

House Bill 2110

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

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 construction contractor to retain written evidence that contractor timely delivered consumer notification form to owner of residential structure. Provides that failure to retain written evidence of notification form delivery creates rebuttable presumption notification form was not timely delivered.

Makes violation subject to civil penalty, not to exceed \$5,000.

Extends time for property owner to file claim if contractor fails to deliver consumer notification form by certain dates. Creates evidentiary presumptions concerning notification form delivery.

A BILL FOR AN ACT

1
2 Relating to construction contractors; creating new provisions; and amending ORS 701.055, 701.135,
3 701.143 and 701.590.

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

5 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS chapter 701.**

6 **SECTION 2. (1) The Construction Contractors Board shall prepare, and provide at no cost**
7 **to all licensed contractors, a consumer notification form designed to specifically inform**
8 **property owners about what the property owners should do to protect themselves in a resi-**
9 **dential repair, remodel or construction project. The form shall include an explanation of the**
10 **meaning of licensure, including a statement that licensure is not an endorsement of a con-**
11 **tractor's work, and an explanation of the bond and insurance levels required of contractors**
12 **for the benefit of property owners. The form must not be larger than one side of a sheet of**
13 **paper that is 8-1/2 inches by 11 inches.**

14 **(2) A contractor shall deliver the consumer notification form to the property owner when**
15 **the contractor submits a bid or proposal for work on a residential structure. The contractor**
16 **may reproduce the form on the contractor's bid proposal. The contractor shall retain written**
17 **evidence of timely delivery of the form to the property owner for at least:**

18 **(a) Two years after substantial completion of the work performed by the contractor on**
19 **the residential structure; or**

20 **(b) One year after delivery of the form, if the contractor and property owner do not enter**
21 **into an agreement for work on a residential structure.**

22 **(3) If the board proposes to assess a civil penalty for failure to timely deliver a consumer**
23 **notification form to a property owner, the failure of a contractor to retain written evidence**
24 **of delivery as required by subsection (2) of this section creates a rebuttable presumption that**
25 **the contractor failed to timely deliver the form to the property owner.**

26 **(4) The board shall adopt rules specifying the type of written evidence that a contractor**
27 **must retain to comply with subsection (2) of this section.**

28 **SECTION 3. ORS 701.055 is amended to read:**

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.

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

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

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

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

26 _____

27
28 (a) I have read and understand the Information Notice to Property Owners About Construction
29 Responsibilities; and

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

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

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

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

41 _____

42
43 (5) The board shall adopt by rule a form entitled “Information Notice to Property Owners About
44 Construction Responsibilities” that shall describe, in nontechnical language and in a clear and co-
45 herent manner using words in their common and everyday meaning, the responsibilities property

1 owners are undertaking by acting as their own general contractor and the problems that could de-
 2 velop. The responsibilities described in the form shall include, but not be limited to:

3 (a) Compliance with state and federal laws regarding Social Security tax, income tax and un-
 4 employment tax.

5 (b) Workers' compensation insurance on workers.

6 (c) Liability and property damage insurance.

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

10 (7) A city or county that requires a business license for engaging in a business subject to reg-
 11 ulation under this chapter shall require that the licensee or applicant for issuance or renewal of the
 12 business license file, or have on file, with the city or county, a signed statement that the licensee
 13 or applicant is licensed under this chapter.

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

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

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

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

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

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

30 (11)(a) A contractor shall maintain a list that includes the following information about all sub-
 31 contractors or other contractors performing work on a project for that contractor:

32 (A) Names and addresses.

33 (B) License numbers.

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

36 (12) A contractor may not hire any subcontractor or other contractor to perform work unless
 37 the subcontractor or contractor is licensed under this chapter or exempt from licensure under ORS
 38 701.010.

39 *[(13) A consumer notification form designed to specifically inform a property owner what the*
 40 *property owner should do to protect themselves in a residential repair, remodel or construction project*
 41 *shall be prepared by the board and provided at no cost to all licensed contractors. The contractor shall*
 42 *deliver the form to the property owner when the contractor submits a bid or proposal for work on a*
 43 *residential structure. The form shall include an explanation of the meaning of licensure, including a*
 44 *statement that licensure is not an endorsement of a contractor's work, and an explanation of the bond*
 45 *and insurance levels required of contractors for the benefit of property owners. The form must not be*

1 *larger than one side of a sheet of paper that is 8-1/2 inches by 11 inches. The contractor may reproduce*
 2 *the form on the contractor's bid proposal.]*

3 [(14)] (13) A contractor may not perform work subject to this section for an owner of a resi-
 4 dential structure without a written contract if the aggregate contract price exceeds \$2,000. If the
 5 price of a contract was initially less than \$2,000, but during the course of performance the contract
 6 exceeds that amount, the contractor shall mail or otherwise deliver a written contract to the owner
 7 not later than five days after the contractor knows or should reasonably know that the contract
 8 price will exceed \$2,000. Failure to have a written contract will not void the contract.

