

**Enrolled**  
**House Bill 3242**

Sponsored by Representative SCHAUFLEER; Representatives BRUUN, GILLIAM, HOLVEY, RILEY,  
Senator MORRISETTE (at the request of Oregon-Columbia Chapter of Associated General Con-  
tractors, Oregon State Building and Construction Trades Council)

CHAPTER .....

AN ACT

Relating to construction contractors; creating new provisions; amending ORS 18.635, 18.800, 205.126, 279C.375, 279C.465, 279C.585, 479.940, 646.551, 656.021, 656.027, 671.540, 701.005, 701.010, 701.035, 701.055, 701.060, 701.065, 701.072, 701.075, 701.078, 701.085, 701.105, 701.115, 701.135, 701.138, 701.139, 701.140, 701.145, 701.146, 701.148, 701.150, 701.205, 701.230, 701.235, 701.990 and 701.992 and sections 2 and 5, chapter 114, Oregon Laws 2007 (Enrolled House Bill 2109); repealing ORS 701.058 and 701.252; limiting expenditures; and declaring an emergency.

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

**SECTION 1.** Sections 2 to 12 of this 2007 Act are added to and made a part of ORS chapter 701.

**SECTION 2.** (1) Except as provided in ORS 701.010, a person or joint venture that undertakes, offers to undertake or submits a bid to do work as a contractor must have a current license issued by the Construction Contractors Board and possess an appropriate endorsement as provided in this section.

(2) A person or joint venture that undertakes, offers to undertake or submits a bid to do work as a contractor in preparation for or in connection with a residential structure must have one of the following endorsements:

- (a) Residential general contractor.
- (b) Residential specialty contractor.
- (c) Residential limited contractor.
- (d) Residential developer.

(3) A person or joint venture that undertakes, offers to undertake or submits a bid to do work as a contractor in preparation for or in connection with a small commercial structure must have one of the following endorsements:

- (a) Residential general contractor.
- (b) Residential specialty contractor.
- (c) Residential limited contractor.
- (d) Residential developer.
- (e) Commercial general contractor level 1.
- (f) Commercial specialty contractor level 1.
- (g) Commercial general contractor level 2.
- (h) Commercial specialty contractor level 2.
- (i) Commercial developer.

(4) A person or joint venture that undertakes, offers to undertake or submits a bid to do work as a contractor in preparation for or in connection with a large commercial structure must have one of the following endorsements:

- (a) Commercial general contractor level 1.
- (b) Commercial specialty contractor level 1.
- (c) Commercial general contractor level 2.
- (d) Commercial specialty contractor level 2.
- (e) Commercial developer.

**SECTION 3.** (1) A residential general contractor shall:

(a) Obtain a surety bond under ORS 701.085 in the amount of \$20,000;  
(b) Obtain general liability insurance under ORS 701.105 in an amount of not less than \$500,000; and

(c) Have a responsible managing individual who meets the requirements of ORS 701.078.

(2) A residential specialty contractor shall:

(a) Obtain a surety bond under ORS 701.085 in the amount of \$15,000;  
(b) Obtain general liability insurance under ORS 701.105 in an amount not less than \$300,000; and

(c) Have a responsible managing individual who meets the requirements of ORS 701.078.;

(3) A residential limited contractor shall:

(a) Obtain a surety bond under ORS 701.085 in the amount of \$10,000;  
(b) Obtain general liability insurance under ORS 701.105 in an amount not less than \$100,000; and

(c) Have a responsible managing individual who meets the requirements of ORS 701.078.

(4) A residential developer shall:

(a) Obtain a surety bond under ORS 701.085 in the amount of \$20,000; and  
(b) Obtain general liability insurance under ORS 701.105 in an amount not less than \$500,000.

**SECTION 4.** (1) A commercial general contractor level 1 shall:

(a) Obtain a surety bond under ORS 701.085 in the amount of \$75,000;  
(b) Obtain general liability insurance under ORS 701.105 in an amount of not less than \$2 million;

(c) Have a responsible managing individual who meets the requirements of ORS 701.078; and

(d) Have one or more key employees with a combined total of at least eight years of experience described in section 8 of this 2007 Act.

(2) A commercial specialty contractor level 1 shall:

(a) Obtain a surety bond under ORS 701.085 in the amount of \$50,000;  
(b) Obtain general liability insurance under ORS 701.105 in an amount not less than \$1 million;

(c) Have a responsible managing individual who meets the requirements of ORS 701.078; and

(d) Have one or more key employees with a combined total of at least four years of experience described in section 8 of this 2007 Act.

(3) A commercial general contractor level 2 shall:

(a) Obtain a surety bond under ORS 701.085 in the amount of \$20,000;  
(b) Obtain general liability insurance under ORS 701.105 in an amount of not less than \$1 million;

(c) Have a responsible managing individual who meets the requirements of ORS 701.078; and

(d) Have one or more key employees with a combined total of at least eight years of experience described in section 8 of this 2007 Act.

(4) A commercial specialty contractor level 2 shall:

- (a) Obtain a surety bond under ORS 701.085 in the amount of \$20,000;
  - (b) Obtain general liability insurance under ORS 701.105 in an amount not less than \$500,000;
  - (c) Have a responsible managing individual who meets the requirements of ORS 701.078; and
  - (d) Have one or more key employees with a combined total of at least four years of experience described in section 8 of this 2007 Act.
- (5) A commercial developer shall:
- (a) Obtain a surety bond under ORS 701.085 in the amount of \$20,000; and
  - (b) Obtain general liability insurance under ORS 701.105 in an amount not less than \$500,000.

**SECTION 5. A residential limited contractor may not:**

- (1) Perform work as a contractor exceeding \$40,000 in gross annual volume; or
- (2) Enter into contracts to perform work as a contractor in excess of \$5,000.

**SECTION 6. A licensed developer or a residential or commercial developer:**

- (1) Shall act only in association with licensed general contractors, one or a combination of whom must have sole responsibility for overseeing all phases of construction activity on a property; and
- (2) May not perform any construction work on a property.

**SECTION 7. Section 6 of this 2007 Act is amended to read:**

**Sec. 6. A [*licensed developer or a*] residential or commercial developer:**

- (1) Shall act only in association with licensed general contractors, one or a combination of whom must have sole responsibility for overseeing all phases of construction activity on a property; and
- (2) May not perform any construction work on a property.

**SECTION 8. (1) A commercial general contractor or commercial specialty contractor shall certify upon license application or renewal that the contractor has one or more key employees with the combined total amount of experience required under section 4 of this 2007 Act.**

(2) Except as provided in subsection (3) of this section, the experience certified under subsection (1) of this section must be as a licensed contractor, journeyman, foreperson or supervisor or as any other employee engaged in construction work for a licensed contractor.

(3) The following experience or education may substitute for construction experience described in subsection (2) of this section:

- (a) Completion of an apprenticeship program may substitute for up to three years of experience;
- (b) A bachelor's degree in a construction-related field may substitute for up to three years of experience;
- (c) A bachelor's degree or master's degree in business, finance or economics may substitute for up to two years of experience; and
- (d) An associate's degree in construction or building management may substitute for up to one year of experience.

**SECTION 9. (1) A commercial general contractor level 1 or commercial specialty contractor level 1 shall have a key employee, or combination of key employees, who completes at least 40 hours of continuing education per year.**

(2) A commercial general contractor level 2 or commercial specialty contractor level 2 shall have a key employee, or combination of key employees, who completes the equivalent of at least 16 hours of continuing education per year.

(3) Notwithstanding subsection (1) of this section, if a commercial general contractor level 1 or commercial specialty contractor level 1 has no more than four key employees, the contractor shall have a key employee, or combination of key employees, that completes

continuing education each year equivalent to the number of key employees multiplied by eight hours.

(4) Continuing education may be provided by post-secondary institutions, trade schools, trade associations, professional societies, private companies, public agencies, business associations and contractor-provided in-house training programs. Continuing education topics may include, but need not be limited to, construction means, methods and business practices.

(5) A contractor applying for renewal shall certify the number of continuing education hours completed during the preceding licensing period.

(6) A contractor subject to this section shall maintain records of the continuing education completed by key employees.

(7) This section does not apply to a commercial contractor:

(a) That is subject to regulation under ORS 479.510 to 479.945 or 480.510 to 480.670 or ORS chapter 693; or

(b) As provided by rule by the Construction Contractors Board.

**SECTION 10.** (1) If an order of the Construction Contractors Board that determines a claim under ORS 701.145 becomes final by operation of law or on appeal and remains unpaid 10 days after the date the order becomes final, the claimant may file the order with the county clerk in any county of this state.

(2) Upon receipt, the clerk shall record the order in the County Clerk Lien Record. In addition to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

(3)(a) Payments from the surety bond of a residential contractor pursuant to board order and notice are satisfied in the following priority in any 90-day period:

(A) Board orders as a result of claims against a residential contractor by the owner of a residential or small commercial structure have payment priority to the full extent of the bond over all other types of claims.

(B) If the claims described in subparagraph (A) of this paragraph do not exhaust the bond, then amounts due as a result of all other types of residential or small commercial structure claims filed within that 90-day period may be satisfied from the bond, except that the total amount paid from any one bond to nonowner claimants may not exceed \$3,000.

(b) A 90-day period begins on the date the first claim is filed with the board. Subsequent 90-day periods begin on the date the first claim is filed with the board after the close of the preceding 90-day period.

(4) If the total claims filed with the board against a residential contractor within 90 days after the board receives notice of the first claim against the contractor exceed the amount of the bond available for those claims, the bond shall be apportioned as the board determines, subject to the priorities established under this section.

(5) If the total amounts due as a result of claims filed with the board within 90 days after the first claim is filed do not exceed the amount of the bond available for those claims, all amounts due as a result of claims filed within the 90-day period shall have priority over all claims subsequently filed until the amount of the bond available for the payment of claims is exhausted.

(6) The total amount paid from a residential contractor bond for costs, interest and attorney fees may not exceed \$3,000.

**SECTION 11.** (1)(a) Payments from the surety bond of a commercial contractor pursuant to Construction Contractors Board order and notice are satisfied in the following priority in any 90-day period:

(A) Board orders as a result of claims against a commercial contractor by a person furnishing labor to a contractor or owed employee benefits by a contractor have payment priority to the full extent of the bond over all other types of claims.

(B) If the claims described in subparagraph (A) of this paragraph do not exhaust the bond, then amounts due as a result of all other types of small commercial or large commercial structure claims may be satisfied from the bond, except claims for costs, interest and attorney fees.

(C) If claims described in subparagraphs (A) and (B) of this paragraph do not exhaust the bond, then claims for costs, interest and attorney fees resulting from small commercial or large commercial structure claims may be satisfied from the bond.

(b) A 90-day period begins on the date the first claim is filed with the board. Subsequent 90-day periods begin on the date the first claim is filed with the board after the close of the preceding 90-day period.

(2) If the total claims filed with the board against a commercial contractor within 90 days after the board receives notice of the first claim against the contractor exceed the amount of the bond available for those claims, the bond shall be apportioned as the board determines, subject to the priorities established under this section.

(3) If the total amounts due as a result of claims filed with the board within 90 days after the first claim is filed do not exceed the amount of the bond available for those claims, all amounts due as a result of claims filed within the 90-day period shall have priority over all claims subsequently filed until the amount of the bond available for the payment of claims is exhausted.

**SECTION 12.** A commercial general contractor level 1 or level 2 that constructs a new large commercial structure shall provide the owner with a two-year warranty of the building envelope and penetration components against defects in materials and workmanship. The warranty shall provide for the contractor to annually inspect the building envelope and penetration components during the warranty period. The warranty need not cover conditions resulting from improper maintenance by the owner.

**SECTION 13.** ORS 701.005 is amended to read:

701.005. As used in this chapter:

(1) "Board" means the Construction Contractors Board.

(2) "Commercial contractor" means a licensed contractor that holds an endorsement as a:

- (a) Commercial general contractor level 1;
- (b) Commercial specialty contractor level 1;
- (c) Commercial general contractor level 2;
- (d) Commercial specialty contractor level 2; or
- (e) Commercial developer.

(3) "Commercial developer" means a developer of property that is zoned for or intended for use compatible with a small commercial or large commercial structure.

[(2)] (4) "Construction debt" means an amount owed under:

- (a) A final order or arbitration award issued by the board; or
- (b) A judgment or civil penalty arising from construction activities within the United States.

