

**A-Engrossed
House Bill 2657**

Ordered by the House May 3
Including House Amendments dated May 3

Sponsored by COMMITTEE ON CONSUMER PROTECTION

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.

[Requires contractor undertaking residential construction or improvement work on residential structure to provide property owner with written contract.] **Requires construction contractor to use standard terminology approved by Construction Contractors Board when providing property owner with written contract.** Establishes period within which property owner may cancel contract.

Requires contractor to provide certain notices to *[residential]* property owner before property owner signs contract. Requires notices to include signature lines for contractor and property owner.

[Prohibits contractor that fails to use written contract for work on residential property from claiming lien for labor or materials.] **Prohibits contractor from claiming lien on improvement of property if written contract is required and contractor did not provide contract.**

Allows Director of Department of Consumer and Business Services to adopt rules establishing requirements for *[residential building permits]* **uniform permit, inspection and certificate of occupancy requirements under state building code.**

Requires contractor that constructs new residential structure to provide property owner written warranty.

Increases contractor surety bond amounts.

A BILL FOR AN ACT

1
2 Relating to construction; creating new provisions; amending ORS 87.018, 87.030, 87.093, 701.055 and
3 701.085; and repealing ORS 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 87.001 to 87.060.**

6 **SECTION 2. An original contractor may not claim a lien arising from the improvement
7 of real property if a written contract for the work is required by ORS 701.055 and the con-
8 tractor does not have a written contract.**

9 **SECTION 3. Section 4 of this 2007 Act is added to and made a part of ORS chapter 455.**

10 **SECTION 4. The Director of the Department of Consumer and Business Services may
11 adopt rules establishing uniform permit, inspection and certificate of occupancy require-
12 ments under the state building code. The rules may include, but need not be limited to, rules
13 establishing standards for building inspections and inspection procedures and rules estab-
14 lishing uniform forms for certificates of occupancy. In adopting rules under this section, the
15 director may establish a process for a municipality to address conditions that are unique to
16 the municipality's enforcement of the state building code or that are not addressed by the
17 rules establishing uniform permit, inspection and certificate of occupancy requirements.**

18 **SECTION 5. Sections 6 to 9 of this 2007 Act are added to and made a part of ORS chapter
19 701.**

20 **SECTION 6. A contractor that constructs a new residential structure shall offer to the**

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 property owner a written warranty against defects in materials and workmanship for the
2 structure. A property owner may accept or refuse the offer of a warranty by the contractor.

3 **SECTION 7.** (1) A contractor that constructs a new residential structure shall provide a
4 recommended maintenance schedule to the property owner.

5 (2) The Construction Contractors Board shall develop the minimum information that a
6 contractor shall provide to a property owner under subsection (1) of this section. The mini-
7 mum information shall include, but need not be limited to, the following:

8 (a) Definitions and descriptions of moisture intrusion and water damage.

9 (b) An explanation of how moisture intrusion and water damage can occur.

10 (c) Advice on how to recognize the signs of water damage.

11 (d) Appropriate steps to take when water damage is discovered.

12 (3) The board shall make the information developed under this section available without
13 charge to contractors that construct new residential structures.

14 **SECTION 8.** (1) The Construction Contractors Board shall adopt rules that require a
15 contractor to use standard contractual terms in construction contracts for which ORS
16 701.055 requires a written contract. The standard contractual terms shall be clear, use words
17 of common understanding and shall include but need not be limited to:

18 (a) An acknowledgement of a written warranty offer, if an offer is required by section 6
19 of this 2007 Act, and indication of the acceptance or rejection of the warranty offer;

20 (b) A summary of the notices required under ORS 87.093 or under rules adopted under
21 701.055 (13) or section 9 of this 2007 Act on the contractor's bid proposal;

22 (c) Acknowledgement of the receipt of the information required by the board under sec-
23 tion 7 of this 2007 Act;

24 (d) An explanation of the property owner's rights under the contract, including but not
25 limited to, the ability to file a claim with the board and the existence of any mediation or
26 arbitration provision in the contract, set forth in a conspicuous manner as defined by the
27 board by rule; and

28 (e) Notice of the construction defect notice procedure under ORS 701.560 to 701.595, set
29 forth in a conspicuous manner as defined by the board by rule.

