

Enrolled
House Bill 2109

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Construction Contractors Board)

CHAPTER

AN ACT

Relating to construction contractors; creating new provisions; amending ORS 454.715, 701.055, 701.060, 701.135, 701.138 and 701.590; and repealing ORS 701.100.

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

SECTION 1. Sections 2 to 7 and 14 of this 2007 Act are added to and made a part of ORS chapter 701.

SECTION 2. (1) If a person is required under this chapter to be licensed as a contractor, a city, county or state agency may not issue the person a building permit unless the person has a current, valid contractor license. A city, county or state agency that requires the issuance of a permit for the construction, alteration, improvement, demolition, movement or repair of a building, structure or appurtenances to a structure shall, as a condition for issuing the permit, require the applicant for a permit to file a written statement signed by the applicant. The statement must affirm that the applicant is licensed under this chapter, give the license number and state that the license is in full force and effect, or, if the applicant is exempt from licensing under this chapter, list the basis for the exemption. The city, county or state agency shall list the contractor's license number on the permit issued to that contractor.

(2) If the applicant for a building permit is exempt from licensure under ORS 701.010 (6), the city, county or state agency shall supply the applicant with an Information Notice to Property Owners About Construction Responsibilities. The city, county or state agency may not issue a building permit for a residential structure to the applicant until the applicant signs a statement in substantially the following form:

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- (a) I have read and understand the Information Notice to Property Owners About Construction Responsibilities; and
 - (b) I own, reside in or will reside in the completed dwelling. My general contractor is _____, Construction Contractors Board license no. _____, license expiration date_____. I will instruct my general contractor that all subcontractors who work on this dwelling must be licensed with the Construction Contractors Board; or
 - (c) I am performing work on property I own, a residence that I reside in or a residence that I will reside in.
 - (d) I will be my own general contractor and, if I hire subcontractors, I will hire only subcontractors licensed with the Construction Contractors Board.

(e) If I change my mind and do hire a general contractor, I will contract with a general contractor who is licensed with the Construction Contractors Board and I will immediately notify the office issuing this building permit of the name of the general contractor

(3) The Construction Contractors Board shall adopt by rule a form titled "Information Notice to Property Owners About Construction Responsibilities" that clearly describes in everyday language the responsibilities property owners are undertaking by acting as their own general contractor and the problems that could develop. The responsibilities described in the form shall include, but not be limited to:

(a) Compliance with state and federal laws regarding Social Security tax, income tax and unemployment tax.

(b) Workers' compensation insurance on workers.

(c) Liability and property damage insurance.

(4) The board shall develop and furnish to city, county and state building permit offices, at no cost to the offices, the Information Notice to Property Owners About Construction Responsibilities and the statement to be signed by the permit applicant.

(5) A city or county that requires a business license for engaging in a business subject to regulation under this chapter shall require that the licensee or applicant for issuance or renewal of the business license file, or have on file, with the city or county, a signed statement that the licensee or applicant is licensed under this chapter.

(6) The provisions of this chapter are exclusive and a city, county or other political subdivision may not require or issue any registrations, licenses or surety bonds, nor charge any fee for the regulatory or surety registration of any contractor licensed with the board. This subsection does not affect the authority of a city, county or political subdivision to:

(a) License and levy and collect a general and nondiscriminatory license fee levied upon all businesses or upon business conducted by any firm within the city, county or political subdivision;

(b) Require a contractor to pay a fee, post a bond or require insurance when the city, county or political subdivision is contracting for the services of the contractor; or

(c) Regulate a contractor that is not required to be licensed under this chapter.

SECTION 3. (1) It is prima facie evidence that a person is doing business as a contractor if:

(a) The person for that person's own use performs, employs others to perform, or for compensation and with the intent to sell the structure arranges to have performed, work described in ORS 701.005 (3); and

(b) Within any 36-month period the person offers for sale two or more newly built structures on which work described in paragraph (a) of this subsection was performed.

(2) Licensure under this chapter is prima facie evidence that the licensee conducts a separate, independent business.

SECTION 4. (1) A contractor shall maintain a list that includes the names, addresses and license numbers for all subcontractors or other contractors performing work on a project for that contractor.