[(3)] (5) "Contractor" means **any of the following:**

(a) A person who, for compensation or with the intent to sell, arranges or undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect, move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate or to do any part thereof. ["Contractor" includes general contractors, residential-only contractors and specialty contractors as defined in this section.]

(b) A person that purchases or owns property and constructs or for compensation arranges for the construction of one or more residential structures or small commercial structures with the intent of selling the structures.

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

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

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

(f) A business that supplies the services of a home inspector certified under ORS 701.350, a lead-based paint inspector licensed under ORS 701.515 or a cross connection inspector and backflow assembly tester certified under ORS 448.279.

(6) **“Developer” means a contractor that owns property or an interest in property and engages in the business of arranging for construction work or performing other activities associated with the improvement of real property, with the intent to sell the property.**

[(4)] (7) **“General contractor”:**

(a) Means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor supervises or performs in whole or part, whenever the sum of all contracts on any single property, including materials and labor, exceeds an amount established by rule by the board. [*“General contractor” does not include specialty contractors or limited contractors, as described in ORS 701.085.*]

**(b) Does not mean a specialty contractor or a residential limited contractor.**

[(5)] (8) **“Home inspector”** means a person who, for a fee, inspects and provides written reports on the overall physical condition of a residential structure and the appurtenances thereto. **“Home inspector”** does not include persons certified under ORS chapter 455 to inspect new, repaired or altered structures for compliance with the state building code.

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

(9) **“Key employee” means an employee or owner of a contractor who is a corporate officer, manager, superintendent, foreperson or lead person or any other employee identified by the board by rule.**

[(7)] (10) **“Large commercial structure”** means a structure that is not a residential structure or small commercial structure.

[(8)] *“Licensed developer” means a contractor who owns property or an interest in property and arranges for construction work, if the contractor:]*

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

*[(b) Acts in association with one or more licensed general contractors and the general contractor or combination of general contractors have sole responsibility for overseeing all phases of construction activity on the property; and]*

*[(c) Does not perform any construction work on the property.]*

[(9)] (11) **“Officer”** means any of the following persons:

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

(b) A general partner in a limited partnership.

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

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

(e) A trustee.

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

*[(10) "Residential-only contractor" means a general contractor or specialty contractor who performs work exclusively in connection with residential structures and small commercial structures, and the appurtenances thereto. "Residential-only contractor" includes, but is not limited to:]*

*[(a) A person who purchases or owns property and constructs or for compensation arranges for the construction of one or more residential structures or small commercial structures with the intent of selling the structures;]*

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

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

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

**(12) "Residential contractor" means a licensed contractor that holds an endorsement as a:**

- (a) Residential general contractor;**
- (b) Residential specialty contractor;**
- (c) Residential limited contractor; or**
- (d) Residential developer.**

**(13) "Residential developer" means a developer of property that is zoned for or intended for use compatible with a residential or small commercial structure.**

*[(11) "Residential structure" means a residence, including a site-built home, modular home constructed off-site, floating home as defined in ORS 830.700, condominium unit, manufactured dwelling or duplex, or a multiunit residential building consisting of four units or less that is not part of a multistructure complex of buildings.]*

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

**(14) "Residential structure":**

**(a) Means:**

**(A) A residence that is a site-built home;**

**(B) A structure that contains one or more dwelling units and is four stories or less above grade;**

**(C) A condominium, rental residential unit or other residential dwelling unit that is part of a larger structure, if the property interest in the unit is separate from the property interest in the larger structure;**

**(D) A modular home constructed off-site;**

**(E) A manufactured dwelling; or**

**(F) A floating home as defined in ORS 830.700.**

**(b) Does not mean:**

**(A) Subject to paragraph (a)(C) of this subsection, a structure that contains both residential and nonresidential units;**

**(B) Transient lodging;**

**(C) A residential school or residence hall;**

**(D) A state or local correctional facility other than a local facility for persons enrolled in work release programs maintained under ORS 144.460;**

**(E) A youth correction facility as defined in ORS 420.005;**

**(F) A youth care center operated by a county juvenile department under administrative control of a juvenile court pursuant to ORS 420.855 to 420.885;**

**(G) A detention facility as defined in ORS 419A.004;**

**(H) A nursing home;**

**(I) A hospital; or**

**(J) A place constructed primarily for recreational activities.**

**(15) "Small commercial structure" means:**

**(a) A nonresidential structure that has a ground area of 10,000 square feet or less, including exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish of the structure;**

**(b) A nonresidential leasehold, rental unit or other unit that is part of a larger structure, if the unit has a ground area of 12,000 square feet or less, excluding exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish of the unit; or**

**(c) A nonresidential structure of any size for which the contract price of all construction contractor work to be performed on the structure as part of a construction project does not total more than \$250,000.**

*[(13)]* **(16) "Specialty contractor" means a contractor who performs work on a structure, project, development or improvement and whose operations as such do not fall within the definition of "general contractor." "Specialty contractor" includes a person who performs work regulated under ORS [chapter 446] 446.395.**

**SECTION 14.** ORS 701.010 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) A manufacturer of a manufactured home constructed under standards established by the federal government.

(10) A person involved in the movement of:

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

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

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

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

(13) Units of government other than those specified in ORS 701.005 [(10)(b) and (c)] **(5)(c) and (d)**.

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

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

**(16) City or county inspectors acting under ORS 701.225 or inspectors described in ORS 455.715.**

**SECTION 15.** ORS 701.035 is amended to read:

701.035. (1) An applicant must qualify as an independent contractor under ORS 670.600 to be eligible for a license with the Construction Contractors Board.

(2) The board shall establish two classes of independent contractor [*licenses*]:

(a) The nonexempt class is composed of the following entities:

(A) Sole proprietorships, partnerships, corporations, limited liability companies with one or more employees; and

(B) Partnerships, corporations and limited liability companies with more than two partners, corporate officers or members, if any of the partners, corporate officers or members are not part of the same family and related as parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren.

(b) The exempt class is composed of all sole proprietorships, partnerships, corporations and limited liability companies that do not qualify as nonexempt. [*All partnerships, corporations and limited liability companies must have an identification number issued for federal tax purposes.*]

(3) If a person who qualifies for a license under subsection (2)(b) of this section hires one or more employees or falls into any of the categories set out in subsection (2)(a)(B) of this section, the

person is subject to penalties under ORS 701.992 for improper licensing. The person must reapply to the board in the correct class.

(4) The decision of the board that a person is an independent contractor applies only when the person is performing work of the nature described in [ORS 701.055 and 701.060] **section 2 of this 2007 Act.**

**(5) A person that is within the exempt class described in subsection (2)(b) of this section and is licensed as a commercial contractor shall procure and maintain workers' compensation insurance as authorized by ORS 656.128.**

**SECTION 16.** ORS 701.055, as amended by section 8, chapter 114, Oregon Laws 2007 (Enrolled House Bill 2109), is amended to read:

701.055. [(1) A person or joint venture may not undertake, offer to undertake or submit a bid to do work as a contractor unless that person or joint venture has a current, valid license issued under this chapter by the Construction Contractors Board. A partnership or joint venture is licensed for the purpose of offering to undertake work as a contractor on a structure if any of the partners or joint venturers whose name appears in the business name of the partnership or joint venture is licensed under this chapter.]

[(2)] (1) A contractor may not hire [any subcontractor or other] a contractor to perform work unless the [subcontractor or] contractor is licensed under this chapter **and properly endorsed for the work to be performed** or is exempt from licensure under ORS 701.010.

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

**SECTION 16a.** Section 2, chapter 114, Oregon Laws 2007 (Enrolled House Bill 2109), is amended to read:

**Sec. 2.** (1) If a person is required under this chapter to be licensed as a contractor, a city, county or state agency may not issue the person a building permit unless the person has a current, valid contractor license **properly endorsed for the work to be performed.** A city, county or state agency that requires the issuance of a permit for the construction, alteration, improvement, demolition, movement or repair of a building, structure or appurtenances to a structure shall, as a condition for issuing the permit, require the applicant for a permit to file a written statement signed by the applicant. [The statement must affirm that the applicant is licensed under this chapter, give the] **If the applicant is a contractor, the contractor shall provide the contractor's** license number and state that the license is in full force and effect[, or, if the applicant is exempt from licensing under this chapter, list the basis for the exemption]. **If the applicant is exempt from licensing under this chapter, the applicant shall state the basis for the exemption.** The city, county or state agency shall list the contractor's license number on the permit issued to that contractor.

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

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

(b) I own, reside in or will reside in the completed dwelling. My **residential** general contractor is \_\_\_\_\_, Construction Contractors Board license no. \_\_\_\_\_, license expiration date \_\_\_\_\_. I will instruct my [general] contractor that all subcontractors who work on this dwelling must be licensed with the Construction Contractors Board **and properly endorsed for the work to be performed;** or

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

(d) I will be my own [general] contractor and, if I hire [subcontractors] **contractors**, I will hire only [subcontractors] **contractors** licensed with the Construction Contractors Board **and properly endorsed for the work to be performed.**

(e) If I change my mind and do hire a **residential** general contractor, I will contract with a [general] contractor who is licensed with the Construction Contractors Board and **properly endorsed for the work to be performed.** I will immediately notify the office issuing this building permit of the name **and license number** of the [general] contractor \_\_\_\_\_.

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(3) The Construction Contractors Board shall adopt by rule a form titled "Information Notice to Property Owners About Construction Responsibilities" that clearly describes in everyday language the responsibilities property owners are undertaking by acting as their own [general] contractor and the problems that could develop. The responsibilities described in the form shall include, but not be limited to:

(a) Compliance with state and federal laws regarding Social Security tax, income tax and unemployment tax.

(b) Workers' compensation insurance on workers.

(c) Liability and property damage insurance.

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

(5) A city or county that requires a business license for engaging in a business subject to regulation under this chapter shall require that the licensee or applicant for issuance or renewal of the business license file, or have on file, with the city or county, a signed statement that the licensee or applicant is licensed under this chapter.

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

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

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

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

**SECTION 16b.** If House Bill 2654 does not become law, section 5, chapter 114, Oregon Laws 2007 (Enrolled House Bill 2109), is amended to read:

**Sec. 5.** (1) The Construction Contractors Board shall prepare, and provide at no cost to all licensed contractors, a consumer notification form designed to specifically inform property owners what the property owners should do to protect themselves in a residential repair, remodel or construction project. The form shall include an explanation of the meaning of licensure, including a statement that licensure is not [an endorsement] **a guarantee** of a contractor's work, and an explanation of the bond and insurance levels required of contractors for the benefit of property owners. The form must not be larger than one side of a sheet of paper that is 8-1/2 inches by 11 inches.

(2) A contractor shall deliver the consumer notification form to the property owner when the contractor submits a bid or proposal for work on a residential structure. The contractor may reproduce the form on the contractor's bid proposal.

**SECTION 17.** ORS 701.060, as amended by section 9, chapter 114, Oregon Laws 2007 (Enrolled House Bill 2109), is amended to read:

701.060. [(1)] Any contractor licensed under this chapter may at any time apply for [a license in another category] **an additional or different endorsement.** The Construction Contractors Board may charge a [transfer] fee not to exceed \$20 for each [additional license] **application.**

*[(2) If a contractor applies for a license pursuant to subsection (1) of this section, all construction, alteration, improvement, moving over public highways, roads or streets, demolition or repair performed by that contractor on buildings of all types shall be subject to the provisions of this chapter and to regulation by the board. Licensure under subsection (1) of this section shall be exclusive as provided in section 2 (6) of this 2007 Act.]*

**SECTION 18.** ORS 701.065 is amended to read:

701.065. (1) Except as provided in subsection (2) of this section, a contractor may not perfect a claim of a construction lien, or commence a claim with the Construction Contractors Board, in arbitration or in any court of this state for compensation for the performance of any work or for the breach of any contract for work that is subject to this chapter, unless the contractor had a valid license issued by the board **and properly endorsed for the work performed**:

- (a) At the time the contractor bid or entered into the contract for performance of the work; and
- (b) Continuously while performing the work for which compensation is sought.