30 (2) A property owner who enters into a written contract for the construction, improve-
31 ment or repair of a residential structure may cancel the contract by delivery of a written
32 notice of cancellation anytime prior to midnight at the end of the next business day. The
33 notice of cancellation may be delivered in any written form or by any means that can readily
34 be converted to written form, including but not limited to, facsimile, electronic mail and
35 regular mail, that sufficiently states the intention of the property owner to cancel the con-
36 tract.

37 (3) Subsection (2) of this section does not allow a property owner to cancel a contract:

38 (a) If both parties agree that work is to begin before the cancellation period has expired;
39 or

40 (b) After a contractor substantially begins the residential construction, improvement or
41 repair.

42 **SECTION 9.** (1) The Construction Contractors Board shall adopt rules to require that a
43 contractor deliver to a residential property owner a notice of the procedure contained in ORS
44 701.560 to 701.595 and the consumer notification form described in under ORS 701.055 (13).
45 The rules shall specify, but need not be limited to, the following:

1 (a) **The form and format of the consumer notification form. The form and format shall**
2 **include signature lines for the contractor and the owner of the property.**

3 (b) **The content to be included in the notice.**

4 (c) **The time period within which the contractor must provide the required consumer**
5 **notification form to the property owner.**

6 (d) **Acceptable methods of providing the required consumer notification form to the**
7 **property owner.**

8 (2) **In addition to any notice or provision of information required under this chapter, the**
9 **board may adopt rules that require a contractor to provide a residential property owner with**
10 **information the board determines to be necessary. The board may specify the form, format,**
11 **content, recipients, manner of delivery, manner of proof or any other aspect of the infor-**
12 **mation.**

13 **SECTION 10.** ORS 87.018 is amended to read:

14 87.018. All notices required under ORS 87.001 to 87.060 and 87.075 to 87.093 shall be in writing
15 and delivered in person or delivered by registered or certified mail. *[except for the "Information*
16 *Notice to Owner" described in ORS 87.093 which may also be proved by a United States Postal Service*
17 *certificate of mailing.]*

18 **SECTION 11.** ORS 87.030 is amended to read:

19 87.030. (1) Every improvement except an improvement made by a person other than the land-
20 owner in drilling or boring for oil or gas, constructed upon lands with the knowledge of the owner
21 shall be deemed constructed at the instance of the owner, and the interest owned shall be subject
22 to any lien perfected pursuant to the provisions of ORS 87.001 to 87.060 and 87.075 to 87.093, unless
23 the owner shall, within three days after the owner obtains knowledge of the construction, give no-
24 tice that the owner will not be responsible for the same by posting a notice in writing to that effect
25 in some conspicuous place upon the land or the improvement situated thereon.

26 (2) **Subsection (1) of this section does not apply to a lien prohibited under section 2 of this**
27 **2007 Act.**

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

29 87.093. (1) The Construction Contractors Board shall adopt by rule a form entitled "Information
30 Notice to Owner" which shall describe, in nontechnical language and in a clear and coherent man-
31 ner using words in their common and everyday meanings, the pertinent provisions of the Con-
32 struction Lien Law of this state and the rights and responsibilities of an owner of property and an
33 original contractor under that law. **The "Information Notice to Owner" shall include signature**
34 **lines for the contractor and the owner of the property.** The rights and responsibilities described
35 in the form shall include, but not be limited to:

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

37 (b) The right to file a claim against a licensed contractor with the Construction Contractors
38 Board and, when appropriate, to be reimbursed from the contractor's bond filed under ORS chapter
39 701; and

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

44 (2)(a) Each original contractor shall provide a copy of the "Information Notice to Owner"
45 adopted by the Construction Contractors Board under this section to:

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

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

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

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

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

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

22 (6) If an original contractor does not provide an owner or agent with an "Information Notice
23 to Owner" as required under subsection (2) of this section, the Construction Contractors Board may
24 suspend the license of the original contractor for any period of time that the board considers ap-
25 propriate or impose a civil penalty of not more than \$5,000 upon the original contractor as provided
26 in ORS 701.992.

