, memoranda and other material or relevant documents in [*all*] investi-
 20 gations or proceedings pertaining to the powers and duties of the board.

21 (5) In the case of a person who refuses to respond to a subpoena issued by the **Appraiser**
 22 **Certification and Licensure** Board, the judge of the circuit court, on the application of the board
 23 administrator, shall order compliance with the board subpoena in the same manner as a proceeding
 24 for contempt for failure to respond to a subpoena of the court.

25 **SECTION 7.** ORS 674.320 is amended to read:

26 674.320. The lapsing or suspension of a certificate, [*or*] license **or registration** by operation of
 27 law, [*or*] by order of the Appraiser Certification and Licensure Board, [*or*] **by** decision of a court
 28 of law[,] **or by** the voluntary surrender of a certificate, [*or*] license **or registration** by an appraiser
 29 [*shall*] **or appraiser assistant does** not deprive the board of jurisdiction to proceed with any in-
 30 vestigation of or any action or disciplinary proceedings against [*such*] **the appraiser or appraiser**
 31 **assistant**, or to revise or render null and void an order suspending or revoking [*such*] **the** certifi-
 32 cate, [*or*] license **or registration**.

33 **SECTION 8.** ORS 674.364 is amended to read:

34 674.364. (1) [*Except where otherwise specifically provided by ORS 674.850 and 674.990, all*] Mon-
 35 eys collected or received by the Appraiser Certification and Licensure Board[, *placed to the credit*
 36 *of the board and remaining unexpended and unobligated on August 21, 2001, and all moneys collected*
 37 *or received by the board after August 21, 2001,*] shall be deposited into an account established by the
 38 board in a depository bank insured by the Federal Deposit Insurance Corporation or the National
 39 Credit Union Share Insurance Fund. In a manner consistent with the requirements of ORS chapter
 40 295, the chairperson of the board shall ensure that sufficient collateral secures any amount of funds
 41 on deposit that exceeds the limits of the coverage of the Federal Deposit Insurance Corporation or
 42 the National Credit Union Share Insurance Fund. All moneys in the account are continuously ap-
 43 propriated to the board for the purpose of carrying out the functions of the board.

44 (2) Subject to the approval of the chairperson, the board may invest moneys collected or re-
 45 ceived by the board. Investments made by the board are:

(a) Limited to investments described in ORS 294.035;

(b) Subject to the investment maturity date limitations described in ORS 294.135; and

(c) Subject to the conduct prohibitions listed in ORS 294.145.

(3) Interest earned from any moneys invested under subsection (2) of this section shall be made available to the board in a manner consistent with the board's annual budget.

(4) Subject to the approval of the chairperson, **the board shall pay** all necessary board expenses *[shall be paid]* from the moneys collected or earned by the board.

(5) As used in this section, "depository bank" has the meaning given that term in ORS 295.005.

SECTION 9. ORS 674.850 is amended to read:

674.850. (1) *[Any]* **The Appraiser Certification and Licensure Board may impose a civil penalty, not to exceed \$500 for each violation, on a** person who violates *[any]* a provision of ORS 674.130 to 674.150~~], 674.310 and 674.330, or any]~~ **or a rule or final order of the** *[Appraiser Certification and Licensure]* board or *[any final]* a judgment made by *[any]* a court upon application of the board~~], may be required to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the board of not more than \$500 for each offense. Each violation shall be deemed a separate offense].~~

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

(2) The board may impose a civil penalty on a person who violates ORS 674.100 (1) in an amount that is:

(a) Not less than \$100 and not more than \$500 for the first violation; and

(b) Not less than \$500 and not more than \$1,000 for a subsequent violation.

(3) In addition to the civil penalties set forth in subsection (2) of this section, the board may impose a civil penalty on a person who violates ORS 674.100 (1) in an amount that does not exceed the amount by which the person profited in the transaction in violation of ORS 674.100 (1).

(4) The board shall impose civil penalties under this section in the manner provided in ORS 183.745.

[(3)] **(5)(a)** The provisions of this section are in addition to and not in lieu of *[any]* other enforcement *[provision]* **provisions** contained in ORS *[674.130 to 674.150,]* **674.140 and** 674.310 *[and 674.330].*

(b) The civil penalty provisions of subsections (2) and (3) of this section are in addition to and not in lieu of the criminal penalties for uncertified, unlicensed or unregistered real estate appraisal activity in ORS 674.990.

