

# House Bill 2659

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**.

Allows Construction Contractors Board to investigate financial and criminal history of applicant for licensing. Requires licensee to report certain financial and criminal activity for owners, officers, managers and others.

Expands grounds for pre-hearing action against board licensees.

Creates crime of performing shoddy construction work. Makes offense punishable by maximum of 30 days' imprisonment, \$1,250 fine or both if involving work for which contract is not more than \$20,000 in value. Makes offense punishable by maximum of six months' imprisonment, \$2,500 fine or both if involving work for which contract is worth more than \$20,000 and not more than \$100,000 in value. Makes offense punishable by maximum of one year's imprisonment, \$6,250 fine or both if involving work for which contract is worth more than \$100,000 in value. Allows authorized agent for board to issue criminal citation for offense of performing shoddy construction work.

## A BILL FOR AN ACT

1  
2 Relating to regulation of construction contracting trade; creating new provisions; and amending ORS  
3 133.065, 133.069, 133.073, 701.075, 701.102 and 701.135.

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 chapter 701.**

6 **SECTION 2. (1) The Construction Contractors Board may investigate an applicant to de-**  
7 **termine the fitness of the applicant for licensing under this chapter. In conducting the in-**  
8 **vestigation the board may investigate, for each individual described in ORS 701.075 (1)(h) and**  
9 **(i), any of the following occurring within the five years preceding the application date:**

10 (a) **The issuance of a judgment by a circuit court or an equivalent court in another state;**

11 (b) **The issuance of any arbitration award;**

12 (c) **The issuance of an administrative agency final order in any state; and**

13 (d) **A conviction for, or a plea of nolo contendere to, any felony or misdemeanor involving**  
14 **dishonesty or fraud as identified in board rules or any crime listed in ORS 701.135 (1)(h), in**  
15 **any state.**

16 (2) **The board is an authorized agency for purposes of criminal records checks under ORS**  
17 **181.534.**

18 **SECTION 3. ORS 701.075 is amended to read:**

19 701.075. (1) An applicant for a construction contractor license must submit the application on  
20 a form prescribed by the Construction Contractors Board. The application shall include, but not be  
21 limited to, the following information regarding the applicant:

22 (a) Classification of the license being sought.

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

26 (c) Social Security number.

**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 (d) Workers' compensation insurance account number, if the applicant is required to have  
2 workers' compensation insurance.

3 (e) Unemployment insurance account number, if the applicant is required to have unemployment  
4 insurance.

5 (f) State withholding tax account number, if the applicant is required to withhold state income  
6 tax.

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

9 (h) The name and address of:

10 (A) Each partner, if the applicant is a partnership, limited liability partnership or foreign limited  
11 liability partnership.

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

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

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

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

16 (F) The manager and each member, if the applicant is a manager-managed limited liability com-  
17 pany.

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

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

22 (A) Each partner in a partnership, limited liability partnership or foreign limited liability part-  
23 nership that is a partner, joint venturer or member of the applicant.

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

26 (C) Each joint venturer in a joint venture that is a partner, joint venturer or member of the  
27 applicant.

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

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

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

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

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

37 **(j) For each individual described in paragraphs (h) and (i) of this subsection, disclosure**  
38 **of any of the following occurring within the five years preceding the application date:**

39 **(A) Issuance of a judgment by a circuit court or an equivalent court in another state**  
40 **remaining unsatisfied on the application date.**

41 **(B) Issuance of any arbitration award remaining unpaid on the application date.**

42 **(C) Issuance of an administrative agency final order in any state for the payment of**  
43 **money to a claimant if the amount ordered has not been fully paid on the date of the appli-**  
44 **cation or if the amount was paid by a surety.**

45 **(D) Conviction for, or a plea of nolo contendere to, any felony or misdemeanor involving**

1 **dishonesty or fraud as identified in board rules or any crime listed in ORS 701.135 (1)(h), in**  
 2 **any state.**

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

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

7 (a) Is in compliance with ORS 701.078.

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

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

10 (4) An applicant shall conform to the information provided by the applicant on the application  
 11 and to the terms of the application.

12 **SECTION 4.** ORS 701.102 is amended to read:

13 701.102. (1) As used in this section, “construction contractor license” means a license issued  
 14 within the United States to engage in the business of construction contracting.