(2) The contractor must deliver the list referred to in subsection (1) of this section to the Construction Contractors Board within 72 hours after a board request made during reasonable working hours.

SECTION 5. (1) The Construction Contractors Board shall prepare, and provide at no cost to all licensed contractors, a consumer notification form designed to specifically inform property owners what the property owners should do to protect themselves in a residential repair, remodel or construction project. The form shall include an explanation of the meaning of licensure, including a statement that licensure is not an endorsement of a contractor's

work, and an explanation of the bond and insurance levels required of contractors for the benefit of property owners. The form must not be larger than one side of a sheet of paper that is 8-1/2 inches by 11 inches.

(2) A contractor shall deliver the consumer notification form to the property owner when the contractor submits a bid or proposal for work on a residential structure. The contractor may reproduce the form on the contractor's bid proposal.

SECTION 6. A contractor may not perform work subject to this chapter for an owner of a residential structure without a written contract if the aggregate contract price exceeds \$2,000. If the price of a contract was initially less than \$2,000, but during the course of performance the contract exceeds that amount, the contractor shall mail or otherwise deliver a written contract to the owner not later than five days after the contractor knows or should reasonably know that the contract price will exceed \$2,000. Failure to have a written contract does not void the contract.

SECTION 7. A partnership or corporation licensed under this chapter shall notify the Construction Contractors Board immediately upon any change in licensed partners or corporate officers. If a partnership no longer has a licensed partner, the partnership may not conduct activities that require a license under this chapter.

SECTION 8. ORS 701.055 is amended to read:

701.055. (1) A person or joint venture may not undertake, offer to undertake or submit a bid to do work as a contractor unless that person or joint venture has a current, valid license issued under this chapter by the Construction Contractors Board. [A partnership, corporation or joint venture may not undertake, offer to undertake or submit a bid to do work as a contractor unless that partnership, corporation or joint venture is licensed under this chapter.] A partnership or joint venture is licensed for the purpose of offering to undertake work as a contractor on a structure if any of the partners or joint venturers whose name appears in the business name of the partnership or joint venture is licensed under this chapter.

(2) A licensed partnership or corporation shall notify the board immediately upon any change in licensed partners or corporate officers. If a partnership no longer has a licensed partner, the partnership may not conduct activities that require a license under this chapter.]

(3) A city, county or the State of Oregon may not issue a building permit to any person required to be licensed under this chapter that does not have a current, valid license. A county, city or state agency that requires the issuance of a permit as a condition precedent to construction, alteration, improvement, demolition, movement or repair of any building or structure or the appurtenances to the structure shall, as a condition for issuing the permit, require that the applicant for a permit file a written statement, subscribed by the applicant. The statement must affirm that the applicant is licensed under this chapter, give the license number and state that the license is in full force and effect, or, if the applicant is exempt from licensing under this chapter, list the basis for the exemption. The city, county or state agency shall list the contractor's license number on the permit obtained by that contractor.]

(4) If the applicant for a building permit is exempt from licensure under ORS 701.010 (6), the city, county or state shall supply the applicant with an Information Notice to Property Owners About Construction Responsibilities. The city, county or state may not issue a building permit for a residential structure to the applicant until the applicant signs a statement in substantially the following form:]

[_____]

(a) I have read and understand the Information Notice to Property Owners About Construction Responsibilities; and

(b) I own, reside in or will reside in the completed dwelling. My general contractor is _____, Construction Contractors Board license no. _____, license expiration date _____. I will instruct my general contractor that all subcontractors who work on this dwelling must be licensed with the Construction Contractors Board; or

(c) I am performing work on property I own, a residence that I reside in or a residence that I will reside in.

(d) I will be my own general contractor and, if I hire subcontractors, I will hire only subcontractors licensed with the Construction Contractors Board.

(e) If I change my mind and do hire a general contractor, I will contract with a general contractor who is licensed with the Construction Contractors Board and I will immediately notify the office issuing this building permit of the name of the general contractor _____

[_____]

[(5) The board shall adopt by rule a form entitled "Information Notice to Property Owners About Construction Responsibilities" that shall describe, in nontechnical language and in a clear and coherent manner using words in their common and everyday meaning, the responsibilities property owners are undertaking by acting as their own general contractor and the problems that could develop. The responsibilities described in the form shall include, but not be limited to:]

[(a) Compliance with state and federal laws regarding Social Security tax, income tax and unemployment tax.]