9 [(15)] (14) Except as provided in ORS 671.540, a contractor that is not licensed under ORS
 10 671.560 shall hire a person licensed under ORS 671.560 to perform landscaping work.

11 **SECTION 4.** ORS 701.135 is amended to read:

12 701.135. (1) The Construction Contractors Board may revoke, suspend or refuse to issue or re-
 13 issue a license and the board may assess a civil penalty as provided in ORS 701.992 if the board
 14 determines after notice and opportunity for hearing:

15 (a) That the licensee or applicant has violated ORS 701.055 or 701.078 **or section 2 of this 2007**
 16 **Act.**

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

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

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

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

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

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

- 31 (A) Two sole proprietors;
- 32 (B) One partnership;
- 33 (C) One corporation; or
- 34 (D) One limited liability company.

35 (h) Consistent with the provisions of ORS 670.280, that the licensee or applicant has been con-
 36 victed of one of the following crimes:

- 37 (A) Murder;
- 38 (B) Assault in the first degree;
- 39 (C) Kidnapping;
- 40 (D) Rape, sodomy or unlawful sexual penetration;
- 41 (E) Sexual abuse;
- 42 (F) Arson in the first degree;
- 43 (G) Robbery in the first degree;
- 44 (H) Theft in the first degree; or
- 45 (I) Theft by extortion.

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

5 (j) That the licensee or applicant has repeatedly reported bad faith or false claims of nonpay-
 6 ment against contractors or subcontractors.

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

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

13 (A) Lack of a surety bond required by ORS 701.085;

14 (B) Lack of liability insurance required by ORS 701.105;

15 (C) Hiring employees while licensed as exempt under ORS 701.035; or

16 (D) Conduct as a construction contractor that is dishonest or fraudulent.

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

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

31 (4) A certified copy of the record of conviction shall be conclusive evidence of a conviction un-
 32 der subsection (1)(h) of this section.

33 (5) If the board suspends or revokes the license of an individual contractor or contractor busi-
 34 ness for a violation of subsection (1)(g) of this section, the board may not restore or reissue the li-
 35 cense unless the individual contractor or a responsible managing individual, as defined in ORS
 36 701.078, for the contractor business has successfully completed the training and testing described in
 37 ORS 701.072.

38 **SECTION 5.** ORS 701.143 is amended to read:

39 701.143. (1) The Construction Contractors Board may not process a claim against a licensed
 40 contractor, including a claim based upon a court judgment or arbitration award, unless the claim
 41 is filed in a timely manner as follows:

42 [(1)] (a) Except as otherwise provided in **paragraph (c) or (d) of this subsection or in sub-**
 43 **section (2) of this section**, if the owner of a new structure files the claim, the board must receive
 44 the claim no later than the earlier of:

45 [(a)] (A) One year after the date the structure was first occupied; or

1 [(b)] **(B)** Two years after substantial completion of the structure by the contractor filed against.

2 [(2)] **(b)** Except as otherwise provided in **paragraph (c) or (d) of this subsection or in sub-**
 3 **section (2) of this section**, if the owner of an existing structure files the claim, the board must re-
 4 ceive the claim no later than one year after the date the work was substantially completed by the
 5 contractor filed against.

6 [(3)] **(c)** Regardless of whether the claim involves a new or existing structure, if the owner of
 7 the structure files the claim and the licensed contractor failed to begin the work, the board must
 8 receive the claim no later than one year after the date the parties entered into the contract.

9 [(4)] **(d)** Regardless of whether the claim involves a new or existing structure, if the owner of
 10 the structure files the claim and the licensed contractor failed to substantially complete the work,
 11 the board must receive the claim no later than one year after the date the contractor ceased to
 12 work on the structure.

13 [(5)] **(e)** Except as otherwise provided in [*this section*] **paragraph (g) of this subsection**, if a
 14 licensed contractor files the claim against the licensed contractor performing work as a subcon-
 15 tractor on a new structure, the board must receive the claim no later than the earlier of:

16 [(a)] **(A)** Fourteen months after the date the structure was first occupied; or

17 [(b)] **(B)** Two years after substantial completion of the structure.

