

House Bill 2657

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 **as introduced**.

Requires contractor undertaking residential construction or improvement work on residential structure to provide 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.

Allows Director of Department of Consumer and Business Services to adopt rules establishing requirements for residential building permits.

A BILL FOR AN ACT

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

6 **SECTION 2. (1) As used in this section, "residential construction or improvement" has**
7 **the meaning given that term in ORS 87.093.**

8 **(2) A construction contractor who contracts directly with a property owner for residen-**
9 **tial construction or improvement on a residential property may not claim a lien under ORS**
10 **87.010 for labor or materials supplied for the construction or improvement unless the con-**
11 **tractor supplied the property owner with a written contract for the construction or im-**
12 **provement.**

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

14 **SECTION 4. The Director of the Department of Consumer and Business Services may**
15 **adopt rules establishing standards for residential building permits. The rules may include,**
16 **but need not be limited to, rules regarding the form and content of the building permits and**
17 **building permit applications, procedures for the issuance of building permits by local juris-**
18 **dictions and the scope of required inspections conducted under a building permit.**

19 **SECTION 5. Section 6 of this 2007 Act is added to and made a part of ORS chapter 701.**

20 **SECTION 6. (1) As used in this section, "residential construction or improvement" has**
21 **the meaning given that term in ORS 87.093.**

22 **(2) A construction contractor undertaking work for residential construction or improve-**
23 **ment shall provide the property owner with the "Information Notice to Owner" required by**
24 **ORS 87.093, the consumer notification form required by ORS 701.055 (13) and the notice of**
25 **procedure required by ORS 701.590 before the contract is signed by the property owner.**

26 **(3) A property owner who signs a contract for residential construction or improvement**
27 **may cancel the contract at any time before midnight at the end of the next business day.**

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 **The property owner may cancel the contract by written notice of cancellation delivered to**
 2 **the contractor’s address shown on the contract. The notice of cancellation may be in any**
 3 **written form and is sufficient if it indicates the intention of the property owner to not be**
 4 **bound by the contract.**

5 **(4) Subsection (3) of this section does not allow a property owner to cancel a contract**
 6 **after the contractor substantially begins the residential construction or improvement.**

7 **SECTION 7.** ORS 87.018 is amended to read:

8 87.018. All notices required under ORS 87.001 to 87.060 and 87.075 to 87.093 shall be in writing
 9 and delivered in person or [*delivered*] by registered or certified mail, except [*for the*] **that an** “In-
 10 formation Notice to Owner” described in ORS 87.093 [*which may also be proved by a United States*
 11 *Postal Service certificate of mailing*] **must be delivered as required by section 6 of this 2007**
 12 **Act.**

13 **SECTION 8.** ORS 87.030 is amended to read:

14 87.030. (1) Every improvement, except an improvement made by a person other than the land-
 15 owner in drilling or boring for oil or gas, constructed upon lands with the knowledge of the owner
 16 shall be deemed constructed at the instance of the owner, and the interest owned shall be subject
 17 to any lien perfected pursuant to the provisions of ORS 87.001 to 87.060 and 87.075 to 87.093, unless
 18 the owner shall, within three days after the owner obtains knowledge of the construction, give no-
 19 tice that the owner will not be responsible for the same by posting a notice in writing to that effect
 20 in some conspicuous place upon the land or the improvement situated thereon.

21 **(2) Subsection (1) of this section does not apply to a lien prohibited under section 2 of this**
 22 **2007 Act.**

23 **SECTION 9.** ORS 87.093 is amended to read:

24 87.093. (1) The Construction Contractors Board shall adopt by rule a form entitled “Information
 25 Notice to Owner” which shall describe, in nontechnical language and in a clear and coherent man-
 26 ner using words in their common and everyday meanings, the pertinent provisions of the Con-
 27 struction Lien Law of this state and the rights and responsibilities of an owner of property and an
 28 original contractor under that law. **The “Information Notice to Owner” shall include signature**
 29 **lines for the contractor and the owner.** The rights and responsibilities described in the form shall
 30 include, but not be limited to:

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

32 (b) The right to file a claim against a licensed contractor with the Construction Contractors
 33 Board and, when appropriate, to be reimbursed from the contractor’s bond filed under ORS chapter
 34 701; and

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

39 (2)[(a)] Each original contractor shall provide a copy of the “Information Notice to Owner”
 40 adopted by the Construction Contractors Board under this section to:

41 [(A)] (a) The first purchaser of residential property constructed by the contractor and sold be-
 42 fore or within the 75-day period immediately following the completion of construction; and

43 [(B)] (b) The owner or an agent of the owner, other than an original contractor, at the time of
 44 signing a written residential construction or improvement contract with the owner.