(2) The board, arbitrator or court shall not apply the provisions of subsection (1) of this section to a lien or claim if the board, arbitrator or court determines that:

(a) The contractor either did not have a valid license **with a proper endorsement** at any time required under subsection (1) of this section, or had an initial issuance thereof, and:

(A) The contractor was not aware of the requirement that the contractor be licensed **or properly endorsed for the work performed**, and the contractor submitted a completed application for a license within a number of days established by the board, but not more than 90 days, of the date the contractor became aware of the requirement;

(B) At the time the contractor perfected a claim of a construction lien or commenced any other claim subject to the provisions of subsection (1) of this section, the contractor was licensed by the board **and properly endorsed for the work performed**; and

(C) Enforcement of the provisions of subsection (1) of this section would result in substantial injustice to the contractor;

(b) The contractor was licensed by the board for some but not all of the times required under subsection (1) of this section and had a lapse in such license and:

(A) The contractor was not aware of the lapse in the license for more than a number of days established by the board, but not to exceed 90 days, before submitting a completed application for license renewal with the board;

(B) Except for perfection of a claim of a construction lien and a suit to foreclose the lien, at the time the contractor commenced any other claim subject to the provisions of subsection (1) of this section the contractor's license was renewed under ORS 701.115 to include the entire time period for which a license was required under subsection (1) of this section; and

(C) For perfection of a claim of a construction lien and a suit to foreclose the lien, the contractor's license was renewed under ORS 701.115 for the entire time period for which a license was required under subsection (1) of this section, but not later than 90 days following perfection of the lien; **or**

*[(c)(A) The contractor is a licensed developer and did not have a valid license during all or part of the period described in subsection (1) of this section;]*

*[(B) The licensed developer was unaware of the license requirement and obtained a license within a time established by the board, not to exceed 90 days after the licensed developer learned of the requirement;]*

*[(C) The licensed developer was licensed at the time the licensed developer perfected the lien or commenced the claim; and]*

*[(D) Enforcement of subsection (1) of this section would result in substantial injustice to the licensed developer; or]*

*[(d)]* (c) The claim:

(A) Is directed against a person or entity that:

(i) Is subject to this chapter or ORS chapter 671 or 672;

(ii) Provides construction or design labor or services of any kind; or

(iii) Manufactures, distributes, rents or otherwise provides materials, supplies, equipment, systems or products; and

(B) Arises out of defects, deficiencies or inadequate performance in the construction, design, labor, services, materials, supplies, equipment, systems or products provided.

(3) If a contractor falsely swears to information provided under ORS 701.075 or knowingly violates the provisions of ORS 656.029, 670.600 or 701.075, the contractor may not perfect a claim of a construction lien, or commence a claim with the board, in arbitration or in any court of this state for compensation for the performance of any work on a residential structure or for the breach of any contract for work on a residential structure that is subject to this chapter.

**SECTION 19.** ORS 701.072 is amended to read:

701.072. (1) The Construction Contractors Board, by rule, shall impose training requirements for individuals and businesses seeking to be licensed under this chapter. The training required by the board must relate to business practices and laws affecting construction contractors. The board shall adopt standards for programs that provide training that meets the requirements of this subsection.

(2) In establishing training requirements under subsection (1) of this section, the board shall take into consideration the availability of training programs within the state and shall encourage training providers to use the most up-to-date technology. The board shall recognize and grant credit for training provided by private organizations if the training program meets the standards established by the board under subsection (1) of this section. The board periodically shall review the qualifications of private organizations and instructors to determine compliance with the program standards. The board shall develop and make available to the public a list of public and private programs that provide training that meets the training requirements established by the board under subsection (1) of this section.

(3) The board, by rule, shall approve a test for applicants for licensing under ORS 701.075. The test shall measure the applicant's knowledge regarding business practices and laws that are the subject of the training required under subsection (1) of this section.

(4) Subsections (1) and (3) of this section do not apply to an applicant for licensing **with endorsement solely** as a [*licensed*] **residential or commercial** developer.

**SECTION 20.** ORS 701.075 is amended to read:

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

(a) [*Classification of the license*] **The endorsement** being sought.

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

(c) Social Security number.

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

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

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

(g) Federal employer identification number, if the applicant is required to have a federal employer identification number.

(h) The name and address of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) The basis on which the applicant meets the standards for independent contractor status under ORS 670.600.

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

(a) Is in compliance with ORS 701.078.

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

(3) Subsection (2)(a) of this section does not apply to *[a licensed]* **an applicant for licensing with endorsement solely as a residential or commercial developer.**

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

**SECTION 21.** ORS 701.078 is amended to read:

701.078. (1) As used in this section, "responsible managing individual" means an individual who:

(a)(A) Is an owner; or

(B) Is an employee of a business, designated by the owner, who exercises management or supervisory authority over the construction activities of the business; and

(b)(A) Has successfully completed the training and testing required for licensing under ORS 701.072 within a period identified by the Construction Contractors Board by rule;

(B) Has demonstrated experience required by the board by rule; or

(C) Has complied with the licensing requirements of ORS 446.395.

(2) A business licensed under this chapter must at all times have at least one responsible managing individual.

(3) Subsection (2) of this section does not apply to *[a licensed]* **a business licensed with endorsement solely as a residential or commercial developer.**

**SECTION 22.** ORS 701.085 is amended to read:

701.085. (1) An applicant for issuance or renewal of a contractor license shall file with the Construction Contractors Board a surety bond with one or more corporate sureties authorized to do business in this state in the amount set forth in *[subsections (2) to (5) of this section]* **section 3 or 4 of this 2007 Act.**

**(2) If an applicant for issuance, renewal or an additional endorsement of a license will hold endorsements as both a residential contractor and a commercial contractor, the appli-**

**cant shall file with the board a surety bond for each endorsement in the amount set forth in section 3 or 4 of this 2007 Act.**

**(3)** The surety bond must provide that the applicant, with regard to work subject to this chapter, will pay claims ordered paid by the board under ORS 701.145 or 701.146. Bonds filed under this [subsection] **section** shall remain in effect for at least one year or until depleted by claims paid **as provided** under ORS 701.150 **and sections 10 and 11 of this 2007 Act**, unless the surety sooner cancels the bond. At the discretion of the surety the bond may be continued for an additional period by continuation certificate. Except as provided in subsection [(6)] **(4)** of this section, the aggregate liability of the surety under the bond for claims against the bond may not exceed the penal sum of the bond no matter how many years the bond is in force. Except as provided in subsection [(6)] **(4)** of this section, an extension by continuation certificate, reinstatement, reissue or renewal of the bond may not increase the liability of the surety.

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

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

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

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

[(6)] **(4)** The board, by rule, may require a licensee to obtain a new surety bond if, pursuant to a board order for payment of a claim described in ORS 701.140, the surety pays a claim out of the bond of the licensee. The new surety bond must be in the **applicable** amount set forth in [subsections (2) to (5) of this section] **section 3 or 4 of this 2007 Act** unless a higher amount is required by a board condition or rule described in subsection [(7) or (8)] **(5) or (6)** of this section. The board may allow a licensee to obtain, instead of a new bond, a certification that the surety remains liable for the full penal sum of the bond, notwithstanding payment by the surety on the claim.

[(7)] **(5)** If the amount the licensee must pay against the bond under **subsection (3) of this section** exceeds the amount of the bond, the board shall suspend the contractor's license until the amount owed is paid. The board, as a condition of ending the suspension, may require a contractor requesting reinstatement of a license to file a bond of an amount up to five times as much as the amount required ordinarily of a licensee under [this section] **section 3 or 4 of this 2007 Act**.

[(8)] **(6)** The board by rule may establish conditions for applicants or persons licensed under this chapter under which the applicant or licensee must file a bond of an amount up to five times as much as the amount required ordinarily of an applicant or licensee under [this section] **section 3 or 4 of this 2007 Act**. The board may reduce the amount of bond it would otherwise require if the contractor demonstrates satisfactory completion of approved elective classes on dispute resolution and prevention, basic accounting and record keeping or such other classes as the board may prescribe.

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

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

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

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

(a) Costs;

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

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

**SECTION 23.** ORS 701.105 is amended to read:

701.105. (1) Except as provided in subsection (2) of this section, a contractor who possesses a license as required under this chapter shall have in effect public liability, personal injury and property damage insurance covering the work of the contractor that is subject to this chapter, for an amount not less than **the applicable amount set forth in section 3 or 4 of this 2007 Act.**[:]

[*(a) \$500,000 for a general contractor or licensed developer.*]

[*(b) \$300,000 for a residential-only specialty contractor.*]

[*(c) \$500,000 for all other specialty contractors.*]

[*(d) \$100,000 for a limited contractor.*]

[*(e) \$300,000 for an inspector.*]

(2) The Construction Contractors Board by rule, in consultation with the Department of Consumer and Business Services, may allow a [*general or specialty contractor that is a residential-only*] **residential general, residential specialty or residential limited** contractor to provide an alternative form of security approved by the board instead of procuring a public liability, personal injury and property damage insurance policy. The board may approve an alternative form of security if the board determines that the alternative form of security provides protection to the public equivalent to the protection provided by an insurance policy in the amounts otherwise applicable to the [*residential-only contractor under subsection (1) of this section*] **residential general, residential specialty or residential limited contractor under section 3 of this 2007 Act.** A board-approved alternative form of security may consist of a combination of financial resources.

(3) A [*residential-only*] **residential general, residential specialty or residential limited** contractor who provides a board-approved alternative form of security under subsection (2) of this section is considered for purposes of this chapter to have obtained insurance [*described in*] **as required by** subsection (1) of this section. This subsection does not subject to regulation as an insurer a person who issues all or part of an alternative form of security, unless the alternative form of security otherwise qualifies as an insurance product.

(4) The contractor shall provide satisfactory evidence to the board at the time of licensure and renewal that the insurance policy or board-approved alternative form of security required by this section has been procured and is in effect.

**SECTION 24.** ORS 701.105, as amended by section 2, chapter 766, Oregon Laws 2003, is amended to read:

701.105. (1) A contractor who possesses a license as required under this chapter shall have in effect public liability, personal injury and property damage insurance covering the work of the contractor that is subject to this chapter, for an amount not less than **the applicable amount set forth in section 3 or 4 of this 2007 Act.**[:]

[*(a) \$500,000 for a general contractor or licensed developer.*]

[*(b) \$300,000 for a residential-only specialty contractor.*]

[*(c) \$500,000 for all other specialty contractors.*]

[*(d) \$100,000 for a limited contractor.*]

[*(e) \$300,000 for an inspector.*]

(2) The contractor shall provide satisfactory evidence to the Construction Contractors Board at the time of licensure and renewal that the insurance required by subsection (1) of this section has been procured and is in effect.

**SECTION 25.** ORS 701.115 is amended to read:

701.115. (1) A license is valid for two years from the date of issuance unless the license is revoked or suspended as set forth in ORS 701.135.

(2) A license may be renewed by submitting an application for renewal on the prescribed form, providing any additional information required, including evidence of completion of any required education, and submitting the appropriate application fee, as provided by Construction Contractors Board rule.

(3) The board may vary the dates of license renewal by giving to the licensee written notice of the renewal date assigned and by making appropriate adjustments in the fee for the license renewal application.

(4) If a contractor applies for renewal not more than one year after the contractor's license lapses, upon the contractor's compliance with the requirements of subsection (2) of this section, the board may renew the lapsed license. The board may designate the effective date of renewal as the last date on which the contractor was licensed.

(5) A contractor may convert a license to inactive status if the contractor is not engaged in work as a contractor. A contractor having an inactive license is subject to board licensing requirements and application fees, but is not subject to the bonding requirement of ORS 701.085 or the insurance requirement of ORS 701.105. **A commercial general or commercial specialty contractor having an inactive license is not subject to the key employee continuing education requirements of section 9 of this 2007 Act.** An inactive license is not considered a valid license for purposes of offering to undertake construction work, submitting a bid for construction work, obtaining a building permit or performing construction work. A license may not be placed or maintained in inactive status more than once during any two-year licensing term.

(6) The board shall issue a pocket-card certificate of licensure to a contractor licensed under this chapter indicating the type of license issued.

**SECTION 26.** ORS 701.135 is amended to read:

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

(a) That the licensee or applicant has violated [*ORS 701.055 or 701.078*] **a provision of this chapter.**

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

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

**(d) That the licensee has knowingly assisted a licensed contractor to perform work for which the contractor is not properly endorsed.**

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

[*(e)*] (f) That the licensee has knowingly provided false information to the board.

[*(f)*] (g) That the licensee has worked without a construction permit where a permit is required and the work resulted in a claim being filed with the board. For purposes of this paragraph, "construction permit" includes a building permit, electrical permit, mechanical permit or plumbing permit.

[*(g)*] (h) That the number of licensed contractors working together on the same task on the same job site, where one of the contractors is [*licensed*] **classed** as exempt under ORS 701.035 (2)(b), exceeded the following:

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

[*(h)*] (i) Consistent with the provisions of ORS 670.280, that the licensee or applicant has been convicted of one of the following crimes:

- (A) Murder;
- (B) Assault in the first degree;
- (C) Kidnapping;
- (D) Rape, sodomy or unlawful sexual penetration;
- (E) Sexual abuse;
- (F) Arson in the first degree;

- (G) Robbery in the first degree;
- (H) Theft in the first degree; or
- (I) Theft by extortion.