15 (2) The Construction Contractors Board may suspend or refuse to issue a license required under  
 16 this chapter to a business if:

17 (a) The business owes a construction debt or has had a construction contractor license revoked  
 18 or suspended;

19 (b) An owner, [or] officer, **director, partner, manager or responsible managing individual**  
 20 of the business owes a construction debt or has had a construction contractor license revoked, [or]  
 21 suspended **or otherwise subjected to sanctions;** or

22 (c) An owner, [or] officer, **director, partner, manager or responsible managing individual**  
 23 of the business was an owner, [or] officer, **director, partner, manager or responsible managing**  
 24 **individual** of another business at the time the other business incurred a construction debt that is  
 25 owing or at the time of an event that resulted in the revocation or suspension of, **or other sanc-**  
 26 **tions against,** the other business’s construction contractor license.

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

37 **SECTION 5.** ORS 701.135 is amended to read:

38 701.135. (1) The Construction Contractors Board may revoke, suspend or refuse to issue or re-  
 39 issue a license and the board may assess a civil penalty as provided in ORS 701.992 if the board  
 40 determines after notice and opportunity for hearing:

41 (a) That the licensee or applicant has violated ORS 701.055 or 701.078.

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

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

45 (d) That a lien was filed on a structure under ORS 87.010 to 87.060 and 87.075 to 87.093 because

1 the licensee or applicant wrongfully failed to perform a contractual duty to pay money to the person  
 2 claiming the lien.

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

4 (f) That the licensee has worked without a construction permit where a permit is required and  
 5 the work resulted in a claim being filed with the board. For purposes of this paragraph, “con-  
 6 struction permit” includes a building permit, electrical permit, mechanical permit or plumbing per-  
 7 mit.

8 (g) That the number of licensed contractors working together on the same task on the same job  
 9 site, where one of the contractors is licensed as exempt under ORS 701.035 (2)(b), exceeded the fol-  
 10 lowing:

- 11 (A) Two sole proprietors;
- 12 (B) One partnership;
- 13 (C) One corporation; or
- 14 (D) One limited liability company.

15 (h) Consistent with the provisions of ORS 670.280, that the licensee or applicant has been con-  
 16 victed of one of the following crimes:

- 17 (A) Murder;
- 18 (B) Assault in the first degree;
- 19 (C) Kidnapping;
- 20 (D) Rape, sodomy or unlawful sexual penetration;
- 21 (E) Sexual abuse;
- 22 (F) Arson in the first degree;
- 23 (G) Robbery in the first degree;
- 24 (H) Theft in the first degree; or
- 25 (I) Theft by extortion.

26 (i) That the licensee or applicant has not, within 90 days after the date when payment was re-  
 27 ceived from the public contracting agency, or contractor in the case of a subcontractor, made pay-  
 28 ment to any person for supplying labor or materials contracted for with a public contract for a  
 29 public improvement plus the amount of interest due.

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

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

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

- 38 (A) Lack of a surety bond required by ORS 701.085;
- 39 (B) Lack of liability insurance required by ORS 701.105;
- 40 (C) Hiring employees while licensed as exempt under ORS 701.035; [or]
- 41 (D) Conduct as a construction contractor that is dishonest or fraudulent[.];
- 42 **(E) Failure to pay a construction debt;**
- 43 **(F) Failure to pay a civil penalty assessed by the board; or**
- 44 **(G) A violation of ORS 701.035, 701.055, 701.075, 701.078, 701.080, 701.085, 701.105 or 701.138.**

45 (b) If the licensee or applicant demands a hearing within 90 days after the date of notice to the

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

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

14 (4) A certified copy of the record of conviction shall be conclusive evidence of a conviction un-  
 15 der subsection (1)(h) of this section.

16 (5) If the board suspends or revokes the license of an individual contractor or contractor busi-  
 17 ness for a violation of subsection (1)(g) of this section, the board may not restore or reissue the li-  
 18 cense unless the individual contractor or a responsible managing individual, as defined in ORS  
 19 701.078, for the contractor business has successfully completed the training and testing described in  
 20 ORS 701.072.

21 **SECTION 6. (1) A person commits the crime of performing shoddy construction work if**  
 22 **the person enters into a construction contract with a property owner and in the performance**  
 23 **of, or failure to perform, the contract:**

24 (a) **With criminal negligence, causes economic harm to the property owner or causes the**  
 25 **physical endangerment of any person through dishonest or fraudulent conduct as defined by**  
 26 **the Construction Contractors Board by rule; or**

27 (b) **Intentionally performs work that fails to meet state building code requirements, if the**  
 28 **failure creates an unreasonably dangerous condition.**

29 (2) **Performing shoddy construction work is a:**

30 (a) **Class C misdemeanor if the value of the construction contract is not more than**  
 31 **\$20,000.**

32 (b) **A Class B misdemeanor if the value of the construction contract is more than \$20,000**  
 33 **but not more than \$100,000.**

34 (c) **A Class A misdemeanor if the value of the construction contract is more than**  
 35 **\$100,000.**

