

A-Engrossed
House Bill 2498

Ordered by the House May 7
Including House Amendments dated May 7

Sponsored by Representative ROBLAN; Representatives BERGER, BONAMICI, BOONE, BRUUN, CLEM, ESQUIVEL, GARRARD, GREENLICK, HUNT, JENSON, READ, SCHAUFLEER, SHIELDS, Senators MONNES ANDERSON, MORSE, NELSON, VERGER (at the request of Oregon Association of Realtors)

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.

[Transfers unexercised right to claim against contractor for negligent or improper work on existing residential structure from seller of structure to purchaser of structure.]

[Extends construction contractor licensing exemption to owner of existing residential structure hiring licensed contractors in course of business of reselling structure.]

Extends exemption from Construction Contractors Board licensing to owner who contracts with one or more licensed contractors to perform work on not more than four residential structures of owner within same calendar year. Specifies that exemption does not apply to owner contracting for work that requires building permit unless work requiring permit is performed by, or under direction of, general contractor.

A BILL FOR AN ACT

1
2 Relating to construction work on existing structures; amending ORS 701.010 and 701.055.

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

4 **SECTION 1.** ORS 701.010 is amended to read:

5 701.010. The Construction Contractors Board may adopt rules to make licensure optional for
6 persons who offer, bid or undertake to perform work peripheral to construction, as defined by ad-
7 ministrative rule of the board. The following persons are exempt from licensure under this chapter:

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

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

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

13 (4) A person working on one structure or project, under one or more contracts, when the ag-
14 gregate price of all of that person's contracts for labor, materials and all other items is less than
15 \$500 and such work is of a casual, minor or inconsequential nature. This subsection does not apply
16 to a person who advertises or puts out any sign or card or other device that might indicate to the
17 public that the person is a contractor.

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

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 ture constructed, remodeled or repaired does not occupy the structure after its completion.

2 **(6) An owner who contracts for one or more licensed contractors to perform work wholly**
3 **or partially within the same calendar year on not more than four residential structures of**
4 **the owner. This subsection does not apply to an owner contracting for work that requires a**
5 **building permit unless the work that requires a permit is performed by, or under the direc-**
6 **tion of, a general contractor.**

7 [(6)] (7) A person performing work on a property that person owns or performing work as the
8 owner's employee, whether the property is occupied by the owner or not, or a person performing
9 work on that person's residence, whether or not that person owns the residence. This subsection
10 does not apply to a person performing work on a structure owned by that person or the owner's
11 employee, if the work is performed[,] in the pursuit of an independent business[,] with the intent of
12 offering the structure for sale before, upon or after completion.

13 [(7)] (8) A person licensed in one of the following trades or professions when operating within
14 the scope of that license:

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

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

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

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

20 (e) A landscaping business licensed under ORS 671.510 to 671.710 that constructs fences, decks,
21 arbors, patios, landscape edging, driveways, walkways or retaining walls and that meets the appli-
22 cable bonding requirements under ORS 671.690.

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

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

27 [(8)] (9) A person who performs work subject to this chapter as an employee of a contractor.

28 [(9)] (10) A manufacturer of a manufactured home constructed under standards established by
29 the federal government.

30 [(10)] (11) A person involved in the movement of:

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

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

35 [(11)] (12) A commercial lending institution or surety company that arranges for the completion,
36 repair or remodeling of a structure. As used in this subsection, "commercial lending institution"
37 means any bank, mortgage banking company, trust company, savings bank, savings and loan asso-
38 ciation, credit union, national banking association, federal savings and loan association, insurance
39 company or federal credit union maintaining an office in this state.

40 [(12)] (13) A real estate licensee as defined in ORS 696.010 or the employee of that licensee when
41 performing work on a structure that the real estate licensee manages under a contract.

42 [(13)] (14) Units of government other than those specified in ORS 701.005 (10)(b) and (c).

43 [(14)] (15) A qualified intermediary in a property exchange that qualifies under section 1031 of
44 the Internal Revenue Code as amended and in effect on January 1, 2004, if the qualified intermediary
45 is not performing construction activities.

1 [(15)] (16) A business that supplies personnel to a licensed contractor for the performance of
2 work under the direction and supervision of the contractor.

3 **SECTION 2.** ORS 701.055 is amended to read:

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

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

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

24 (4) If the applicant for a building permit is exempt from licensure under ORS 701.010 [(6)] (7),
25 the city, county or state shall supply the applicant with an Information Notice to Property Owners
26 About Construction Responsibilities. The city, county or state may not issue a building permit for
27 a residential structure to the applicant until the applicant signs a statement in substantially the
28 following form:

29 _____
30

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

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

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

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

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

44 _____
45

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

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

8 (b) Workers' compensation insurance on workers.

9 (c) Liability and property damage insurance.

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

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

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

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

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

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

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

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

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

35 (A) Names and addresses.

36 (B) License numbers.

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

39 (12) A contractor may not hire any subcontractor or other contractor to perform work unless
40 the subcontractor or contractor is licensed under this chapter or exempt from licensure under ORS
41 701.010.

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

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

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

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

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