[(4)] **(6)** The remedies provided in *[subsections (1) to (3) of]* this section are in addition to and not exclusive of *[any]* other remedies provided by law.

SECTION 10. ORS 674.990 is amended to read:

674.990. (1) Violation of ORS 674.100 (1) is a Class A misdemeanor.

(2) *[Any]* **An** officer, director, *[or]* shareholder or agent of a corporation, or member or agent of a partnership or association, who personally participates in or is an accessory to *[any]* a violation of ORS 674.100 (1) by the partnership, association or corporation, is subject to *[the penalties prescribed in]* subsection (1) of this section.

[(3) Any person who violates ORS 674.100 (1) may be required by the Appraiser Certification and Licensure Board to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the board of:]

[(a) Not less than \$100 nor more than \$500 for the first offense of uncertified or unlicensed real

estate appraisal activity; and]

[(b) Not less than \$500 nor more than \$1,000 for the second and subsequent offenses of uncertified or unlicensed real estate appraisal activity.]

[(4) In addition to the civil penalties set forth in subsection (3) of this section, any person who violates ORS 674.100 (1) may be required by the board to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the board but not to exceed the amount by which such person profited in any transaction that violates ORS 674.100 (1).]

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

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

[(7) The civil penalty provisions of subsections (3) and (4) of this section are in addition to and not in lieu of the criminal penalties for unlicensed real estate appraisal activity in subsections (1) and (2) of this section.]

SECTION 11. ORS 58.015 is amended to read:

58.015. As used in this chapter, unless the context requires otherwise:

(1) "Foreign professional corporation" means a professional corporation organized under laws other than the laws of this state.

(2) "License" includes a license, certificate of registration, permit or other legal authorization required by law as a condition precedent to the rendering of professional service or services within this state.

(3) "Oregon Business Corporation Act" has the same meaning given that term in ORS 60.951.

(4) "Practicing medicine" has the meaning given that term in ORS 677.085.

(5) "Professional" means:

(a) Accountants licensed under ORS 673.010 to 673.457 or the laws of another state;

(b) Architects licensed under ORS 671.010 to 671.220 or the laws of another state;

(c) Attorneys licensed under ORS 9.005 to 9.755 or the laws of another state;

(d) Chiropractors licensed under ORS chapter 684 or the laws of another state;

(e) Dentists licensed under ORS chapter 679 or the laws of another state;

(f) Landscape architects licensed under ORS 671.310 to 671.459 or the laws of another state;

(g) Naturopaths licensed under ORS chapter 685 or the laws of another state;

(h) Nurse practitioners licensed under ORS 678.010 to 678.410 or the laws of another state;

(i) Psychologists licensed under ORS 675.010 to 675.150 or the laws of another state;

(j) Physicians licensed under ORS chapter 677 or the laws of another state;

(k) Podiatrists licensed under ORS chapter 677 or the laws of another state;

(L) Radiologic technologists licensed under ORS 688.405 to 688.605 or the laws of another state;

(m) Real estate appraisers licensed **or certified** under ORS chapter 674 or the laws of another state; and

(n) Other persons providing to the public types of personal service or services substantially similar to those listed in paragraphs (a) to (m) of this subsection that may be lawfully rendered only pursuant to a license.

(6) "Professional corporation" or "domestic professional corporation" means a corporation organized under this chapter for the specific purpose of rendering professional service or services and

for such other purposes provided under this chapter.

(7) “Professional service” means personal service or services rendered in this state to the public which may be lawfully rendered only pursuant to a license by a professional.

(8) “Regulatory board” means the governmental agency of the State of Oregon required or authorized by law to license and regulate the rendering of a professional service or services for which a professional corporation is organized.

SECTION 12. ORS 701.010 is amended to read:

701.010. The Construction Contractors Board may adopt rules to make licensure optional for persons who offer, bid or undertake to perform work peripheral to construction, as defined by administrative rule of the Construction Contractors Board. The following persons are exempt from licensure under this chapter:

(1) A person who is constructing, altering, improving or repairing personal property.

(2) A person who is constructing, altering, improving or repairing a structure located within the boundaries of any site or reservation under the jurisdiction of the federal government.

(3) A person who furnishes materials, supplies, equipment or finished product and does not fabricate them into, or consume them, in the performance of the work of a contractor.