27 (7) As used in this section:

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

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

36 **SECTION 13.** ORS 701.055 is amended to read:

37 701.055. (1) A person may not undertake, offer to undertake or submit a bid to do work as a
38 contractor unless that person has a current, valid license issued by the Construction Contractors
39 Board. A partnership, corporation or joint venture may not undertake, offer to undertake or submit
40 a bid to do work as a contractor unless that partnership, corporation or joint venture is licensed
41 under this chapter. A partnership or joint venture is licensed for the purpose of offering to under-
42 take work as a contractor on a structure if any of the partners or joint venturers whose name ap-
43 pears in the business name of the partnership or joint venture is licensed under this chapter.

44 (2) A licensed partnership or corporation shall notify the board immediately upon any change
45 in licensed partners or corporate officers. If a partnership no longer has a licensed partner, the

1 partnership may not conduct activities that require a license under this chapter.

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

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

17 _____
18
19 (a) I have read and understand the Information Notice to Property Owners About Construction
20 Responsibilities; and

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

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

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

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

32 _____
33
34 (5) The board shall adopt by rule a form entitled "Information Notice to Property Owners About
35 Construction Responsibilities" that shall describe, in nontechnical language and in a clear and co-
36 herent manner using words in their common and everyday meaning, the responsibilities property
37 owners are undertaking by acting as their own general contractor and the problems that could de-
38 velop. The responsibilities described in the form shall include, but not be limited to:

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

41 (b) Workers' compensation insurance on workers.

42 (c) Liability and property damage insurance.

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

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

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

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

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

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

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

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

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

23 (A) Names and addresses.

24 (B) License numbers.

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

27 (12) A contractor may not hire any subcontractor or other contractor to perform work unless
28 the subcontractor or contractor is licensed under this chapter or exempt from licensure under ORS
29 701.010.

30 (13) **The board shall adopt rules requiring the use of** a consumer notification form designed
31 to specifically inform a property owner what the property owner should do to protect themselves in
32 a residential repair, remodel or construction project. *[shall be prepared by the board and provided*
33 *at no cost to all licensed contractors. The contractor shall deliver the form to the property owner when*
34 *the contractor submits a bid or proposal for work on a residential structure. The form shall include*
35 *an explanation of the meaning of licensure, including a statement that licensure is not an endorsement*
36 *of a contractor's work, and an explanation of the bond and insurance levels required of contractors for*
37 *the benefit of property owners. The form must not be larger than one side of a sheet of paper that is*
38 *8-1/2 inches by 11 inches. The contractor may reproduce the form on the contractor's bid proposal.]*
39 **The required consumer notification form must include, at a minimum, information regarding**
40 **the warranty offer requirement of section 6 of this 2007 Act and the information requirement**
41 **described in section 7 of this 2007 Act.**

42 (14) A contractor may not perform work subject to this section for an owner of a residential
43 structure without a written contract if the aggregate contract price exceeds \$2,000. If the price of
44 a contract was initially less than \$2,000, but during the course of performance the contract exceeds
45 that amount, the contractor shall mail or otherwise deliver a written contract to the owner not later

1 than five days after the contractor knows or should reasonably know that the contract price will
2 exceed \$2,000. Failure to have a written contract will not void the contract.

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

5 **SECTION 14.** ORS 701.085 is amended to read:

6 701.085. (1) An applicant for issuance or renewal of a contractor license shall file with the
7 Construction Contractors Board a surety bond with one or more corporate sureties authorized to
8 do business in this state in the amount set forth in subsections (2) to (5) of this section. The surety
9 bond must provide that the applicant, with regard to work subject to this chapter, will pay claims
10 ordered paid by the board under ORS 701.145 or 701.146. Bonds filed under this subsection shall
11 remain in effect for at least one year or until depleted by claims paid under ORS 701.150, unless the
12 surety sooner cancels the bond. At the discretion of the surety the bond may be continued for an
13 additional period by continuation certificate. Except as provided in subsection (6) of this section, the
14 aggregate liability of the surety under the bond for claims against the bond may not exceed the
15 penal sum of the bond no matter how many years the bond is in force. Except as provided in sub-
16 section (6) of this section, an extension by continuation certificate, reinstatement, reissue or renewal
17 of the bond may not increase the liability of the surety.