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

[(j)] **(k)** That the licensee or applicant has repeatedly reported bad faith or false claims of non-payment against contractors or subcontractors.

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

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

- (A) Lack of a surety bond required by ORS 701.085;
- (B) Lack of liability insurance required by ORS 701.105;
- (C) Hiring employees while [*licensed*] **classed** as exempt under ORS 701.035; or
- (D) Conduct as a construction contractor that is dishonest or fraudulent.

(b) If the licensee or applicant demands a hearing within 90 days after the date of notice to the licensee or applicant of the suspension or refusal to renew, then a hearing must be granted to the licensee or applicant as soon as practicable after the demand, and the administrator shall issue an order pursuant to the hearing as required by ORS chapter 183 confirming, altering or revoking the administrator's earlier order. Notwithstanding ORS 670.325, a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to a citation for violation that is subject to judicial determination in any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee or applicant.

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

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

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

**SECTION 27.** ORS 701.138 is amended to read:

701.138. (1) Every person offering to undertake or undertaking construction of building sewer piping shall comply with the requirements of ORS chapter 701.

(2) Every person submitting a bid or a written estimate of the costs to construct building sewer piping shall provide to potential customers, prior to an agreement to perform, the following:

- (a) The person's Construction Contractors Board license number [*and category*];
- (b) The applicable bonding and liability coverage; and
- (c) The statement described in ORS 701.055 (3).

(3) Any person licensed under ORS 701.055 may install a building sewer after obtaining a permit for plumbing inspection under ORS 447.095.

(4) As used in this section, “building sewer” means that part of the system of drainage piping that conveys sewage into a septic tank, cesspool or other treatment unit that begins five feet outside the building or structure within which the sewage originates.

**SECTION 28.** ORS 701.139 is amended to read:

701.139. *[Except as provided in ORS 701.148 (2), the Construction Contractors Board may resolve a dispute against a licensed contractor only if a claim is made against the contractor’s surety bond required by ORS 701.085. In order to have access to the bond,]* **The Construction Contractors Board may determine the validity of a claim described in ORS 701.140 filed against a licensed contractor.** A person must file *[a claim of a type described in ORS 701.140]* **the claim** within the applicable time limitation described in ORS 701.143. The claim must be filed and resolved as follows:

**(1) A claim against a residential contractor that is not also endorsed as a commercial contractor must be resolved as provided in ORS 701.145.**

**(2) A claim against a commercial contractor that is not also endorsed as a residential contractor must be resolved as provided in ORS 701.146.**

**(3) A claim against a contractor that is endorsed as both a residential contractor and a commercial contractor:**

*[(1)] (a) [A claim]* That involves work on a residential structure or an appurtenance to the structure must be resolved as provided under ORS 701.145.

*[(2)] (b)* A claim that involves work on a small commercial structure or an appurtenance *[thereto]* **to the structure** may be resolved as provided in ORS 701.145 or 701.146, **at the claimant’s election.**

*[(3)] (c) [Except as provided in subsections (4) and (5) of this section, a claim]* That involves work on a large commercial structure or an appurtenance *[thereto]* **to the structure** must be resolved as provided in ORS 701.146.

*[(4)]* A claim by an owner that involves work on a large commercial structure or an appurtenance thereto when the total contract involved in the claim is \$25,000 or less may be resolved as provided in ORS 701.145 or 701.146.]

*[(5)]* **(4)** Notwithstanding subsections (1) to *[(4)]* **(3)** of this section **and except as provided in ORS 701.148**, with prior agreement of the claimant and the licensed contractor, a claim may be resolved by the board through binding arbitration under ORS 701.148.

**SECTION 29.** ORS 701.140 is amended to read:

701.140. A claim *[made against a licensed contractor’s bond required by ORS 701.085]* **under ORS 701.139** must arise from the performance, or a contract for the performance, of work that *[is subject to this chapter]* **requires a contractor license issued by the Construction Contractors Board.** The claim must be of one or more of the following types:

(1) A claim against a contractor by the owner of a structure or other real property for the following:

- (a) Negligent work.
- (b) Improper work.
- (c) Breach of contract.

(2) A claim against a contractor by the owner of a structure or other real property to discharge, or to recoup funds expended in discharging, a lien established under ORS 87.010 to 87.060 and 87.075 to 87.093 under circumstances described under this subsection. If the claim is processed under ORS 701.145, the Construction Contractors Board may reduce a claim by any amount the claimant owes the contractor. The board shall process claims described in this subsection under ORS 701.145 only if:

- (a) The owner paid the contractor for that contractor’s work subject to this chapter; *[and]*
- (b) A lien is filed against the property of the owner under ORS 87.010 to 87.060 and 87.075 to 87.093 because the contractor failed to pay the person claiming the lien for that person’s contribution toward completion of the improvement[.]; **and**
- (c) **The claim is described in ORS 701.139 (1) or (3)(a) or (b).**

(3) A claim against a licensed subcontractor by a licensed contractor for the following:

- (a) Negligent work;
- (b) Improper work; or
- (c) Breach of contract.

(4) A claim by a person furnishing labor to a contractor **or owed employee benefits by a contractor.**

(5) A claim, as limited by rule of the board, by a person furnishing material or renting or supplying equipment to a contractor. The minimum limit set by the board shall not exceed \$150.

(6) A claim by a subcontractor against a contractor for unpaid labor or materials arising out of a contract.

**SECTION 30.** ORS 701.145 is amended to read:

701.145. For a claim described in ORS 701.139 [(1) involving work on a residential structure or an appurtenance thereto, a claim described in ORS 701.139 (2) involving work on a small commercial structure or an appurtenance thereto that is not resolved under ORS 701.146 or an owner's claim described in ORS 701.139 (4) involving work on a large commercial structure or an appurtenance thereto that is not resolved under ORS 701.146] **(1) or (3)(a) or a claim under ORS 701.139 (3)(b) that a claimant elects to have resolved under this section:**

(1) The person having the claim must file with the Construction Contractors Board a statement of the claim in a form prescribed by the board.

(2) The board may suspend processing of the claim if:

(a) The same facts and issues involved in the claim have been submitted to a court of competent jurisdiction for determination or have been submitted to any other entity authorized by law or the parties to effect a resolution or settlement; or

(b) The board determines that the nature or complexity of the claim is such that a court is the appropriate forum for the adjudication of the claim.

(3) The board may dismiss or close the claim as established by rule of the board if any of the following conditions apply:

(a) The claimant does not permit the contractor against whom the claim is filed to be present at an on-site investigation made by the board.

(b) The board determines that the contractor against whom the claim is filed is capable of complying with recommendations made by the board relative to the claim, but the claimant does not permit the contractor to comply with the recommendations. The board may refuse to accept or further process a claim under this paragraph only if the contractor was licensed at the time the work was first performed and is licensed at the time the board makes its recommendations.

(c) The amount in controversy is less than an amount adopted by the board and not more than \$250.

(4) Upon acceptance of the statement of claim, the board shall give notice to the contractor against whom the claim is made and shall initiate proceedings to determine the validity of the claim. If, after investigation, the board determines that a violation of this chapter or of any rule adopted thereunder has occurred, or damage has been caused by the contractor, the board may recommend to the contractor such action as the board considers appropriate to compensate the claimant. If the contractor performs accordingly, the board shall give that fact due consideration in any subsequent disciplinary proceeding brought by the board. If a claim is for less than \$1,000, the board may process the claim without conducting an on-site investigation.

(5) Subject to ORS 701.148, if the board is unable to resolve the claim under subsection (4) of this section, the board may issue a contested case notice under ORS 183.415 and:

(a) Issue a proposed default order under ORS 183.415 to become effective only if a party does not request a contested case hearing; or

(b) Refer the matter for hearing.

(6) The board shall send a copy of the notice and any proposed order described in subsection (5) of this section to the surety on the contractor bond required by ORS 701.085.

**SECTION 31.** ORS 701.146 is amended to read:

701.146. For a claim described in ORS 701.139 [(3) *involving work on a large commercial structure or an appurtenance thereto, a claim described in ORS 701.139 (2) involving work on a small commercial structure or an appurtenance thereto that is not resolved under ORS 701.145 or an owner's claim described in ORS 701.139 (4) involving work on a large commercial structure or an appurtenance thereto that is not resolved under ORS 701.145*] (2) or (3)(c) or a claim under ORS 701.139 (3)(b) **that a claimant elects to have resolved under this section:**

(1) The person seeking to file the claim must:

(a) Bring an action on the claim against the licensed contractor in a court of competent jurisdiction; or

(b) Initiate a proceeding to resolve the claim through binding arbitration substantially in conformance with ORS 36.600 to 36.740.

(2) The claimant must file the claim with the Construction Contractors Board by delivering to the board a copy of the complaint or the demand for arbitration or other document necessary to initiate arbitration. The complaint, demand or other document must be accompanied by a statement of claim in a form prescribed by board rule. The claimant must also give notice to the surety on the bond by delivering to the surety a copy of the complaint, demand for arbitration or other document necessary to initiate arbitration and a copy of the statement of claim. Delivery to the board and the surety must be accomplished by certified mail, return receipt requested, no later than the earlier of:

(a) The 90th day after the complaint, demand or other document was filed or made;

(b) The 14th day before the first day of trial or arbitration; or

(c) The 30th day before:

(A) The court issues a judgment on the complaint; or

(B) The arbitrator issues an award on the arbitration.

(3) Filing the claim with the board under subsection (2) of this section constitutes filing the claim for purposes of establishing timeliness of the claim under ORS 701.143 and priority of the claim under [ORS 701.150] **section 11 of this 2007 Act.**

(4) Except as provided in this subsection and subsection (7) of this section, if the claimant properly gives notice to the surety under subsection (2) of this section, a judgment or award against the contractor entered in the action or arbitration is binding on the surety. If the claimant delivers the notice required under subsection (2) of this section to the wrong surety, the surety receiving the notice may avoid being bound by a judgment or award by delivering notice of the mistake to the claimant or the claimant's attorney of record, and to the board, on or before the 30th day after the surety receives notice under subsection (2) of this section. Delivery of the notice of mistake must be by certified mail, return receipt requested, or by facsimile machine or other form of transmission with an acknowledgment of receipt.

(5) A surety under subsection (2) of this section has an absolute right to intervene in an action or arbitration brought or initiated under subsection (1) of this section. A claimant may not join a surety as a party to an action or arbitration unless the claimant disputes the validity or timeliness of the surety's notice of mistake or the surety disputes the validity or timeliness of the delivery to the surety of the notice required by subsection (2) of this section. If the surety elects to intervene or is joined as a party, the surety is bound by all issues of fact and law determined by the court or arbitrator and may not seek board review of those determinations.

(6) If a court issues a judgment on an action, or reduces an arbitration award to judgment, against a contractor on a claim described in subsection (1) of this section, the claimant must deliver a certified copy of the judgment to the board and to the surety no later than the 30th day after entry of the judgment in order to retain a claim against the bond. The entry of a final judgment against the contractor concludes the contractor's involvement in any proceedings to determine whether the bond is subject to payment of the claim. The claimant and the surety are the only parties to the administrative process set forth in subsection (7) of this section.

(7) Upon receipt of a timely delivered certified copy of the judgment as described in subsection (6) of this section, the board shall issue a proposed order in the amount of the judgment together

with any costs, interest and attorney fees awarded under the judgment, to the extent that the judgment, costs, interest and fees are within the jurisdiction of the board. The board's determination of the claim is limited to whether the claim comes within the jurisdiction of the board and is subject to payment by the surety. The board shall issue the proposed order in a form that indicates the surety's maximum liability to the claimant. If a hearing is not requested within the time set forth in the proposed order, the proposed order becomes final without any further action by the board. If a hearing is requested, unless review of an issue is precluded under subsection (5) of this section, the board may determine:

- (a) Whether the claim was timely filed with the board as provided in ORS 701.143.
- (b) Whether the surety received timely notice as provided in subsections (2) and (6) of this section.
- (c) Whether the claim is for work subject to this chapter.
- (d) The extent of the surety's liability to the claimant.

