

HOUSE AMENDMENTS TO HOUSE BILL 2659

By COMMITTEE ON CONSUMER PROTECTION

May 3

1 On page 1 of the printed bill, delete line 3 and insert “701.005, 701.075, 701.077, 701.102 and
2 701.135.”.

3 Delete lines 5 through 26 and delete pages 2 through 7 and insert:

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

5 “**SECTION 2.** The Construction Contractors Board may investigate an applicant, includ-
6 ing any individual described in ORS 701.075 (1)(h) and (i) appearing on the application, to de-
7 termine the fitness of the applicant for licensure if the board has reason to believe that any
8 of the following relate to construction activities of the applicant or individual and have oc-
9 curred within the five years preceding the application date:

10 “(1) The issuance of a judgment by a circuit court or an equivalent court in another state
11 if on the application date satisfaction of the judgment is not current under the terms of the
12 judgment;

13 “(2) The issuance of an administrative agency final order in any state for the payment
14 of money to a claimant if on the application date payment of the amount ordered is not
15 current under the terms of the order; and

16 “(3) A conviction for any felony or misdemeanor involving dishonesty or fraud as identi-
17 fied in board rules or any crime listed in ORS 701.135 (1)(h), in any state.

18 “**SECTION 3.** ORS 701.005 is amended to read:

19 “701.005. As used in this chapter:

20 “(1) ‘Board’ means the Construction Contractors Board.

21 “(2) ‘Construction debt’ means an amount owed under:

22 “(a) A final order or arbitration award issued by the board; or

23 “(b) A judgment or civil penalty arising from construction **business** activities within the United
24 States.

25 “(3) ‘Contractor’ means a person who, for compensation or with the intent to sell, arranges or
26 undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract from,
27 improve, inspect, move, wreck or demolish, for another, any building, highway, road, railroad, exca-
28 vation or other structure, project, development or improvement attached to real estate or to do any
29 part thereof. ‘Contractor’ includes general contractors, residential-only contractors and specialty
30 contractors as defined in this section.

31 “(4) ‘General contractor’ means a contractor whose business operations require the use of more
32 than two unrelated building trades or crafts that the contractor supervises or performs in whole or
33 part, whenever the sum of all contracts on any single property, including materials and labor, ex-
34 ceeds an amount established by rule by the board. ‘General contractor’ does not include specialty
35 contractors or limited contractors, as described in ORS 701.085.

1 “(5) ‘Home inspector’ means a person who, for a fee, inspects and provides written reports on
2 the overall physical condition of a residential structure and the appurtenances thereto. ‘Home in-
3 spector’ does not include persons certified under ORS chapter 455 to inspect new, repaired or al-
4 tered structures for compliance with the state building code.

5 “(6) ‘Inspector’ means a contractor registered with the board who inspects or otherwise provides
6 services to a property owner or other contractor but does not substantively add to or subtract from
7 a structure. ‘Inspector’ includes but is not limited to a home inspector certified under ORS 701.350,
8 a lead-based paint inspector licensed under ORS 701.515 and a cross connection inspector and
9 backflow assembly tester certified under ORS 448.279. ‘Inspector’ does not include city or county
10 inspectors acting under ORS 701.225 or an inspector as defined in ORS 455.715.

11 “(7) ‘Large commercial structure’ means a structure that is not a residential structure or small
12 commercial structure.

13 “(8) ‘Licensed developer’ means a contractor who owns property or an interest in property and
14 arranges for construction work, if the contractor:

15 “(a) Engages in the business of arranging for construction work and performing other activities
16 associated with the improvement of real property, with the intent to sell the property;

17 “(b) Acts in association with one or more licensed general contractors and the general con-
18 tractor or combination of general contractors have sole responsibility for overseeing all phases of
19 construction activity on the property; and

20 “(c) Does not perform any construction work on the property.

21 “(9) ‘Officer’ means any of the following persons:

22 “(a) A president, vice president, secretary, treasurer or director of a corporation.

23 “(b) A general partner in a limited partnership.

24 “(c) A manager in a manager-managed limited liability company.

25 “(d) A member of a member-managed limited liability company.

26 “(e) A trustee.

27 “(f) A person defined as an officer under board rules. The definition of officer adopted by board
28 rule may include persons not listed in this subsection who may exercise substantial control over a
29 business.