18 (2) A general contractor or licensed developer shall obtain a surety bond in the amount of
19 ~~[\$15,000]~~ **\$20,000**.

20 (3) A specialty contractor shall obtain a surety bond in the amount of ~~[\$10,000]~~ **\$15,000**.

21 (4) An inspector shall obtain a surety bond in the amount of ~~[\$10,000]~~ **\$15,000**.

22 (5) The board may reduce the amount of the surety bond required by this section to ~~[\$5,000]~~
23 **\$10,000** for a contractor upon a showing that the contractor does not perform work as a contractor
24 exceeding \$40,000 in gross annual volume and does not enter into contracts that exceed \$5,000. The
25 board shall designate the contractor as a limited contractor.

26 (6) The board, by rule, may require a licensee to obtain a new surety bond if, pursuant to a
27 board order for payment of a claim described in ORS 701.140, the surety pays a claim out of the
28 bond of the licensee. The new surety bond must be in the amount set forth in subsections (2) to (5)
29 of this section unless a higher amount is required by a board condition or rule described in sub-
30 section (7) or (8) of this section. The board may allow a licensee to obtain, instead of a new bond,
31 a certification that the surety remains liable for the full penal sum of the bond, notwithstanding
32 payment by the surety on the claim.

33 (7) If the amount the licensee must pay against the bond under this section exceeds the amount
34 of the bond, the board shall suspend the contractor's license until the amount owed is paid. The
35 board, as a condition of ending the suspension, may require a contractor requesting reinstatement
36 of a license to file a bond of an amount up to five times as much as the amount required ordinarily
37 of a licensee under this section.

38 (8) The board by rule may establish conditions for applicants or persons licensed under this
39 chapter under which the applicant or licensee must file a bond of an amount up to five times as
40 much as the amount required ordinarily of an applicant or licensee under this section. The board
41 may reduce the amount of bond it would otherwise require if the contractor demonstrates satisfac-
42 tory completion of approved elective classes on dispute resolution and prevention, basic accounting
43 and record keeping or such other classes as the board may prescribe.

44 (9) The bond required under this section is for the exclusive purpose of payment of final orders
45 and arbitration awards of the board in accordance with this chapter.

1 (10) Upon determination under ORS 701.145 or 701.146 of a claim against a contractor who holds
2 a bond required under this section, the board shall notify the surety on the bond of the final order
3 in a manner determined by the board by rule. The notification shall include a list of all claims upon
4 which a final order has been issued.

5 (11) A suit or action may not be commenced against a surety on a bond required under this
6 section until 30 days after the date that the surety is notified by the board under ORS 701.150 that
7 payment is due on the claim.

8 (12) In any action against a surety on a bond under this section that is based on the failure of
9 the surety to pay a claim or on the denial of a claim by the surety, the court may award:

10 (a) Costs;

11 (b) Reasonable attorney fees to the prevailing party as part of the costs; and

12 (c) Twice the amount of any damages that the board ordered the surety to pay on the claim, if
13 the surety arbitrarily and capriciously refused to pay upon order of the board.

14 **SECTION 15. ORS 701.590 is repealed.**

15 **SECTION 16. (1) Sections 6 and 7 of this 2007 Act apply to new residential structure sales**
16 **that close on or after July 1, 2008.**

17 **(2) The amendments to ORS 87.018 and 87.093 by sections 10 and 12 of this 2007 Act apply**
18 **to notices for which delivery by the original contractor is first required on or after the ef-**
19 **fective date of this 2007 Act.**

20 **(3) The amendments to ORS 87.018, 87.093 and 701.055 by sections 10, 12 and 13 of this 2007**
21 **Act and the repeal of ORS 701.590 by section 15 of this 2007 Act do not relieve any person**
22 **from a civil penalty or other sanction for a violation of ORS 87.018, 87.093, 701.055 or 701.590**
23 **as set forth in the 2005 Edition of Oregon Revised Statutes committed prior to the effective**
24 **date of this 2007 Act.**