**SECTION 32.** ORS 701.148 is amended to read:

701.148. (1) Subject to subsection (4) of this section, if the resolution of a claim under ORS 701.145 requires a hearing, the Construction Contractors Board may require that the hearing be conducted as a binding arbitration under rules adopted by the board under subsection (3) of this section. This subsection does not authorize the board to require binding arbitration of a claim that is subject to ORS 701.146.

(2) The board may use mediation or arbitration to resolve a construction dispute between any parties who agree to follow the rules of the board, [*including but not limited to parties to a claim that is subject to ORS 701.146*] **other than a dispute involving work on a large commercial structure.**

(3) Except as provided in this subsection, rules adopted by the board to regulate arbitration under subsections (1) and (2) of this section must substantially conform with the provisions of ORS 36.600, 36.610 to 36.630, 36.635 (2), 36.640, 36.645 (2), 36.650 to 36.680, 36.685 (1) and 36.690 to 36.740. The rules may:

- (a) Require that a hearing under ORS 183.413 to 183.470 be conducted for issues for which a petition could be filed under ORS 36.615, 36.620, 36.625 and 36.640;
- (b) Limit orders and awards made by the arbitrator as necessary to comply with this chapter;
- (c) Require that a request that an arbitrator modify or correct an award under ORS 36.690 be submitted in a form specified by the rule;
- (d) Require that a petition under ORS 36.705 (2) or 36.710 (1) be filed in a shorter period of time than provided by ORS 36.705 and 36.710; and
- (e) Include any other provision necessary to conform the arbitration to this chapter.

(4) A party to a claim that is subject to a board order of binding arbitration under subsection (1) of this section may avoid the arbitration if the party requests to have the claim resolved through a contested case hearing or files a complaint in a court. A party making a request or filing a complaint under this subsection is subject to the following provisions:

(a) If the party requests to have a claim resolved through a contested case hearing, the party must, within the time specified in paragraph (c) of this subsection, deliver the request in writing to the board and to all parties entitled by board rule to receive a copy of the request.

(b) If the party files a complaint in court, the party must, within the time specified in paragraph (c) of this subsection, deliver a copy of the complaint to the board and to all parties entitled by board rule to receive a copy of the complaint. If the party filing the complaint is the claimant, the claimant must allege all elements of the claim in the complaint. If the complaint is filed by the contractor against whom a claim is alleged, the complaint may be a complaint for damages, a complaint for declaratory judgment or other complaint that allows the claimant to file a response alleging the elements of the claim. The claimant has the burden of proving the elements of the claim in any action described in this paragraph.

(c) A party that is subject to paragraph (a) or (b) of this subsection must deliver a request or complaint to the board as described in paragraphs (a) and (b) of this subsection no later than the

30th day after the board sends notice that an arbitration hearing has been scheduled. Failure to timely deliver a request or complaint under this paragraph constitutes consent to the binding arbitration.

(d) If a party makes a timely request under paragraph (a) of this subsection for a contested case hearing and another party timely files a complaint in compliance with paragraph (b) of this subsection, the filing of the complaint supersedes the request for a contested case hearing.

(e) A party may not withdraw a request made in compliance with paragraph (a) of this subsection unless all parties agree to the withdrawal.

(f) The board may adopt a rule that a contested case hearing for a claim of less than \$1,000 is not available under this subsection.

(g) The provisions of paragraph (b) of this subsection are in addition to any other requirements imposed by law regarding the filing of a complaint.

(5) The board may refuse to accept a dispute for mediation or arbitration under subsection (1) or (2) of this section if the board determines that the nature or complexity of the dispute is such that a court or other forum is more appropriate for resolution of the dispute.

**SECTION 33.** ORS 701.150 is amended to read:

**701.150. (1) A Construction Contractors Board final order that is not paid by the contractor and that:**

**(a) Arises out of a claim filed under ORS 701.145 must be satisfied from a bond required for a residential contractor.**

**(b) Arises out of a claim filed under ORS 701.146 must be satisfied from a bond required for a commercial contractor.**

(2) If a [*Construction Contractors*] board final order is not paid by the contractor, the board shall notify the surety on the bond. The surety may not pay a claim until the surety receives notice from the board that the claim is ready for payment.

*[(2) If an order of the board that determines a claim under ORS 701.145 becomes final by operation of law or on appeal and remains unpaid 10 days after the date the order becomes final, the claimant may file the order with the county clerk in any county of this state.]*

*[(3) Upon receipt, the clerk shall record the order in the County Clerk Lien Record. In addition to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.]*

*[(4) Payments from the surety bond of a contractor pursuant to board order and notice are satisfied in the following priority in any 90-day period. A 90-day period begins on the date the first claim is filed with the board. Subsequent 90-day periods begin on the date the first claim is filed with the board after the close of the preceding 90-day period. Within a 90-day period:]*

*[(a) Board orders as a result of claims against a contractor by the owner of a residential or small commercial structure have payment priority to the full extent of the bond over all other types of claims.]*

*[(b) If the claims described in paragraph (a) of this subsection do not exhaust the bond, then amounts due as a result of all other types of residential or small commercial structure claims filed within that 90-day period may be satisfied from the bond, except that the total amount paid from any one bond to nonowner claimants may not exceed \$3,000.]*

*[(c) If payments involving residential and small commercial structures do not exhaust the bond, board orders and notice involving large commercial structure claims are satisfied in the following priority, except that the total amount paid from any one bond to nonowner claimants may not exceed \$3,000:]*

*[(A) Labor, including employee benefits.]*

*[(B) All other claims involving large commercial structures except costs, interest and attorney fees.]*

*[(C) Any costs, interest and attorney fees the plaintiff may be entitled to recover.]*

*[(d) If the total claims filed with the board against a contractor within 90 days after the board receives notice of the first claim against the contractor exceed the amount of the bond available for those claims, the bond shall be apportioned as the board determines, subject to the priorities established under this section.]*

*[(e) If the total amounts due as a result of claims filed with the board within 90 days after the first claim is filed do not exceed the amount of the bond available for those claims, all amounts due as a result of claims filed within the 90-day period shall have priority over all claims subsequently filed until the amount of the bond available for the payment of claims is exhausted.]*

*[(5)]* **(3)** Notwithstanding *[subsection (4) of this section]* **sections 10 and 11 of this 2007 Act**, a bond is not subject to payment for a claim that is filed more than 14 months after the earlier of:

(a) The expiration or cancellation date of the license that was in force when the work that is the subject of the claim was completed or abandoned; or

(b) The date that the surety canceled the bond.

*[(6) The total amount paid from any one bond for costs, interest and attorney fees may not exceed \$3,000.]*

**SECTION 34.** ORS 701.205 is amended to read:

701.205. (1) The Construction Contractors Board is established, consisting of nine members appointed by the Governor subject to confirmation by the Senate in the manner provided by law. Three of the members shall be **residential** contractors who primarily work on residential or small commercial structures, including one contractor engaged in the business of remodeling, two shall be public members and one shall be an elected representative of a governing body of local government. Two of the members shall be **commercial** general contractors who primarily work on large commercial structures, and one shall be a **commercial** specialty contractor who primarily works on large commercial structures or a **residential** limited contractor. One member who is a contractor may be certified as a home inspector.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment immediately effective for the unexpired term.

(3) In order to be eligible for board membership, the six contractor members of the board shall be licensed under this chapter and shall maintain their licenses in good order during their term of office.

**SECTION 35.** ORS 701.230 is amended to read:

701.230. At least once each month, the Construction Contractors Board shall provide to investigative units of the Department of Revenue, Department of Consumer and Business Services and Employment Department the name and address of each person who acts as a contractor in violation of this chapter or who knowingly assists an unlicensed person **or a licensed contractor that is not properly endorsed** to act in violation of this chapter.

**SECTION 36.** ORS 701.235 is amended to read:

701.235. (1) The Construction Contractors Board shall adopt rules to carry out the provisions of this chapter including, but not limited to, rules that:

(a) Establish language for surety bonds;

(b) Establish processing requirements for different types of claims described in this chapter;

(c) Limit whether a claim may be processed by the board if there is no direct contractual relationship between the claimant and the contractor;

(d) *[Notwithstanding ORS 701.146 (7) and 701.150 (4) and subject to ORS 701.150 (6)]* **Subject to sections 10 and 11 of this 2007 Act**, exclude or limit recovery from the contractor's bond required by ORS 701.085, of damages awarded by a court or arbitrator for interest, service charges, costs and attorney fees arising from filing and proving the claim; and

(e) Designate a form to be used by an owner of residential property under ORS 87.007 for the purpose of indicating the method the owner has selected to comply with the requirements of ORS 87.007 (2) or to indicate that ORS 87.007 (2) does not apply.

(2) The board may adopt rules prescribing terms and conditions under which a contractor may substitute a letter of credit from a bank authorized to do business in this state instead of the bond requirements prescribed in ORS 701.085.

**SECTION 37.** ORS 701.990 is amended to read:

701.990. (1) Violation of [ORS 701.055 (1)] **section 2 of this 2007 Act** is a Class A misdemeanor.

(2) The intentional use of a contractor's license number without the authorization of the licensed contractor is a Class A misdemeanor.

(3) Use of a contractor's license number, with or without the authorization of the licensed contractor, with the intent to deceive the public is a Class A misdemeanor.

**SECTION 38.** ORS 701.992 is amended to read:

701.992. (1) Except as provided in subsections (4) and (5) of this section, any person who violates any provision of this chapter or any rule adopted by the Construction Contractors Board shall forfeit and pay into the General Fund of the State Treasury a civil penalty in an amount determined by the board of not more than \$5,000 for each offense.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law.

(4) The board shall impose sanctions for violation of ORS 701.135 [(1)(g)] **(1)(h)** on both the person to whom the contract is awarded and the person who awards the contract as follows:

(a) A penalty not less than \$500 nor more than \$1,000 for the first offense;

(b) A penalty not less than \$1,000 nor more than \$2,000 for the second offense;

(c) Suspension of the person's license for six months for a third offense;

(d) Suspension of the person's license for three years for a fourth offense; and

(e) Revocation of the person's license for a fifth offense.

(5) The board may impose a civil penalty not to exceed \$100 for each violation of ORS 87.007 (3).

**SECTION 39.** ORS 18.635 is amended to read:

18.635. (1) A writ of garnishment may be issued only by a person specified in this section.

(2) The court administrator may issue a writ pursuant to ORS 18.638 and 18.640 only:

(a) For the enforcement of a judgment that requires the payment of money and that has been entered in the register of a circuit court or docketed in the docket of a justice or municipal court;

(b) Pursuant to an order for provisional process under ORCP 83 and 84; or

(c) On behalf of a claimant under an order recorded pursuant to ORS 671.707 or [701.150] **section 10 of this 2007 Act**, if the claimant has complied with the requirements of ORS 205.126.

(3) An attorney who is an active member of the Oregon State Bar may issue a writ for the purpose of enforcing:

(a) A judgment that requires payment of money and that has been entered in the register of a circuit court of this state or docketed in the docket of a justice or municipal court of this state; and

(b) An order or warrant that an agency has recorded in the County Clerk Lien Record as authorized by law, including any order that has been recorded pursuant to ORS 671.707 or [701.150] **section 10 of this 2007 Act**.

(4) The administrator, as defined in ORS 25.010, may issue writs of garnishment only for the collection of past due support. Writs issued under this subsection are subject to the provisions of ORS 18.645.

**SECTION 40.** ORS 18.800 is amended to read:

18.800. (1) Except as provided in this section, the provisions of ORS 18.600 to 18.850 apply to all writs of garnishment issued on behalf of agencies for the enforcement of agency orders or warrants that are recorded in the County Clerk Lien Record.

(2) Notwithstanding ORS 18.690, a garnishee who receives a writ of garnishment described in subsection (1) of this section need not deliver a copy of the garnishee response to the court administrator for the court identified as having authority over the writ.

(3) Notwithstanding ORS 18.700, a debtor who wishes to make a challenge to a writ of garnishment described in subsection (1) of this section must deliver the challenge in person or by first class mail to the garnishor within the time specified by ORS 18.700 (2).

(4) A person issuing a writ of garnishment described in subsection (1) of this section shall modify the forms provided in ORS 18.600 to 18.850 to reflect that:

(a) The writ of garnishment is issued pursuant to an order or warrant recorded in the County Clerk Lien Record;

(b) A copy of the garnishee response need not be delivered or mailed to the court administrator for the court identified in the writ; and

(c) A challenge to a writ of garnishment described in subsection (1) of this section must be delivered to the garnishor and not to the court.