36 **SECTION 7. (1) An authorized agent of the Construction Contractors Board may issue a**  
 37 **criminal citation to a person if the board has probable cause to believe that the person has**  
 38 **committed the crime of performing shoddy construction work as described in section 6 of**  
 39 **this 2007 Act. The authorized agent shall deliver a copy of the criminal citation to the person.**  
 40 **The criminal citation shall require the person to appear at the court of the magistrate before**  
 41 **whom the person would be taken under ORS 133.450 if the person were arrested for the of-**  
 42 **fense.**

43 (2) **The Construction Contractors Board and any authorized agent of the board are im-**  
 44 **mune from criminal or civil liability for issuing a criminal citation under this section in good**  
 45 **faith.**

1        **SECTION 8.** ORS 133.065 is amended to read:

2        133.065. If a criminal citation is issued as described in ORS 133.055 **or section 7 of this 2007**  
 3 **Act**, the peace officer **or an authorized agent of the Construction Contractors Board** shall serve  
 4 one copy on the person arrested and shall, as soon as practicable, file a duplicate copy with the  
 5 magistrate [*specified in ORS 133.055*] **referred to in the citation** along with proof of service.

6        **SECTION 9.** ORS 133.069 is amended to read:

7        133.069. (1) A criminal citation issued with a form of complaint must contain:

8        (a) The name of the court at which the cited person is to appear.

9        (b) The name of the person cited.

10       (c) A complaint containing at least the following:

11       (A) The name of the court, the name of the state or of the city or other public body in whose  
 12 name the action is brought and the name of the defendant.

13       (B) A statement or designation of the crime that can be readily understood by a person making  
 14 a reasonable effort to do so and the date, time and place at which the crime is alleged to have been  
 15 committed.

16       (C) A form of certificate in which the peace officer **or an authorized agent of the Con-**  
 17 **struction Contractors Board** must certify that the peace officer **or the board** has sufficient  
 18 grounds to believe, and does believe, that the person named in the complaint committed the offense  
 19 specified in the complaint. A certificate conforming to this subparagraph shall be deemed equivalent  
 20 to a sworn complaint.

21       (d) The date on which the citation was issued, and the name of the peace officer **or authorized**  
 22 **agent of the board** who issued the citation.

23       (e) The date, time and place at which the person cited is to appear in court, and a summons to  
 24 so appear.

25       (f) If the arrest was made by a private party, the name of the arresting person.

26       (2) The district attorney for the county shall review any criminal citation issued with a form  
 27 of complaint that is to be filed in a circuit or justice court. The review must be done before the  
 28 complaint is filed.

29       (3) If the complaint does not conform to the requirements of this section, the court shall set the  
 30 complaint aside upon motion of the defendant made before entry of a plea. A pretrial ruling on a  
 31 motion to set aside may be appealed by the state.

32       (4) A court may amend a complaint at its discretion.

33       **SECTION 10.** ORS 133.073 is amended to read:

34       133.073. (1) Notwithstanding ORS 133.065, a peace officer **or authorized agent of the Con-**  
 35 **struction Contractors Board**, following procedures established by court rule, may file a criminal  
 36 citation with or without a form of complaint with the court by electronic means, without an actual  
 37 signature of the officer **or authorized agent of the board**, in lieu of filing a duplicate paper copy  
 38 of the citation. A peace officer **or authorized agent of the board** who files a criminal citation  
 39 under this section is deemed to certify the citation and any complaint included with the citation by  
 40 that filing and has the same rights, responsibilities and liabilities in relation to the citation and any  
 41 complaint included with the citation as an officer **or authorized agent of the board** has in relation  
 42 to citations and complaints that are filed with the court in paper form and are certified by actual  
 43 signature.

44       (2) A court may allow electronic filing of criminal citations as described under subsection (1)  
 45 of this section. Procedures established to allow electronic filing of criminal citations under this

1 section shall be established by court rule and shall include procedures necessary to ensure that:

2 (a) An electronically filed criminal citation with or without a form of complaint includes all in-  
3 formation required on a uniform citation adopted by the Supreme Court under ORS 1.525.

4 (b) An electronically filed criminal citation with or without a form of complaint is verifiable as  
5 being filed by a specific peace officer **or authorized agent of the board.**

6 (c) Members of the public can obtain copies of and review a criminal citation with or without  
7 a form of complaint that is electronically filed and maintained under this section in the same manner  
8 as the manner used for those filed on paper.

9 (3) For a criminal citation with a form of complaint issued under ORS 133.069, the district at-  
10 torney's review required by ORS 133.069 and, if necessary, amendments for legal sufficiency, must  
11 be completed before the electronic filing of the citation with the form of complaint is made with a  
12 court under this section.

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