30 “(10) ‘Residential-only contractor’ means a general contractor or specialty contractor who per-
31 forms work exclusively in connection with residential structures and small commercial structures,
32 and the appurtenances thereto. ‘Residential-only contractor’ includes, but is not limited to:

33 “(a) A person who purchases or owns property and constructs or for compensation arranges for
34 the construction of one or more residential structures or small commercial structures with the in-
35 tent of selling the structures;

36 “(b) A school district, as defined in ORS 332.002, that permits students to construct a residential
37 structure or small commercial structure as an educational experience to learn building techniques
38 and sells the completed structure;

39 “(c) A community college district, as defined in ORS 341.005, that permits students to construct
40 a residential structure or small commercial structure as an educational experience to learn building
41 techniques and sells the completed structure; or

42 “(d) Any person except a landscape contractor, nurseryman, gardener or person engaged in the
43 commercial harvest of forest products who is engaged as an independent contractor to remove trees,
44 prune trees, remove tree limbs or stumps or to engage in tree or limb guying.

45 “(11) ‘Residential structure’ means a residence, including a site-built home, modular home con-

1 structured off-site, floating home as defined in ORS 830.700, condominium unit, manufactured dwelling
2 or duplex, or a multiunit residential building consisting of four units or less that is not part of a
3 multistructure complex of buildings.

4 “(12) ‘Small commercial structure’ means a nonresidential structure that has a ground area of
5 4,000 square feet or less, including exterior walls, and a height of not more than 20 feet from the
6 top surface of the lowest flooring to the highest interior overhead finish of the structure.

7 “(13) ‘Specialty contractor’ means a contractor who performs work on a structure, project, de-
8 velopment or improvement and whose operations as such do not fall within the definition of ‘general
9 contractor.’ ‘Specialty contractor’ includes a person who performs work regulated under ORS chap-
10 ter 446.

11 **“SECTION 4.** ORS 701.075 is amended to read:

12 **“701.075.** (1) An applicant for a construction contractor license must submit the application on
13 a form prescribed by the Construction Contractors Board. The application shall include, but not be
14 limited to, the following information regarding the applicant:

15 “(a) Classification of the license being sought.

16 “(b) A list of construction debts involving the applicant, or an owner or officer of the applicant,
17 if the order, award, penalty or judgment that establishes the debt was issued within the preceding
18 five years.

19 “(c) Social Security number.

20 “(d) Workers’ compensation insurance account number, if the applicant is required to have
21 workers’ compensation insurance.

22 “(e) Unemployment insurance account number, if the applicant is required to have unemploy-
23 ment insurance.

24 “(f) State withholding tax account number, if the applicant is required to withhold state income
25 tax.

26 “(g) Federal employer identification number, if the applicant is required to have a federal em-
27 ployer identification number.

28 “(h) The name and address of:

29 “(A) Each partner, if the applicant is a partnership, limited liability partnership or foreign lim-
30 ited liability partnership.

31 “(B) The general partner, if the applicant is a limited partnership.

32 “(C) Each joint venturer, if the applicant is a joint venture.

33 “(D) The owner, if the applicant is a sole proprietorship.

34 “(E) The officers, if the applicant is a corporation.

35 “(F) The manager and each member, if the applicant is a manager-managed limited liability
36 company.

37 “(G) Each member, if the applicant is a member-managed limited liability company.

38 **“(H) The responsible managing individual of the business designated under ORS 701.078.**

39 “(i) The name and address of the following if the applicant is a partnership, limited liability
40 partnership, foreign limited liability partnership, joint venture, manager-managed limited liability
41 company or member-managed limited liability company:

42 “(A) Each partner in a partnership, limited liability partnership or foreign limited liability
43 partnership that is a partner, joint venturer or member of the applicant.

44 “(B) Each general partner in a limited partnership that is a partner, joint venturer or member
45 of the applicant.

1 “(C) Each joint venturer in a joint venture that is a partner, joint venturer or member of the
2 applicant.

3 “(D) The manager and each member of a manager-managed limited liability company that is a
4 partner, joint venturer or member of the applicant.

5 “(E) Each member of a member-managed limited liability company that is a partner, joint
6 venturer or member of the applicant.

7 “(F) Each officer of a corporation that is a partner, joint venturer or member of the applicant.

8 “(G) The general partner in a limited partnership that is a partner, joint venturer or member
9 of the applicant.

10 “(H) Each individual who has a controlling ownership interest in, or management authority over,
11 the applicant and who meets criteria adopted by the board by rule.