(5) Within 14 days after receipt of a challenge to a garnishment described in subsection (1) of this section, the garnishor must either:

(a) Release all property claimed as exempt from or not subject to garnishment under the challenge to the garnishment; or

(b) File with the court administrator a response to the challenge attaching copies of the writ and garnishee response and any supporting documentation necessary or helpful to the court in making its determination on the challenge to the garnishment.

(6) The provisions of this section do not apply to writs of garnishment issued by the court administrator, writs issued by an attorney for the enforcement of an order recorded under ORS 671.707 or [701.150] **section 10 of this 2007 Act** or writs issued by the administrator, as defined in ORS 25.010, under ORS 18.645.

**SECTION 41.** ORS 205.126 is amended to read:

205.126. (1) At any time after recording an order or warrant in the County Clerk Lien Record, a claimant or an attorney for an agency or claimant may file in the circuit court for the county where the order or warrant is recorded, a copy of the original order or warrant certified by the agency to be a true copy of original, and an affidavit of the claimant or attorney verifying that the order or warrant was recorded in the County Clerk Lien Record for that county, the date that the order or warrant was recorded and the date on which any notice of renewal was recorded under subsection (2) of this section. Subject to any other requirements that may apply to the enforcement remedy sought by the agency or claimant, proceedings may thereafter be commenced by the agency or claimant for the enforcement of the order or warrant, in the same manner as provided for the enforcement of judgments issued by a court. Enforcement proceedings may include:

(a) Writ of execution proceedings under ORS 18.252 to 18.993.

(b) Proceedings in support of execution under ORS 18.265, 18.268 and 18.270.

(c) Garnishment proceedings under ORS 18.600 to 18.850.

(2) At any time within 10 years after the recording of an order or warrant, an agency or claimant, acting with or without the assistance of an attorney, may renew an order or warrant by recording a notice of renewal in the County Clerk Lien Record. A notice of renewal recorded within the time specified by this subsection has the attributes and effect of an extension of judgment remedies noted in the register under ORS 18.182, from the date that the notice is recorded. A notice of renewal recorded under this section must state:

(a) The name of the agency that issued the warrant or order or the name of the claimant in whose favor an order of the Construction Contractors Board or State Landscape Contractors Board has been given;

(b) The name of all persons against whom a monetary obligation is imposed under the order or warrant; and

(c) The date of recording and the recording number, the book and page number for the recording, or the volume and page number for the recording.

(3) For the purposes of this section:

(a) "Agency" means any state officer, board, commission, corporation, institution, department or other state body that has authority to record an order or warrant in the County Clerk Lien Record.

(b) "Claimant" means a person in favor of which a board order has been recorded under the provisions of ORS 671.707 or [701.150] **section 10 of this 2007 Act**.

**SECTION 42.** ORS 279C.375 is amended to read:

279C.375. (1) After bids are opened and a determination is made that a public improvement contract is to be awarded, the contracting agency shall award the contract to the lowest responsible bidder.

(2) At least seven days before the award of a public improvement contract, unless the contracting agency determines that seven days is impractical under rules adopted under ORS 279A.065, the contracting agency shall issue to each bidder or post, electronically or otherwise, a notice of the contracting agency's intent to award a contract. This subsection does not apply to a contract excepted or exempted from competitive bidding under ORS 279C.335 (1)(c) or (d) or (6). The notice and its manner of posting or issuance must conform to rules adopted under ORS 279A.065.

(3) In determining the lowest responsible bidder, a contracting agency shall do all of the following:

(a) Check the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract.

(b) Determine whether the bidder has met the standards of responsibility. In making the determination, the contracting agency shall consider whether a bidder has:

(A) Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.

(B) A satisfactory record of performance. The contracting agency shall document the record of performance of a bidder if the contracting agency finds the bidder not to be responsible under this subparagraph.

(C) A satisfactory record of integrity. The contracting agency shall document the record of integrity of a bidder if the contracting agency finds the bidder not to be responsible under this subparagraph.

(D) Qualified legally to contract with the contracting agency.

(E) Supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder fails to promptly supply information requested by the contracting agency concerning responsibility, the contracting agency shall base the determination of responsibility upon any available information, or may find the bidder not to be responsible.

(c) Document the contracting agency's compliance with the requirements of paragraphs (a) and (b) of this subsection in substantially the following form:

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#### RESPONSIBILITY DETERMINATION FORM

Project Name: \_\_\_\_\_

Bid Number: \_\_\_\_\_

Business Entity Name: \_\_\_\_\_

CCB License Number: \_\_\_\_\_

Form Submitted By (Contracting Agency): \_\_\_\_\_

Form Submitted By (Contracting Agency Representative's Name): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(The contracting agency must submit this form with attachments, if any, to the Construction Contractors Board within 30 days after the date of contract award.)

The contracting agency has (check all of the following):

- Checked the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract.
- Determined whether the bidder has met the standards of responsibility. In so doing, the contracting agency has considered whether the bidder:
  - Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.
  - Has a satisfactory record of performance.
  - Has a satisfactory record of integrity.
  - Is qualified legally to contract with the contracting agency.
  - Has supplied all necessary information in connection with the inquiry concerning responsibility.
- Determined the bidder to be (check one of the following):
  - Responsible under ORS 279C.375 (3)(a) and (b).
  - Not responsible under ORS 279C.375 (3)(a) and (b).

(Attach documentation if the contracting agency finds the bidder not to be responsible.)

(d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the Construction Contractors Board within 30 days after the date the contracting agency awards the contract.

(4) The successful bidder shall:

(a) Promptly execute a formal contract; and

(b) Execute and deliver to the contracting agency a performance bond and a payment bond when required under ORS 279C.380.

**(5) A contracting agency may not exclude a commercial contractor from competing for a public contract on the basis that the license issued by the Construction Contractors Board is endorsed as a level 1 or level 2 license. As used in this section, “commercial contractor” has the meaning given that term in ORS 701.005.**

**SECTION 43.** ORS 279C.375, as amended by section 18, chapter 103, Oregon Laws 2005, is amended to read:

279C.375. (1) After bids are opened and a determination is made that a public improvement contract is to be awarded, the contracting agency shall award the contract to the lowest responsible bidder.

(2) At least seven days before the award of a public improvement contract, unless the contracting agency determines that seven days is impractical under rules adopted under ORS 279A.065,

the contracting agency shall issue to each bidder or post, electronically or otherwise, a notice of the contracting agency's intent to award a contract. This subsection does not apply to a contract excepted or exempted from competitive bidding under ORS 279C.335 (1)(c) or (6). The notice and its manner of posting or issuance must conform to rules adopted under ORS 279A.065.

(3) In determining the lowest responsible bidder, a contracting agency shall do all of the following:

(a) Check the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract.

(b) Determine whether the bidder has met the standards of responsibility. In making the determination, the contracting agency shall consider whether a bidder has:

(A) Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.

(B) A satisfactory record of performance. The contracting agency shall document the record of performance of a bidder if the contracting agency finds the bidder not to be responsible under this subparagraph.

(C) A satisfactory record of integrity. The contracting agency shall document the record of integrity of a bidder if the contracting agency finds the bidder not to be responsible under this subparagraph.

(D) Qualified legally to contract with the contracting agency.

(E) Supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder fails to promptly supply information requested by the contracting agency concerning responsibility, the contracting agency shall base the determination of responsibility upon any available information, or may find the bidder not to be responsible.

(c) Document the contracting agency's compliance with the requirements of paragraphs (a) and (b) of this subsection in substantially the following form:

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#### RESPONSIBILITY DETERMINATION FORM

Project Name: \_\_\_\_\_

Bid Number: \_\_\_\_\_

Business Entity Name: \_\_\_\_\_

CCB License Number: \_\_\_\_\_

Form Submitted By (Contracting Agency): \_\_\_\_\_

Form Submitted By (Contracting Agency Representative's Name): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(The contracting agency must submit this form with attachments, if any, to the Construction Contractors Board within 30 days after the date of contract award.)

The contracting agency has (check all of the following):

- Checked the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract.
- Determined whether the bidder has met the standards of responsibility. In so doing, the contracting agency has considered whether the bidder:
  - Has available the appropriate financial, material, equipment, facility and personnel resources

and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.

- Has a satisfactory record of performance.
- Has a satisfactory record of integrity.
- Is qualified legally to contract with the contracting agency.
- Has supplied all necessary information in connection with the inquiry concerning responsibility.
- Determined the bidder to be (check one of the following):
  - Responsible under ORS 279C.375 (3)(a) and (b).
  - Not responsible under ORS 279C.375 (3)(a) and (b).

(Attach documentation if the contracting agency finds the bidder not to be responsible.)

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(d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the Construction Contractors Board within 30 days after the date the contracting agency awards the contract.

(4) The successful bidder shall:

(a) Promptly execute a formal contract; and

(b) Execute and deliver to the contracting agency a performance bond and a payment bond when required under ORS 279C.380.

**(5) A contracting agency may not exclude a commercial contractor from competing for a public contract on the basis that the license issued by the Construction Contractors Board is endorsed as a level 1 or level 2 license. As used in this section, "commercial contractor" has the meaning given that term in ORS 701.005.**

**SECTION 44.** ORS 279C.465 is amended to read:

279C.465. (1) Any person that loses a competitive bid or proposal for a contract involving the construction, repair, remodeling, alteration, conversion, modernization, improvement, rehabilitation, replacement or renovation of a building or structure may bring an action for damages against another person who is awarded the contract for which the bid or proposal was made if the person making the losing bid or proposal can establish that the other person knowingly violated ORS 279C.840, 656.017, 657.505 or 701.055 **or section 2 of this 2007 Act** while performing the work under the contract, or knowingly failed to pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

(2) A person bringing an action under this section must establish a violation of ORS 279C.840, 316.167, 656.017, 657.505 or 701.055 **or section 2 of this 2007 Act** by a preponderance of the evidence.

(3) Upon establishing that the violation occurred, the person shall recover, as liquidated damages, 10 percent of the total amount of the contract or \$5,000, whichever is greater.

(4) In any action under this section, the prevailing party is entitled to an award of reasonable attorney fees.

(5) An action under this section must be commenced within two years of the substantial completion of the construction, repair, remodeling, alteration, conversion, modernization, improvement,

rehabilitation, replacement or renovation. For the purposes of this subsection, “substantial completion” has the meaning given that term in ORS 12.135.

(6) A person may not recover any amounts under this section if the defendant in the action establishes by a preponderance of the evidence that the plaintiff:

(a) Was in violation of ORS 701.055 **or section 2 of this 2007 Act** at the time of making the bid or proposal on the contract;

(b) Was in violation of ORS 316.167, 656.017 or 657.505 with respect to any employees of the plaintiff as of the time of making the bid or proposal on the contract; or

(c) Was in violation of ORS 279C.840 with respect to any contract performed by the plaintiff within one year before making the bid or proposal on the contract at issue in the action.

**SECTION 45.** ORS 279C.585 is amended to read:

279C.585. A contractor whose bid is accepted may substitute a first-tier subcontractor that was not disclosed under ORS 279C.370 by submitting the name of the new subcontractor and the reason for the substitution in writing to the contracting agency. A contractor may substitute a first-tier subcontractor under this section in the following circumstances:

(1) When the subcontractor disclosed under ORS 279C.370 fails or refuses to execute a written contract after having had a reasonable opportunity to do so after the written contract, which must be reasonably based upon the general terms, conditions, plans and specifications for the public improvement project or the terms of the subcontractor’s written bid, is presented to the subcontractor by the contractor.

(2) When the disclosed subcontractor becomes bankrupt or insolvent.

(3) When the disclosed subcontractor fails or refuses to perform the subcontract.

(4) When the disclosed subcontractor fails or refuses to meet the bond requirements of the contractor that had been identified prior to the bid submittal.

(5) When the contractor demonstrates to the contracting agency that the subcontractor was disclosed as the result of an inadvertent clerical error.

(6) When the disclosed subcontractor does not hold a license from, **or has a license that is not properly endorsed by**, the Construction Contractors Board and is required to be licensed by the board.

(7) When the contractor determines that the work performed by the disclosed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications or that the subcontractor is substantially delaying or disrupting the progress of the work.

(8) When the disclosed subcontractor is ineligible to work on a public improvement contract under applicable statutory provisions.

(9) When the substitution is for good cause. The Construction Contractors Board shall define “good cause” by rule. “Good cause” includes but is not limited to the financial instability of a subcontractor. The definition of “good cause” must reflect the least-cost policy for public improvements established in ORS 279C.305.

(10) When the substitution is reasonably based on the contract alternates chosen by the contracting agency.