[(b) Workers' compensation insurance on workers.]

[(c) Liability and property damage insurance.]

[(6) The board shall develop and furnish to city, county and state building permit offices, at no cost to the offices, the Information Notice to Property Owners About Construction Responsibilities and the statement to be signed by the permit applicant.]

[(7) A city or county that requires a business license for engaging in a business subject to regulation under this chapter shall require that the licensee or applicant for issuance or renewal of the business license file, or have on file, with the city or county, a signed statement that the licensee or applicant is licensed under this chapter.]

[(8) It is prima facie evidence of doing business as a contractor if a person for that person's own use performs, employs others to perform, or for compensation and with the intent to sell the structure, arranges to have performed any work described in ORS 701.005 (3) if within any 36-month period that person offers for sale two or more newly built structures on which that work was performed.]

[(9) Licensure under this chapter is prima facie evidence that the licensee conducts a separate, independent business.]

[(10) The provisions of this chapter are exclusive and a city, county or other political subdivision may not require or issue any registrations, licenses or surety bonds, nor charge any fee for the regulatory or surety registration of any contractor licensed with the board. This subsection does not limit or abridge the authority of any city or county to:]

[(a) License and levy and collect a general and nondiscriminatory license fee levied upon all businesses or upon business conducted by any firm within the city or county;]

[(b) Require a contractor to pay a fee, post a bond or require insurance when the city, county or political subdivision is contracting for the service of the contractor; or]

[(c) Regulate a contractor that is not required to be licensed under this chapter.]

[(11)(a) A contractor shall maintain a list that includes the following information about all subcontractors or other contractors performing work on a project for that contractor:]

[(A) Names and addresses.]

[(B) License numbers.]

[(b) The contractor must deliver the list referred to in paragraph (a) of this subsection to the board within 72 hours after a board request made during reasonable working hours.]

[(12)] (2) A contractor may not hire any subcontractor or other contractor to perform work unless the subcontractor or contractor is licensed under this chapter or exempt from licensure under ORS 701.010.

[(13) A consumer notification form designed to specifically inform a property owner what the property owner should do to protect themselves in a residential repair, remodel or construction project shall be prepared by the board and provided at no cost to all licensed contractors. The contractor shall

deliver the form to the property owner when the contractor submits a bid or proposal for work on a residential structure. The form shall include an explanation of the meaning of licensure, including a statement that licensure is not an endorsement of a contractor's work, and an explanation of the bond and insurance levels required of contractors for the benefit of property owners. The form must not be larger than one side of a sheet of paper that is 8-1/2 inches by 11 inches. The contractor may reproduce the form on the contractor's bid proposal.]

[(14) A contractor may not perform work subject to this section for an owner of a residential structure without a written contract if the aggregate contract price exceeds \$2,000. If the price of a contract was initially less than \$2,000, but during the course of performance the contract exceeds that amount, the contractor shall mail or otherwise deliver a written contract to the owner not later than five days after the contractor knows or should reasonably know that the contract price will exceed \$2,000. Failure to have a written contract will not void the contract.]

[(15)] (3) Except as provided in ORS 671.540, a contractor that is not licensed under ORS 671.560 shall hire a person licensed under ORS 671.560 to perform landscaping work.

SECTION 9. ORS 701.060 is amended to read:

701.060. (1) Any contractor licensed under this chapter may at any time apply for a license in another category. The Construction Contractors Board may charge a transfer fee not to exceed \$20 for each additional license.

(2) If a contractor applies for a license pursuant to subsection (1) of this section, all construction, alteration, improvement, moving over public highways, roads or streets, demolition or repair performed by that contractor on buildings of all types shall be subject to the provisions of this chapter and to regulation by the board. *[Such]* Licensure **under subsection (1) of this section** shall be exclusive as provided in *[ORS 701.055 (10)]* **section 2 (6) of this 2007 Act.**

SECTION 10. ORS 701.135 is amended to read:

701.135. (1) The Construction Contractors Board may revoke, suspend or refuse to issue or re-issue a license and the board may assess a civil penalty as provided in ORS 701.992 if the board determines after notice and opportunity for hearing:

(a) That the licensee or applicant has violated ORS 701.055 or 701.078 **or section 4, 5, 6 or 7 of this 2007 Act.**

(b) That the licensee has violated a rule or order of the board.