12 “(I) **The responsible managing individual of the business designated under ORS 701.078.**

13 “(j) **For each individual described in paragraphs (h) and (i) of this subsection, disclosure**
14 **of any of the following if related to construction and occurring within the five years pre-**
15 **ceding the application date:**

16 “(A) **The issuance of a final judgment by a circuit court or an equivalent court in another**
17 **state if on the application date satisfaction of the judgment is not current under the terms**
18 **of the judgment.**

19 “(B) **The issuance of an administrative agency final order in any state for the payment**
20 **of money to a claimant if on the application date payment of the amount ordered is not**
21 **current under the terms of the order.**

22 “(C) **A conviction for any felony or misdemeanor involving dishonesty or fraud as iden-**
23 **tified in board rules or any crime listed in ORS 701.135 (1)(h), in any state.**

24 “[j] (k) The basis on which the applicant meets the standards for independent contractor status
25 under ORS 670.600.

26 “(2) The application described in subsection (1) of this section must be accompanied by proof
27 satisfactory to the board that the applicant:

28 “(a) Is in compliance with ORS 701.078.

29 “(b) Has the legal capacity to enter into contracts.

30 “(3) Subsection (2)(a) of this section does not apply to a licensed developer.

31 “(4) An applicant shall conform to the information provided by the applicant on the application
32 and to the terms of the application.

33 “**SECTION 5.** ORS 701.077 is amended to read:

34 “701.077. (1) As used in ORS 701.078 [and 701.102], ‘owner’ means:

35 “(a) A sole proprietor of, partner in or holder of a controlling interest in a business; or

36 “(b) A person defined as an owner by Construction Contractors Board rule.

37 “(2) The board shall adopt rules defining an owner for purposes of subsection (1) of this section.
38 The rules may not define an owner in a manner that includes an investor who has no right to
39 manage a business, including but not limited to:

40 “(a) A person who is solely a minority shareholder in a corporation;

41 “(b) A member of a manager-managed limited liability company; or

42 “(c) A limited partner in a limited partnership who does not participate in the control of the
43 business of the limited partnership.

44 “**SECTION 6.** ORS 701.102 is amended to read:

45 “701.102. (1) As used in this section[,]:

1 “(a) ‘Construction contractor license’ means a license issued within the United States to engage
2 in the business of construction contracting.

3 “(b) ‘Owner’ has the meaning given that term in ORS 701.077.

4 “(c) ‘Responsible managing individual’ has the meaning given that term in ORS 701.078.

5 “(2) The Construction Contractors Board may suspend or refuse to issue a license required un-
6 der this chapter to a business if:

7 “(a) The business owes a construction debt or has had a construction contractor license revoked
8 or suspended;

9 “(b) An owner, [or] officer **or responsible managing individual** of the business owes a con-
10 struction debt or has had a construction contractor license revoked or suspended; [or]

11 “(c) An owner, [or] officer **or responsible managing individual** of the business was an owner,
12 [or] officer **or responsible managing individual** of another business at the time the other business
13 incurred a construction debt that is owing or at the time of an event that resulted in the revocation
14 or suspension of the other business’s construction contractor license[.]; **or**

15 “(d) **The board determines that an owner, officer or responsible managing individual of**
16 **the business is not fit for licensure, based upon information submitted under ORS 701.075**
17 **or discovered by a board investigation under section 2 of this 2007 Act.**

18 “(3) The board may place a contractor on probation if a total of three or more claims are filed
19 with the board within a 12-month period against the contractor or a former licensed construction
20 contracting business in which the contractor held at least a 10 percent ownership interest, measured
21 as determined by board rule. A contractor may not be placed on probation unless the board deter-
22 mines after investigation that it is likely that the contractor has caused harm to the claimants. The
23 board may require a contractor that is placed on probation to develop a corrective action plan, to
24 attend specific classes and to resolve outstanding claims. The board may require a contractor that
25 is placed on probation to take training and pass a test, both as described in ORS 701.072. The board
26 shall take action to terminate the contractor’s license if the contractor is unwilling or unable to
27 comply with the conditions of probation.

28 “**SECTION 7.** ORS 701.135 is amended to read:

29 “701.135. (1) The Construction Contractors Board may revoke, suspend or refuse to issue or re-
30 issue a license and the board may assess a civil penalty as provided in ORS 701.992 if the board
31 determines after notice and opportunity for hearing:

32 “(a) That the licensee or applicant has violated **a provision of ORS 701.055 (2) to (15) or**
33 **701.078.**

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

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

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

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

41 “(f) That the licensee has worked without a construction permit where a permit is required and
42 the work resulted in a claim being filed with the board. For purposes of this paragraph, ‘con-
43 struction permit’ includes a building permit, electrical permit, mechanical permit or plumbing per-
44 mit.