18 [(6)] **(f)** Except as otherwise provided in [*this section*] **paragraph (g) of this subsection**, if a
 19 licensed contractor files the claim against the licensed contractor performing work as a subcon-
 20 tractor on an existing structure, the board must receive the claim no later than 14 months after the
 21 date the work on the structure was substantially completed.

22 [(7)] **(g)** If a licensed contractor files the claim against the licensed contractor performing work
 23 as a subcontractor on a structure and the subcontractor failed to substantially complete the work,
 24 the board must receive the claim no later than 14 months after the date the subcontractor ceased
 25 to work on the structure.

26 [(8)] **(h)** If the licensed contractor's employee, subcontractor or material or equipment supplier
 27 files the claim, the board must receive the claim no later than one year after the date the contractor
 28 incurred the indebtedness.

29 **(2) The time limits described in subsection (1)(a) to (d) of this section for filing a claim**
 30 **are extended by 12 months if the licensed contractor failed to deliver the consumer notifi-**
 31 **cation form described in section 2 of this 2007 Act prior to the following dates:**

32 **(a) Except as provided in paragraph (c) or (d) of this subsection, if the claim involves a**
 33 **new structure, the date the structure is first occupied.**

34 **(b) Except as provided in paragraph (c) or (d) of this subsection, if the claim involves an**
 35 **existing structure, the date the work was substantially completed by the contractor.**

36 **(c) Regardless of whether the claim involves a new or existing structure, if the licensed**
 37 **contractor failed to begin the work, the date the parties entered into the contract.**

38 **(d) Regardless of whether the claim involves a new or existing structure, if the licensed**
 39 **contractor failed to substantially complete the work, the date the contractor ceased to work**
 40 **on the structure.**

41 **(3) For purposes of subsection (2) of this section:**

42 **(a) Written evidence of delivery that complies with board rules adopted under section 2**
 43 **(4) of this 2007 Act creates a rebuttable presumption that the contractor delivered the con-**
 44 **sumer notification form on the date established by the written evidence.**

45 **(b) If the time described in section 2 (2) of this 2007 Act for retaining written evidence**

1 **of delivery has not expired, failure of a contractor to produce written evidence of delivery**
2 **that complies with board rules adopted under section 2 (4) of this 2007 Act creates a**
3 **rebuttable presumption that the contractor failed to deliver the consumer notification form.**

4 **SECTION 6.** ORS 701.590 is amended to read:

5 701.590. (1) A contractor shall deliver a notice of the procedure contained in ORS 701.565 to
6 701.580 to an owner along with the consumer notification form required to be delivered to an owner
7 under [ORS 701.055 (13)] **section 2 of this 2007 Act.** The notice must be conspicuous and may be
8 included as part of the underlying contract.

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

11 _____
12
13 OREGON LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE
14 YOU MAY COMMENCE ARBITRATION OR A COURT ACTION AGAINST ANY CONTRACTOR,
15 SUBCONTRACTOR OR SUPPLIER FOR CONSTRUCTION DEFECTS. BEFORE YOU COM-
16 MENCE ARBITRATION OR A COURT ACTION YOU MUST DELIVER A WRITTEN NOTICE OF
17 ANY CONDITIONS YOU ALLEGE ARE DEFECTIVE TO THE CONTRACTOR, SUBCONTRACTOR
18 OR SUPPLIER YOU BELIEVE IS RESPONSIBLE FOR THE ALLEGED DEFECT AND PRO-
19 VIDE THE CONTRACTOR, SUBCONTRACTOR OR SUPPLIER THE OPPORTUNITY TO MAKE
20 AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT
21 ANY OFFER MADE BY THE CONTRACTOR, SUBCONTRACTOR OR SUPPLIER. THERE ARE
22 STRICT DEADLINES AND PROCEDURES UNDER STATE LAW. FAILURE TO MEET THOSE
23 DEADLINES OR FOLLOW THOSE PROCEDURES WILL AFFECT YOUR ABILITY TO COM-
24 MENCE ARBITRATION OR A COURT ACTION.

25 _____
26
27 **SECTION 7.** (1) **Section 2 of this 2007 Act applies to bids and proposals that a contractor**
28 **submits to a property owner on or after the effective date of this 2007 Act.**

29 (2) **The amendments to ORS 701.055 by section 3 of this 2007 Act do not relieve any per-**
30 **son from civil penalty or other sanction for a violation prior to the effective date of this 2007**
31 **Act of ORS 701.055 (13) as set forth in the 2005 Edition of Oregon Revised Statutes.**

32 (3) **The amendments to ORS 701.143 by section 5 of this 2007 Act apply to a claim if the**
33 **bid or proposal by the contractor was subject to the consumer notification form delivery**
34 **requirement of section 2 of this 2007 Act.**