45 [(b) *When the residential construction or improvement contract is an oral contract, the original*

1 contractor shall mail or otherwise deliver the "Information Notice to Owner" not later than five days
2 after the contract is made.]

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

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

10 [(5)] (3) Notwithstanding ORS 87.010, if an original contractor does not provide an owner or
11 agent with an "Information Notice to Owner" as required under [subsections (2) and (3)] **subsection**
12 **(2)** of this section, the original contractor may not claim any lien created under ORS 87.010 upon
13 any improvement, lot or parcel of land of the owner for labor, services or materials supplied under
14 the residential construction or improvement contract for which the "Information Notice to Owner"
15 was not provided.

16 [(6)] (4) If an original contractor does not provide an owner or agent with an "Information No-
17 tice to Owner" as required under subsection (2) of this section, the Construction Contractors Board
18 may suspend the license of the original contractor for any period of time that the board considers
19 appropriate or impose a civil penalty of not more than \$5,000 upon the original contractor as pro-
20 vided in ORS 701.992.

21 [(7)] (5) As used in this section:

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

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

30 **SECTION 10.** ORS 701.055 is amended to read:

31 701.055. (1) A person may not undertake, offer to undertake or submit a bid to do work as a
32 contractor unless that person has a current, valid license issued by the Construction Contractors
33 Board. A partnership, corporation or joint venture may not undertake, offer to undertake or submit
34 a bid to do work as a contractor unless that partnership, corporation or joint venture is licensed
35 under this chapter. A partnership or joint venture is licensed for the purpose of offering to under-
36 take work as a contractor on a structure if any of the partners or joint venturers whose name ap-
37 pears in the business name of the partnership or joint venture is licensed under this chapter.

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

41 (3) A city, county or the State of Oregon may not issue a building permit to any person required
42 to be licensed under this chapter that does not have a current, valid license. A county, city or state
43 agency that requires the issuance of a permit as a condition precedent to construction, alteration,
44 improvement, demolition, movement or repair of any building or structure or the appurtenances to
45 the structure shall, as a condition for issuing the permit, require that the applicant for a permit file

1 a written statement, subscribed by the applicant. The statement must affirm that the applicant is
2 licensed under this chapter, give the license number and state that the license is in full force and
3 effect, or, if the applicant is exempt from licensing under this chapter, list the basis for the ex-
4 emption. The city, county or state agency shall list the contractor’s license number on the permit
5 obtained by that contractor.

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

11 _____
12
13 (a) I have read and understand the Information Notice to Property Owners About Construction
14 Responsibilities; and

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

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

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

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

26 _____
27
28 (5) The board shall adopt by rule a form entitled “Information Notice to Property Owners About
29 Construction Responsibilities” that shall describe, in nontechnical language and in a clear and co-
30 herent manner using words in their common and everyday meaning, the responsibilities property
31 owners are undertaking by acting as their own general contractor and the problems that could de-
32 velop. The responsibilities described in the form shall include, but not be limited to:

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

35 (b) Workers’ compensation insurance on workers.

36 (c) Liability and property damage insurance.

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

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

44 (8) It is prima facie evidence of doing business as a contractor if a person for that person’s own
45 use performs, employs others to perform, or for compensation and with the intent to sell the struc-

1 ture, arranges to have performed any work described in ORS 701.005 (3) if within any 36-month pe-
 2 riod that person offers for sale two or more newly built structures on which that work was
 3 performed.

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

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

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

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

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

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

17 (A) Names and addresses.

18 (B) License numbers.

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

21 (12) A contractor may not hire any subcontractor or other contractor to perform work unless
 22 the subcontractor or contractor is licensed under this chapter or exempt from licensure under ORS
 23 701.010.

24 (13) A consumer notification form designed to specifically inform a property owner what the
 25 property owner should do to protect themselves in a residential repair, remodel or construction
 26 project shall be prepared by the board and provided at no cost to all licensed contractors. The
 27 contractor shall deliver the form to the property owner when the contractor submits a bid or pro-
 28 posal for work on a residential structure. The form shall include an explanation of the meaning of
 29 licensure, including a statement that licensure is not an endorsement of a contractor's work, and
 30 an explanation of the bond and insurance levels required of contractors for the benefit of property
 31 owners. The form must not be larger than one side of a sheet of paper that is 8-1/2 inches by 11
 32 inches. **The form must include signature lines for the contractor and the property owner.** The
 33 contractor may reproduce the form on the contractor's bid proposal.

