

House Bill 2120

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 original contractor for work on residential property to maintain copy of "Information Notice to Owner" signed by recipient of notice. Requires contractor to provide copy of signed "Information Notice to Owner" to Construction Contractors Board upon request. Makes violator subject to license suspension and to civil penalty not exceeding \$5,000. Creates presumption of nondelivery if contractor fails to provide copy of notice in response to subpoena, court order or board request.

Prohibits original contractor from asserting lien against residential property if contractor fails to give required "Information Notice to Owner."

A BILL FOR AN ACT

1
2 Relating to construction contractor liens; creating new provisions; and amending ORS 87.018 and
3 87.093.

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

5 **SECTION 1.** ORS 87.018 is amended to read:

6 87.018. All notices required under ORS 87.001 to 87.060 and 87.075 to 87.093 shall be in writing
7 and delivered in person or delivered by registered or certified mail except for the "Information No-
8 tice to Owner" described in ORS 87.093 which may also be [*proved by a United States Postal Service*
9 *certificate of mailing*] **sent by first class mail. However, proof that an original contractor has**
10 **delivered an "Information Notice to Owner" must be in the form described under ORS 87.093**
11 **(2)(c).**

12 **SECTION 2.** ORS 87.093 is amended to read:

13 87.093. (1) The Construction Contractors Board shall adopt by rule a form entitled "Information
14 Notice to Owner" [*which*] **that** shall describe, in nontechnical language and in a clear and coherent
15 manner using words in their common and everyday meanings, the pertinent provisions of the Con-
16 struction Lien Law of this state and the rights and responsibilities of an owner of property and an
17 original contractor under that law. The rights and responsibilities described in the form shall in-
18 clude, but not be limited to:

19 (a) Methods by which an owner may avoid multiple payments for the same materials and labor;

20 (b) The right to file a claim against a licensed contractor with the Construction Contractors
21 Board and, when appropriate, to be reimbursed from the contractor's bond filed under ORS chapter
22 701; and

23 (c) The right to receive, upon written request therefor, a statement of the reasonable value of
24 materials, equipment, services or labor provided from the persons providing the materials, equip-
25 ment, services or labor at the request of an original contractor and who have also provided notices
26 of right to a lien.

27 (2)(a) Each original contractor shall provide a copy of the "Information Notice to Owner"

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 adopted by the Construction Contractors Board under this section to:

2 (A) The first purchaser of residential property constructed by the contractor and sold before or
3 within the 75-day period immediately following the completion of construction; and

4 (B) The owner or an agent of the owner, other than an original contractor, at the time of signing
5 a written residential construction or improvement contract with the owner.

6 (b) When the residential construction or improvement contract is an oral contract, the original
7 contractor shall mail or otherwise deliver the "Information Notice to Owner" not later than five
8 days after the contract is made.

9 **(c) The original contractor shall maintain a copy of each "Information Notice to**
10 **Owner" delivered under this subsection or subsection (3) of this section, signed by the re-**
11 **ipient of the notice. Within 72 hours after receiving a request by the board, a contractor**
12 **shall deliver a copy of the signed notice to the board.**

13 (3) This section applies only to a residential construction or improvement contract for which the
14 aggregate contract price exceeds \$1,000. If the price of a home improvement contract was initially
15 less than \$1,000, but during the course of the performance of the contract exceeds that amount, the
16 original contractor shall mail or otherwise deliver the "Information Notice to Owner" not later than
17 five days after the contractor knows or should reasonably know that the contract price will exceed
18 \$1,000.

19 (4) An "Information Notice to Owner" need not be sent when the owner is a contractor licensed
20 with the Construction Contractors Board under ORS chapter 701.

21 **(5) Failure to timely provide a copy of the signed notice the contractor is required to**
22 **maintain under subsection (2)(c) of this section in response to a subpoena, court order or**
23 **board request creates a rebuttable presumption that the contractor failed to deliver the no-**
24 **tice as required by subsections (2) and (3) of this section.**

25 [(5)] **(6)** Notwithstanding ORS 87.010 **and 87.030**, if an original contractor does not provide an
26 owner or agent with an "Information Notice to Owner" as required under subsections (2) and (3)
27 of this section, the original contractor may not claim any lien created under ORS 87.010 upon any
28 improvement, lot or parcel of land of the owner for labor, services or materials supplied under the
29 residential construction or improvement contract for which the **original contractor failed to pro-**
30 **vide the required** "Information Notice to Owner" [*was not provided*].

31 [(6)] **(7)** If an original contractor does not [*provide an owner or agent with an*] **timely provide**
32 **the Construction Contractors Board with a requested copy of a signed** "Information Notice to
33 Owner" as required under subsection (2) of this section, the [*Construction Contractors*] board may
34 suspend the license of the original contractor for any period of time that the board considers ap-
35 propriate or impose a civil penalty of not more than \$5,000 upon the original contractor as provided
36 in ORS 701.992.

37 [(7)] **(8)** As used in this section:

38 (a) "Residential construction or improvement" means the original construction of residential
39 property and constructing, repairing, remodeling or altering residential property and includes, but
40 is not limited to, the construction, repair, replacement or improvement of driveways, swimming
41 pools, terraces, patios, fences, porches, garages, basements and other structures or land adjacent to
42 a residential dwelling.

43 (b) "Residential construction or improvement contract" means an agreement, oral or written,
44 between an original contractor and an owner for the performance of a home improvement and in-
45 cludes all labor, services and materials furnished and performed thereunder.

1 **SECTION 3.** The amendments to ORS 87.018 and 87.093 by sections 1 and 2 of this 2007
2 Act apply to notices for which delivery by the original contractor is first required on or after
3 the effective date of this 2007 Act.

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