(c) That the licensee has knowingly assisted an unlicensed person to act in violation of this chapter.

(d) That a lien was filed on a structure under ORS 87.010 to 87.060 and 87.075 to 87.093 because the licensee or applicant wrongfully failed to perform a contractual duty to pay money to the person claiming the lien.

(e) That the licensee has knowingly provided false information to the board.

(f) That the licensee has worked without a construction permit where a permit is required and the work resulted in a claim being filed with the board. For purposes of this paragraph, "construction permit" includes a building permit, electrical permit, mechanical permit or plumbing permit.

(g) That the number of licensed contractors working together on the same task on the same job site, where one of the contractors is licensed as exempt under ORS 701.035 (2)(b), exceeded the following:

(A) Two sole proprietors;

(B) One partnership;

(C) One corporation; or

(D) One limited liability company.

(h) Consistent with the provisions of ORS 670.280, that the licensee or applicant has been convicted of one of the following crimes:

(A) Murder;

(B) Assault in the first degree;

(C) Kidnapping;

- (D) Rape, sodomy or unlawful sexual penetration;
- (E) Sexual abuse;
- (F) Arson in the first degree;
- (G) Robbery in the first degree;
- (H) Theft in the first degree; or
- (I) Theft by extortion.

(i) That the licensee or applicant has not, within 90 days after the date when payment was received from the public contracting agency, or contractor in the case of a subcontractor, made payment to any person for supplying labor or materials contracted for with a public contract for a public improvement plus the amount of interest due.

(j) That the licensee or applicant has repeatedly reported bad faith or false claims of nonpayment against contractors or subcontractors.

(k) That the licensee or applicant has engaged in conduct as a contractor that is dishonest or fraudulent and that the board finds injurious to the welfare of the public.

(2)(a) The administrator of the board, in accordance with administrative rules adopted by the board and after setting forth specific reasons for the findings, may suspend or refuse to renew a license without hearing in any case where the administrator finds a serious danger to the public welfare, including but not limited to:

- (A) Lack of a surety bond required by ORS 701.085;
- (B) Lack of liability insurance required by ORS 701.105;
- (C) Hiring employees while licensed as exempt under ORS 701.035; or
- (D) Conduct as a construction contractor that is dishonest or fraudulent.

(b) If the licensee or applicant demands a hearing within 90 days after the date of notice to the licensee or applicant of the suspension or refusal to renew, then a hearing must be granted to the licensee or applicant as soon as practicable after the demand, and the administrator shall issue an order pursuant to the hearing as required by ORS chapter 183 confirming, altering or revoking the administrator's earlier order. Notwithstanding ORS 670.325, a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to a citation for violation that is subject to judicial determination in any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee or applicant.

(3) In addition to all other remedies, if it appears to the board that a person has engaged in, or is engaging in, any act, practice or transaction that violates the provisions of this chapter, the board may direct the Attorney General or the district attorney of the county in which the act, practice or transaction occurs, to apply to the court for an injunction restraining the person from violating the provisions of this chapter. An injunction may not issue for failure to maintain the list provided for in [ORS 701.055 (11)] **section 4 of this 2007 Act** unless the court determines that the failure is intentional.

(4) A certified copy of the record of conviction shall be conclusive evidence of a conviction under subsection (1)(h) of this section.

(5) If the board suspends or revokes the license of an individual contractor or contractor business for a violation of subsection (1)(g) of this section, the board may not restore or reissue the license unless the individual contractor or a responsible managing individual, as defined in ORS 701.078, for the contractor business has successfully completed the training and testing described in ORS 701.072.

SECTION 11. ORS 701.138 is amended to read:

701.138. (1) Every person offering to undertake or undertaking construction of building sewer piping shall comply with the requirements of ORS chapter 701.