34 (14) A contractor may not perform work subject to this section for an owner of a residential
 35 structure without a written contract. *[if the aggregate contract price exceeds \$2,000. If the price of a
 36 contract was initially less than \$2,000, but during the course of performance the contract exceeds that
 37 amount, the contractor shall mail or otherwise deliver a written contract to the owner not later than
 38 five days after the contractor knows or should reasonably know that the contract price will exceed
 39 \$2,000.]* Failure to have a written contract will not void the contract.

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

42 **SECTION 11.** ORS 701.143 is amended to read:

43 701.143. The Construction Contractors Board may not process a claim against a licensed con-
 44 tractor, including a claim based upon a court judgment or arbitration award, unless the claim is filed
 45 in a timely manner as follows:

1 (1) Except as otherwise provided in this section, if the owner of a new structure files the claim,
2 the board must receive the claim no later than the earlier of:

- 3 (a) One year after the date the structure was first occupied; or
- 4 (b) Two years after substantial completion of the structure by the contractor filed against.

5 (2) Except as otherwise provided in this section, if the owner of an existing structure files the
6 claim, the board must receive the claim no later than one year after the date the work was sub-
7 stantially completed by the contractor filed against.

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

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

15 **(5) Regardless of whether the claim involves a new or existing structure, except as pro-**
16 **vided in subsection (3) of this section, if the owner of a residential structure files the claim**
17 **and the licensed contractor failed to comply with section 6 of this 2007 Act, the board must**
18 **receive the claim no later than two years after the structure is first occupied as a residence**
19 **following completion of the work.**

20 [(5)] (6) Except as otherwise provided in this section, if a licensed contractor files the claim
21 against the licensed contractor performing work as a subcontractor on a new structure, the board
22 must receive the claim no later than the earlier of:

- 23 (a) Fourteen months after the date the structure was first occupied; or
- 24 (b) Two years after substantial completion of the structure.

25 [(6)] (7) Except as otherwise provided in this section, if a licensed contractor files the claim
26 against the licensed contractor performing work as a subcontractor on an existing structure, the
27 board must receive the claim no later than 14 months after the date the work on the structure was
28 substantially completed.

29 [(7)] (8) If a licensed contractor files the claim against the licensed contractor performing work
30 as a subcontractor on a structure and the subcontractor failed to substantially complete the work,
31 the board must receive the claim no later than 14 months after the date the subcontractor ceased
32 to work on the structure.

33 [(8)] (9) If the licensed contractor’s employee, subcontractor or material or equipment supplier
34 files the claim, the board must receive the claim no later than one year after the date the contractor
35 incurred the indebtedness.

36 **SECTION 12.** ORS 701.590 is amended to read:

37 701.590. (1) A contractor shall deliver a notice of the procedure contained in ORS 701.565 to
38 701.580 to an owner along with the consumer notification form required to be delivered to an owner
39 under ORS 701.055 (13). The notice must be conspicuous and may be included as part of the under-
40 lying contract.

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

43 _____
44

45 OREGON LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE

1 YOU MAY COMMENCE ARBITRATION OR A COURT ACTION AGAINST ANY CONTRACTOR,
2 SUBCONTRACTOR OR SUPPLIER FOR CONSTRUCTION DEFECTS. BEFORE YOU COM-
3 MENCE ARBITRATION OR A COURT ACTION YOU MUST DELIVER A WRITTEN NOTICE OF
4 ANY CONDITIONS YOU ALLEGE ARE DEFECTIVE TO THE CONTRACTOR, SUBCONTRAC-
5 TOR OR SUPPLIER YOU BELIEVE IS RESPONSIBLE FOR THE ALLEGED DEFECT AND PRO-
6 VIDE THE CONTRACTOR, SUBCONTRACTOR OR SUPPLIER THE OPPORTUNITY TO MAKE
7 AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT
8 ANY OFFER MADE BY THE CONTRACTOR, SUBCONTRACTOR OR SUPPLIER. THERE ARE
9 STRICT DEADLINES AND PROCEDURES UNDER STATE LAW. FAILURE TO MEET THOSE
10 DEADLINES OR FOLLOW THOSE PROCEDURES WILL AFFECT YOUR ABILITY TO COM-
11 MENCE ARBITRATION OR A COURT ACTION.

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15
16

Contractor

Customer