(4) A person working on one structure or project, under one or more contracts, when the aggregate price of all of that person’s contracts for labor, materials and all other items is less than \$500 and such work is of a casual, minor or inconsequential nature. This subsection does not apply to a person who advertises or puts out any sign or card or other device that might indicate to the public that the person is a contractor.

(5) An owner who contracts for work to be performed by a licensed contractor. This subsection does not apply to a person who, in the pursuit of an independent business, constructs, remodels, repairs or for compensation and with the intent to sell the structure, arranges to have constructed, remodeled or repaired a structure with the intent of offering the structure for sale before, upon or after completion. It is prima facie evidence that there was an intent of offering the structure for sale if the person who constructed, remodeled or repaired the structure or arranged to have the structure constructed, remodeled or repaired does not occupy the structure after its completion.

(6) A person performing work on a property that person owns or performing work as the owner’s employee, whether the property is occupied by the owner or not, or a person performing work on that person’s residence, whether or not that person owns the residence. This subsection does not apply to a person performing work on a structure owned by that person or the owner’s employee if the work is performed, in the pursuit of an independent business, with the intent of offering the structure for sale before, upon or after completion.

(7) A person licensed in one of the following trades or professions when operating within the scope of that license:

(a) An architect licensed by the State Board of Architect Examiners.

(b) A registered professional engineer licensed by the State Board of Examiners for Engineering and Land Surveying.

(c) A water well contractor licensed by the Water Resources Department.

(d) A sewage disposal system installer licensed by the Department of Environmental Quality.

(e) A landscaping business licensed under ORS 671.510 to 671.710 that constructs fences, decks, arbors, driveways, walkways or retaining walls when:

(A) Performed in conjunction with landscaping work; or

(B) Not performed in conjunction with landscaping work and that has filed a bond under ORS

671.690 (1)(b).

(f) A pesticide operator licensed under ORS 634.116 who does not conduct inspections for wood destroying organisms for the transfer of real estate.

(g) An appraiser certified or licensed under ORS chapter 674 **or an appraiser assistant registered under ORS chapter 674** by the Appraiser Certification and Licensure Board.

(8) A person who performs work subject to this chapter as an employee of a contractor.

(9) A manufacturer of a manufactured home constructed under standards established by the federal government.

(10) A person involved in the movement of:

(a) Modular buildings or structures other than manufactured structures not in excess of 14 feet in width.

(b) Structures not in excess of 16 feet in width when the structures are being moved by their owner if the owner is not a contractor required to be licensed under this chapter.

(11) A commercial lending institution or surety company that arranges for the completion, repair or remodeling of a structure. As used in this subsection, "commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association, insurance company or federal credit union maintaining an office in this state.

(12) A real estate licensee as defined in ORS 696.010 or the employee of that licensee when performing work on a structure that the real estate licensee manages under a contract.

(13) Units of government other than those specified in ORS 701.005 (8)(b) and (c).

(14) A qualified intermediary in a property exchange that qualifies under section 1031 of the Internal Revenue Code as amended and in effect on January 1, 2004, if the qualified intermediary is not performing construction activities.

(15) A business that supplies personnel to a licensed contractor for the performance of work under the direction and supervision of the contractor.

SECTION 13. ORS 701.350 is amended to read:

701.350. (1) An individual may not undertake, offer to undertake or submit a bid to do work as a home inspector unless the individual is certified as a home inspector under this section by the Construction Contractors Board and is an owner of, or employed by, a business that is licensed by the board.

(2) A business entity shall not undertake, offer to undertake or submit a bid to do work as a home inspector unless the business entity is licensed by the Construction Contractors Board under this chapter and has an owner or an employee who is certified as a home inspector under this section.

(3) The Construction Contractors Board shall adopt education, training and examination requirements for certification of home inspectors.

(4) The Construction Contractors Board by rule shall adopt procedures for the issuance, renewal and revocation of home inspector certification.

(5) The board by rule may adopt fees necessary for the administration of this section. The fees shall not exceed the following:

(a) \$50 for application;

(b) \$50 for examination; and

(c) \$75 for annual license renewal.

(6) This section does not apply to a person acting within the scope of a license, [or] certificate

1 **or registration** issued to the person by the Appraiser Certification and Licensure Board under ORS
2 chapter 674.

3 **SECTION 14. This 2005 Act being necessary for the immediate preservation of the public**
4 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
5 **on its passage.**

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