(2) Every person submitting a bid or a written estimate of the costs to construct building sewer piping shall provide to potential customers, prior to an agreement to perform, the following:

- (a) The person's Construction Contractors Board license number and category;
- (b) The applicable bonding and liability coverage; and
- (c) The statement described in [ORS 701.055 (3)] **section 2 (1) of this 2007 Act**.

(3) Any person licensed under ORS 701.055 may install a building sewer after obtaining a permit for plumbing inspection under ORS 447.095.

(4) As used in this section, "building sewer" means that part of the system of drainage piping that conveys sewage into a septic tank, cesspool or other treatment unit that begins five feet outside the building or structure within which the sewage originates.

SECTION 12. ORS 701.590 is amended to read:

701.590. (1) A contractor shall deliver a notice of the procedure contained in ORS 701.565 to 701.580 to an owner along with the consumer notification form required to be delivered to an owner under [ORS 701.055 (13)] **section 5 of this 2007 Act**. The notice must be conspicuous and may be included as part of the underlying contract.

(2) The notice required by subsection (1) of this section must be in substantially the following form:

OREGON LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY COMMENCE ARBITRATION OR A COURT ACTION AGAINST ANY CONTRACTOR, SUBCONTRACTOR OR SUPPLIER FOR CONSTRUCTION DEFECTS. BEFORE YOU COMMENCE ARBITRATION OR A COURT ACTION YOU MUST DELIVER A WRITTEN NOTICE OF ANY CONDITIONS YOU ALLEGE ARE DEFECTIVE TO THE CONTRACTOR, SUBCONTRACTOR OR SUPPLIER YOU BELIEVE IS RESPONSIBLE FOR THE ALLEGED DEFECT AND PROVIDE THE CONTRACTOR, SUBCONTRACTOR OR SUPPLIER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE CONTRACTOR, SUBCONTRACTOR OR SUPPLIER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW. FAILURE TO MEET THOSE DEADLINES OR FOLLOW THOSE PROCEDURES WILL AFFECT YOUR ABILITY TO COMMENCE ARBITRATION OR A COURT ACTION.

SECTION 13. The amendments to ORS 701.055, 701.138 and 701.590 by sections 8, 11 and 12 of this 2007 Act do not:

(1) Invalidate or impair any act done prior to the effective date of this 2007 Act.

(2) Relieve any person from civil penalty or other sanction for a violation of ORS 701.055 committed prior to the effective date of this 2007 Act.

SECTION 14. (1) A contractor that violates or fails to comply with any of the following provisions or any rules adopted under those provisions is subject to the suspension of, revocation of, refusal to issue or refusal to renew a license, imposition of a civil penalty under ORS 701.992, or a combination of those sanctions:

(a) ORS 87.007 (2).

(b) ORS chapter 316 or 317.

(c) ORS 446.225 to 446.285.

(d) ORS 446.395 to 446.420.

(e) ORS 447.010 to 447.156.

(f) ORS chapter 455.

(g) ORS 460.005 to 460.175.

(h) ORS 479.510 to 479.945.

(i) ORS 480.510 to 480.670.

(j) ORS chapter 656.

(k) ORS chapter 657.

(L) ORS 670.600.

(m) ORS 671.510 to 671.710.

(n) ORS chapter 693.

(2) The imposition of a sanction under this section is subject to ORS 183.413 to 183.497.

SECTION 15. ORS 454.715 is amended to read:

454.715. Subject to ORS chapter 183, the Department of Environmental Quality at any time may suspend or revoke any license issued pursuant to ORS 454.695 if it finds:

- (1) A material misrepresentation or false statement in the application for the license.
- (2) Failure to comply with the applicable provisions of this chapter.
- (3) Violation of any rule of the Environmental Quality Commission regarding sewage disposal services.
- (4) The licensee was licensed by the Construction Contractors Board at the time of licensing under ORS 454.695 and the license issued by the board was revoked or suspended as provided under ORS [701.100 or] 701.102 or **section 14 of this 2007 Act** and rules adopted by the board.

SECTION 16. ORS 701.100 is repealed.

Passed by House March 7, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate April 2, 2007

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President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State