**SECTION 46.** ORS 479.940 is amended to read:

479.940. (1) The licensure provisions of ORS 479.510 to 479.945 do not apply to the following activity on Class II and III systems in one and two family dwellings regulated under the Low-Rise Residential Dwelling Code:

(a) Prewiring of cable television and telephone systems owned by the owner of the residence;

(b) Garage door openers;

(c) Vacuum systems;

(d) Audio and stereo systems;

(e) HVAC;

(f) Landscape sprinkler controls;

(g) Landscape lighting; and

(h) Doorbells.

(2) The provisions of subsection (1) of this section apply only to *[persons or businesses licensed and in good standing with]* **residential contractors holding a current license and proper endorsement issued by** the Construction Contractors Board.

(3)(a) The licensure provisions of ORS 479.510 to 479.945 do not apply to limited energy electrical activity involving landscape irrigation control wiring and outdoor landscape lighting installed by a business licensed under ORS 671.510 to 671.710.

(b) A business exempt from licensing under this section shall issue an identification card to its landscape irrigation control wiring or outdoor landscape lighting installer. The form for the identification card shall be provided by the State Landscape Contractors Board. The identification card shall include the name of the installer, the name and State Landscape Contractors Board identification number of the landscaping business and the date of issue of the identification card. The card shall be carried by the installer at the job site when performing the allowed electric installations.

(4) The licensure provisions of ORS 479.510 to 479.945 do not apply to limited energy electrical activity involving the installation, maintenance or repair of lottery equipment at retail locations by employees or vendors of the Oregon State Lottery Commission. The exemption provided by this subsection does not authorize work by unlicensed persons on systems of 115 volts or more.

(5) All nonlicensure requirements of ORS 479.510 to 479.945, including permits for and compliance with the electrical specialty code, apply to activities conducted under subsections (1) to (4) of this section. If any person or business repeatedly violates the permit or code compliance requirements, in addition to any other remedy, the Electrical and Elevator Board may suspend, condition or revoke a person's or business's right to use this provision.

**SECTION 47.** ORS 646.551 is amended to read:

646.551. As used in ORS 646.551 to 646.557, unless the context requires otherwise:

(1) "Telephonic seller" means a person who, on the person's own behalf, or on behalf of another person, causes or attempts to cause a telephone solicitation to be made under the following circumstances:

(a) The person initiates telephonic contact with a prospective purchaser and represents or implies any of the following:

(A) That a prospective purchaser who buys one or more goods or services unit will receive additional units, whether or not of the same type as purchased, without further cost. As used in this subparagraph, "further cost" does not include actual postage or common carrier delivery charges, if any;

(B) That a prospective purchaser will receive a prize or gift if the person also encourages the prospective purchaser to do either of the following:

(i) Purchase or rent any goods or services; or

(ii) Pay any money, including, but not limited to a delivery or handling charge;

(C) That a prospective purchaser who buys goods or services, because of some unusual event or imminent price increase, will be able to buy these items at prices which are below those usually charged or will be charged for those items;

(D) That the seller is a person other than the actual seller;

(E) That the items for sale or rent are manufactured or supplied by a person other than the actual manufacturer or supplier; or

(F) That the items for sale are gold, silver or other precious metals, diamonds, rubies, sapphires or other precious stones or any interest in oil, gas or mineral fields, wells or exploration sites; or

(b) The telephone solicitation is made by the person in response to inquiries from prospective purchasers generated by advertisement, on behalf of the person and the solicitation is conducted as described in paragraph (a) of this subsection.

(2) "Telephonic seller" does not include any of the following:

(a) A person selling a security as defined in ORS 59.015, or securities which are exempt under ORS 59.025.

(b) A person licensed pursuant to ORS chapter 696 when the transaction is governed by that chapter.

(c) A person licensed pursuant to [ORS 701.055] **section 2 of this 2007 Act** when the solicited transaction is governed by ORS chapter 701.

(d) A person licensed pursuant to ORS chapter 744 when the solicited transaction is governed by the Insurance Code.

(e) A person soliciting the sale of a franchise when the solicited transaction is governed by ORS 650.005 to 650.100.

(f) A person primarily soliciting the sale of a subscription to or advertising in a newspaper of general circulation.

(g) A person primarily soliciting the sale of a magazine or periodical, or contractual plans, including book or record clubs:

(A) Under which the seller provides the consumer with a form which the consumer may use to instruct the seller not to ship the offered merchandise, and which is regulated by the Federal Trade Commission trade regulation concerning "Use of Negative Option Plans by Sellers in Commerce"; or

(B) Using arrangements such as continuity plans, subscription arrangements, standing order arrangements, supplements and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.

(h) A person soliciting business from prospective purchasers who have previously purchased from the business enterprise for which the person is calling.

(i) A person soliciting without the intent to complete and who does not complete the sales presentation during the telephone solicitation and who only completes the sale presentation at a later face-to-face meeting between the solicitor and the prospective purchaser, unless at that later meeting the solicitor collects or attempts to collect payment for delivery of items purchased.

(j) Any supervised financial institution or parent, subsidiary, or affiliate thereof. As used in this paragraph, "supervised financial institution" means any financial institution or trust company, as those terms are defined in ORS 706.008, or any personal property broker, consumer finance lender, commercial finance lender or insurer that is subject to regulation by an official or agency of this state or the United States.

(k) A person soliciting the sale of funeral or burial services regulated by ORS 59.670 and 59.680 or by ORS chapter 692.

(L) A person soliciting the sale of services provided by a cable television system operating under authority of a franchise or permit issued by a governmental agency of this state, or subdivision thereof.

(m) A person or affiliate of a person whose business is regulated by the Public Utility Commission, or a telecommunications utility with access lines of 15,000 or less or a cooperative telephone association.

(n) A person soliciting the sale of a farm product, as defined in ORS 79.0102, if the solicitation does not result in a sale which costs the purchaser in excess of \$100.

(o) An issuer or a subsidiary of an issuer that has a class of securities that is subject to section 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G) or (H) of subsection (g) of that section.

(p) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person's employer.

(q) A person registered under the Charitable Solicitations Act.

**SECTION 48.** ORS 656.021 is amended to read:

656.021. Notwithstanding ORS 656.029 (1), a person who is licensed pursuant to **an application under** ORS 701.075 and is acting under a contract to perform work described by ORS chapter 701 shall be considered the subject employer for all individuals employed by that person.

**SECTION 49.** ORS 656.027 is amended to read:

656.027. All workers are subject to this chapter except those nonsubject workers described in the following subsections:

(1) A worker employed as a domestic servant in or about a private home. For the purposes of this subsection “domestic servant” means any worker engaged in household domestic service by private employment contract, including, but not limited to, home health workers.

(2) A worker employed to do gardening, maintenance, repair, remodeling or similar work in or about the private home of the person employing the worker.

(3)(a) A worker whose employment is casual and either:

(A) The employment is not in the course of the trade, business or profession of the employer; or

(B) The employment is in the course of the trade, business or profession of a nonsubject employer.

(b) For the purpose of this subsection, “casual” refers only to employments where the work in any 30-day period, without regard to the number of workers employed, involves a total labor cost of less than \$500.

(4) A person for whom a rule of liability for injury or death arising out of and in the course of employment is provided by the laws of the United States.

(5) A worker engaged in the transportation in interstate commerce of goods, persons or property for hire by rail, water, aircraft or motor vehicle, and whose employer has no fixed place of business in this state.

(6) Firefighter and police employees of any city having a population of more than 200,000 that provides a disability and retirement system by ordinance or charter.

(7)(a) Sole proprietors, except those described in paragraph (b) of this subsection. When labor or services are performed under contract, the sole proprietor must qualify as an independent contractor.

(b) Sole proprietors actively registered under ORS 671.525 or licensed under [ORS 701.035] **section 2 of this 2007 Act**. When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the sole proprietor must qualify as an independent contractor. Any sole proprietor registered under ORS 671.525 or licensed under [ORS 701.035] **section 2 of this 2007 Act** and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(8) Except as provided in subsection (23) of this section, partners who are not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement on real property or appurtenances thereto. When labor or services are performed under contract, the partnership must qualify as an independent contractor.

(9) Except as provided in subsection (25) of this section, members, including members who are managers, of limited liability companies, regardless of the nature of the work performed. However, members, including members who are managers, of limited liability companies with more than one member, while engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement on real property or appurtenances thereto, are subject workers. When labor or services are performed under contract, the limited liability company must qualify as an independent contractor.

(10) Except as provided in subsection (24) of this section, corporate officers who are directors of the corporation and who have a substantial ownership interest in the corporation, regardless of the nature of the work performed by such officers, subject to the following limitations:

(a) If the activities of the corporation are conducted on land that receives farm use tax assessment pursuant to ORS chapter 308A, corporate officer includes all individuals identified as directors in the corporate bylaws, regardless of ownership interest, and who are members of the same family, whether related by blood, marriage or adoption.

(b) If the activities of the corporation involve the commercial harvest of timber and all officers of the corporation are members of the same family and are parents, daughters or sons, daughters-in-law or sons-in-law or grandchildren, then all such officers may elect to be nonsubject workers. For all other corporations involving the commercial harvest of timber, the maximum number of exempt corporate officers for the corporation shall be whichever is the greater of the following:

- (A) Two corporate officers; or
  - (B) One corporate officer for each 10 corporate employees.
  - (c) When labor or services are performed under contract, the corporation must qualify as an independent contractor.
- (11) A person performing services primarily for board and lodging received from any religious, charitable or relief organization.
- (12) A newspaper carrier utilized in compliance with the provisions of ORS 656.070 and 656.075.
- (13) A person who has been declared an amateur athlete under the rules of the United States Olympic Committee or the Canadian Olympic Committee and who receives no remuneration for performance of services as an athlete other than board, room, rent, housing, lodging or other reasonable incidental subsistence allowance, or any amateur sports official who is certified by a recognized Oregon or national certifying authority, which requires or provides liability and accident insurance for such officials. A roster of recognized Oregon and national certifying authorities will be maintained by the Department of Consumer and Business Services, from lists of certifying organizations submitted by the Oregon School Activities Association and the Oregon Park and Recreation Society.
- (14) Volunteer personnel participating in the ACTION programs, organized under the Domestic Volunteer Service Act of 1973, P.L. 93-113, known as the Foster Grandparent Program and the Senior Companion Program, whether or not the volunteers receive a stipend or nominal reimbursement for time and travel expenses.
- (15) A person who has an ownership or leasehold interest in equipment and who furnishes, maintains and operates the equipment. As used in this subsection "equipment" means:
- (a) A motor vehicle used in the transportation of logs, poles or piling.
  - (b) A motor vehicle used in the transportation of rocks, gravel, sand, dirt or asphalt concrete.
  - (c) A motor vehicle operated as a taxicab as defined in ORS 825.017.
- (d) A motor vehicle used in the transportation of property by a for-hire motor carrier that is required under ORS 825.100 or 825.104 to possess a certificate or permit.
- (16) A person engaged in the transportation of the public for recreational down-river boating activities on the waters of this state pursuant to a federal permit when the person furnishes the equipment necessary for the activity. As used in this subsection, "recreational down-river boating activities" means those boating activities for the purpose of recreational fishing, swimming or sightseeing utilizing a float craft with oars or paddles as the primary source of power.
- (17) A person who performs volunteer ski patrol activities who receives no wage other than noncash remuneration.
- (18) A person 19 years of age or older who contracts with a newspaper publishing company or independent newspaper dealer or contractor to distribute newspapers to the general public and perform or undertake any necessary or attendant functions related thereto.
- (19) A person performing foster parent or adult foster care duties pursuant to ORS chapter 411, 418, 430 or 443.
- (20) A person performing services on a volunteer basis for a nonprofit, religious, charitable or relief organization, whether or not such person receives meals or lodging or nominal reimbursements or vouchers for meals, lodging or expenses.
- (21) A person performing services under a property tax work-off program established under ORS 310.800.
- (22) A person who performs service as a caddy at a golf course in an established program for the training and supervision of caddies under the direction of a person who is an employee of the golf course.
- (23)(a) Partners who are actively registered under ORS 671.525 or licensed under [ORS 701.035] **section 2 of this 2007 Act** and who have a substantial ownership interest in a partnership. If all partners are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such partners may elect to be nonsubject workers. For all other partnerships registered under ORS 671.510 to 671.710 or licensed under

[*ORS chapter 701*] **section 2 of this 2007 Act**, the maximum number of exempt partners shall be whichever is the greater of the following:

- (A) Two partners; or
- (B) One partner for each 10 partnership employees.