45 “(g) That the number of licensed contractors working together on the same task on the same job

1 site, where one of the contractors is licensed as exempt under ORS 701.035 (2)(b), exceeded the fol-
2 lowing:

3 “(A) Two sole proprietors;

4 “(B) One partnership;

5 “(C) One corporation; or

6 “(D) One limited liability company.

7 “(h) Consistent with the provisions of ORS 670.280, that the licensee or applicant has been
8 convicted of one of the following crimes:

9 “(A) Murder;

10 “(B) Assault in the first degree;

11 “(C) Kidnapping;

12 “(D) Rape, sodomy or unlawful sexual penetration;

13 “(E) Sexual abuse;

14 “(F) Arson in the first degree;

15 “(G) Robbery in the first degree;

16 “(H) Theft in the first degree; or

17 “(I) Theft by extortion.

18 “(i) That the licensee or applicant has not, within 90 days after the date when payment was
19 received from the public contracting agency, or contractor in the case of a subcontractor, made
20 payment to any person for supplying labor or materials contracted for with a public contract for a
21 public improvement plus the amount of interest due.

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

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

26 “(2) **The board may revoke, suspend or refuse to issue or reissue a license if the board**
27 **determines after notice and opportunity for hearing that an applicant or licensee is unfit for**
28 **licensure based upon information submitted under ORS 701.075 or discovered by a board in-**
29 **vestigation under section 2 of this 2007 Act.**

30 “(3) **The board may assess a civil penalty as provided in ORS 701.992 if the board deter-**
31 **mines after notice and opportunity for hearing that any person has violated ORS 701.055 (1).**

32 “[2)] (4)(a) The administrator of the board, in accordance with administrative rules adopted by
33 the board and after setting forth specific reasons for the findings, may suspend or refuse to renew
34 a license without hearing in any case where the administrator finds a serious danger to the public
35 welfare, including but not limited to:

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

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

38 “(C) Hiring employees while licensed as exempt under ORS 701.035; [or]

39 “(D) Conduct as a construction contractor that is dishonest or fraudulent[.]; or

40 “(E) **Failure to pay a construction debt involving the performance of, or a contract for**
41 **the performance of, construction work for a residential or small commercial structure or**
42 **property within the time established for payment or, if no time is established for payment,**
43 **within 30 days of the order award judgment or civil penalty determining the debt.**

44 “(b) If the licensee or applicant demands a hearing within 90 days after the date of notice to the
45 licensee or applicant of the suspension or refusal to renew, then a hearing must be granted to the

1 licensee or applicant as soon as practicable after the demand, and the administrator shall issue an
2 order pursuant to the hearing as required by ORS chapter 183 confirming, altering or revoking the
3 administrator’s earlier order. Notwithstanding ORS 670.325, a hearing need not be held where the
4 order of suspension or refusal to renew is accompanied by or is pursuant to a citation for violation
5 that is subject to judicial determination in any court of this state, and the order by its terms will
6 terminate in case of final judgment in favor of the licensee or applicant.

7 **“(5)(a) In addition to all other remedies, if the board has reason to believe that a person**
8 **is engaging in or about to engage in a violation of this chapter or a board rule, the board**
9 **may issue an order directing the person to cease or refrain from committing the violation.**

10 **“(b) In addition to all other remedies, if the board has reason to believe that a person**
11 **has engaged in a violation of this chapter or a board rule, the board may issue an order di-**
12 **recting the person to take corrective action.**

13 **“(c) The issuance of a board order under paragraph (a) or (b) of this subsection is subject**
14 **to ORS 183.413 to 183.497.**

15 “[3] (d) In addition to all other remedies, if it appears to the board that a person has engaged
16 in, or is engaging in, any act, practice or transaction that violates the provisions of this chapter,
17 the board may direct the Attorney General or the district attorney of the county in which the act,
18 practice or transaction occurs, to apply to the court for an injunction restraining the person from
19 violating the provisions of this chapter. An injunction may not issue for failure to maintain the list
20 provided for in ORS 701.055 (11) unless the court determines that the failure is intentional.

21 “[4] (6) A certified copy of the record of conviction shall be conclusive evidence of a conviction
22 under subsection (1)(h) of this section.

23 “[5] (7) If the board suspends or revokes the license of an individual contractor or contractor
24 business for a violation of subsection (1)(g) of this section, the board may not restore or reissue the
25 license unless the individual contractor or a responsible managing individual, as defined in ORS
26 701.078, for the contractor business has successfully completed the training and testing described in
27 ORS 701.072.”.

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