(b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the partnership qualifies as an independent contractor. Any partnership registered under ORS 671.525 or licensed under [*ORS 701.035*] **section 2 of this 2007 Act** and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(24)(a) Corporate officers who are directors of a corporation actively registered under ORS 671.525 or licensed under [*ORS 701.035*] **section 2 of this 2007 Act** and who have a substantial ownership interest in the corporation, regardless of the nature of the work performed. If all officers of the corporation are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such officers may elect to be nonsubject workers. For all other corporations registered under ORS 671.510 to 671.710 or licensed under [*ORS chapter 701*] **section 2 of this 2007 Act**, the maximum number of exempt corporate officers shall be whichever is the greater of the following:

- (A) Two corporate officers; or
- (B) One corporate officer for each 10 corporate employees.

(b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the corporation qualifies as an independent contractor. Any corporation registered under ORS 671.525 or licensed under [*ORS 701.035*] **section 2 of this 2007 Act** and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(25)(a) Limited liability company members who are members of a company actively registered under ORS 671.525 or licensed under [*ORS 701.035*] **section 2 of this 2007 Act** and who have a substantial ownership interest in the company, regardless of the nature of the work performed. If all members of the company are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such members may elect to be nonsubject workers. For all other companies registered under ORS 671.510 to 671.710 or licensed under [*ORS chapter 701*] **section 2 of this 2007 Act**, the maximum number of exempt company members shall be whichever is the greater of the following:

- (A) Two company members; or
- (B) One company member for each 10 company employees.

(b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the company qualifies as an independent contractor. Any company registered under ORS 671.525 or licensed under [*ORS 701.035*] **section 2 of this 2007 Act** and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(26) A person serving as a referee or assistant referee in a youth or adult recreational soccer match whose services are retained on a match-by-match basis.

(27) A person performing language translator or interpreter services that are provided for others through an agent or broker.

**SECTION 50.** ORS 671.540 is amended to read:

671.540. ORS 671.510 to 671.710 and 671.990 (2) do not apply to:

(1) Any federal or state agency or any political subdivision performing landscaping work on public property.

(2) Any landscape architect registered under ORS 671.310 to 671.459 and practicing as provided under ORS 671.310 to 671.459.

(3) Landscaping work performed by a landscape maintenance business if:

(a) The landscaping work is performed for a customer that in a calendar year receives primarily landscape maintenance services from the business;

(b) The value of all labor, materials or other items supplied for landscaping work at a job site does not exceed \$500 in a calendar year; and

(c) The landscaping work is of a casual, minor or inconsequential nature, as those terms are defined by the State Landscape Contractors Board by rule.

(4) Installation of fences, decks, arbors, driveways, walkways or retaining walls if performed by a person or business licensed with the Construction Contractors Board.

(5) Rough grading of plots and areas of land performed in conjunction with new or remodeling construction if performed by a person or business licensed with the Construction Contractors Board.

(6) Any owner of property who contracts for landscaping work to be performed by a person licensed under ORS 671.560. The exception provided by this subsection does not apply to a person who, in pursuit of an independent business, performs or contracts for the performance of landscaping work with the intent of offering for sale before, upon or after completion of the landscaping work the property upon which the landscaping work is performed.

(7) Any landscaping work performed by a person on property that the person owns or in which the person has a legal interest. The exception provided by this subsection does not apply to a person who, in pursuit of an independent business, performs or contracts for the performance of landscaping work with the intent of offering for sale before, upon or after completion of the landscaping work the property on which the landscaping work is performed.

(8) A **residential** general contractor licensed under ORS chapter 701 who performs landscaping work if the total value of the landscaping is less than \$2,500 per residential dwelling and the landscaping work is performed on residential property for which the contractor is under contract for the construction of a new dwelling. The exception provided by this subsection does not apply to the performance of irrigation work by a **residential** general contractor. The State Landscape Contractors Board shall revise the amount specified in this subsection every five years, beginning in 2003, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor.

(9) A **residential** general contractor licensed under ORS chapter 701 who performs landscaping work on residential property that is directly related to local building code requirements or occupancy ordinances including, but not limited to, the placement of street trees. The exception provided by this subsection does not apply to the performance of irrigation work by a general contractor.

(10) A person engaged in making plans or drawings for the selection, placement or use of plants or other site features, unless the plans or drawings are for the purpose of providing construction details and specifications.

(11) Use by a person other than a landscape contractor of the title "landscape designer" when engaged in making plans or drawings described in subsection (10) of this section.

(12) A person providing recommendations or written specifications for soil amendments or planting media if the recommendations or specifications are solely for the purpose of plant installation.

(13) A person registered under ORS 447.010 to 447.156 when performing repair and maintenance on piping for irrigation systems.

(14) An employee, as defined in ORS 657.015, of a **residential** general contractor licensed under ORS chapter 701 when performing work that the contractor may perform under subsection (8) or (9) of this section.

(15) An employee of a licensed landscaping business when performing work for the business under the direct supervision of a licensed landscape contractor.

(16) An employee of a worker leasing company or temporary service provider, both as defined in ORS 656.850, when performing work for a licensed landscaping business under the direct supervision of a licensed landscape contractor.

**SECTION 51. ORS 701.058 and 701.252 are repealed.**

**SECTION 52.** If Senate Bill 94 becomes law, section 10 of this 2007 Act is amended to read:

**Sec. 10.** (1) If an order of the Construction Contractors Board that determines a [*claim*] **complaint** under ORS 701.145 becomes final by operation of law or on appeal and remains unpaid 10 days after the date the order becomes final, the [*claimant*] **complainant** may file the order with the county clerk in any county of this state.

(2) Upon receipt, the clerk shall record the order in the County Clerk Lien Record. In addition to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

(3)(a) Payments from the surety bond of a residential contractor pursuant to board order and notice are satisfied in the following priority in any 90-day period:

(A) Board orders as a result of *[claims]* **complaints** against a residential contractor by the owner of a residential or small commercial structure have payment priority to the full extent of the bond over all other types of *[claims]* **complaints**.

(B) If the *[claims]* **complaints** described in subparagraph (A) of this paragraph do not exhaust the bond, then amounts due as a result of all other types of residential or small commercial structure *[claims]* **complaints** filed within that 90-day period may be satisfied from the bond, except that the total amount paid from any one bond to nonowner *[claimants]* **complainants** may not exceed \$3,000.

(b) A 90-day period begins on the date the first *[claim]* **complaint** is filed with the board. Subsequent 90-day periods begin on the date the first *[claim]* **complaint** is filed with the board after the close of the preceding 90-day period.

(4) If the total *[claims]* **complaints** filed with the board against a residential contractor within 90 days after the board receives notice of the first *[claim]* **complaint** against the contractor exceed the amount of the bond available for those *[claims]* **complaints**, the bond shall be apportioned as the board determines, subject to the priorities established under this section.

(5) If the total amounts due as a result of *[claims]* **complaints** filed with the board within 90 days after the first *[claim]* **complaint** is filed do not exceed the amount of the bond available for those *[claims]* **complaints**, all amounts due as a result of *[claims]* **complaints** filed within the 90-day period shall have priority over all *[claims]* **complaints** subsequently filed until the amount of the bond available for the payment of *[claims]* **complaints** is exhausted.

(6) The total amount paid from a residential contractor bond for costs, interest and attorney fees may not exceed \$3,000.

**SECTION 53.** If Senate Bill 94 becomes law, section 11 of this 2007 Act is amended to read:

**Sec. 11.** (1)(a) Payments from the surety bond of a commercial contractor pursuant to Construction Contractors Board order and notice are satisfied in the following priority in any 90-day period:

(A) Board orders as a result of *[claims]* **complaints** against a commercial contractor by a person furnishing labor to a contractor or owed employee benefits by a contractor have payment priority to the full extent of the bond over all other types of *[claims]* **complaints**.

(B) If the *[claims]* **complaints** described in subparagraph (A) of this paragraph do not exhaust the bond, then amounts due as a result of all other types of small commercial or large commercial structure *[claims]* **complaints** may be satisfied from the bond, except *[claims]* **complaints** for costs, interest and attorney fees.

(C) If *[claims]* **complaints** described in subparagraphs (A) and (B) of this paragraph do not exhaust the bond, then *[claims]* **complaints** for costs, interest and attorney fees resulting from small commercial or large commercial structure *[claims]* **complaints** may be satisfied from the bond.

(b) A 90-day period begins on the date the first *[claim]* **complaint** is filed with the board. Subsequent 90-day periods begin on the date the first *[claim]* **complaint** is filed with the board after the close of the preceding 90-day period.

(2) If the total *[claims]* **complaints** filed with the board against a commercial contractor within 90 days after the board receives notice of the first *[claim]* **complaint** against the contractor exceed the amount of the bond available for those *[claims]* **complaints**, the bond shall be apportioned as the board determines, subject to the priorities established under this section.

(3) If the total amounts due as a result of *[claims]* **complaints** filed with the board within 90 days after the first *[claim]* **complaint** is filed do not exceed the amount of the bond available for those *[claims]* **complaints**, all amounts due as a result of *[claims]* **complaints** filed within the 90-day

period shall have priority over all *[claims]* **complaints** subsequently filed until the amount of the bond available for the payment of *[claims]* **complaints** is exhausted.

**SECTION 54. If Senate Bill 605 becomes law and House Bill 2117 does not become law, section 13 of this 2007 Act (amending ORS 701.005) is repealed and ORS 701.005, as amended by section 1, chapter 511, Oregon Laws 2007 (Enrolled Senate Bill 605), is amended to read:**

701.005. As used in this chapter:

(1) "Board" means the Construction Contractors Board.

(2) **"Commercial contractor" means a licensed contractor that holds an endorsement as a:**

- (a) **Commercial general contractor level 1;**
- (b) **Commercial specialty contractor level 1;**
- (c) **Commercial general contractor level 2;**
- (d) **Commercial specialty contractor level 2; or**
- (e) **Commercial developer.**

(3) **"Commercial developer" means a developer of property that is zoned for or intended for use compatible with a small commercial or large commercial structure.**

[(2)] (4) "Construction debt" means an amount owed under:

- (a) A final order or arbitration award issued by the board; or
- (b) A judgment or civil penalty arising from construction activities within the United States.

[(3)] (5) **"Contractor" means any of the following:**

(a) A person *[operating as a general contractor, residential-only contractor or specialty contractor business or other person]* who, for compensation or with the intent to sell, arranges or undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect, move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate, or to clean or service chimneys, or to do any part thereof.

(b) **A person that purchases or owns property and constructs or for compensation arranges for the construction of one or more residential structures or small commercial structures with the intent of selling the structures.**

(c) **A school district, as defined in ORS 332.002, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure.**

(d) **A community college district, as defined in ORS 341.005, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure.**

(e) **Any person except a landscape contractor, nurseryman, gardener or person engaged in the commercial harvest of forest products, that is engaged as an independent contractor to remove trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying.**

(f) **A business that supplies the services of a home inspector certified under ORS 701.350, a lead-based paint inspector licensed under ORS 701.515 or a cross connection inspector and backflow assembly tester certified under ORS 448.279.**

(6) **"Developer" means a contractor that owns property or an interest in property and engages in the business of arranging for construction work or performing other activities associated with the improvement of real property, with the intent to sell the property.**

[(4)] (7) "General contractor":

(a) Means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor supervises or performs in whole or part, whenever the sum of all contracts on any single property, including materials and labor, exceeds an amount established by rule by the board. *["General contractor" does not include specialty contractors or limited contractors, as described in ORS 701.085.]*

(b) **Does not mean a specialty contractor or a residential limited contractor.**

[5] (8) “Home inspector” means a person who, for a fee, inspects and provides written reports on the overall physical condition of a residential structure and the appurtenances thereto. “Home inspector” does not include persons certified under ORS chapter 455 to inspect new, repaired or altered structures for compliance with the state building code.

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

(9) “Key employee” means an employee or owner of a contractor who is a corporate officer, manager, superintendent, foreperson or lead person or any other employee identified by the board by rule.

[7] (10) “Large commercial structure” means a structure that is not a residential structure or small commercial structure.

[8] “Licensed developer” means a contractor who owns property or an interest in property and arranges for construction work, if the contractor:]

[a] Engages in the business of arranging for construction work and performing other activities associated with the improvement of real property, with the intent to sell the property;]

[b] Acts in association with one or more licensed general contractors and the general contractor or combination of general contractors have sole responsibility for overseeing all phases of construction activity on the property; and]

[c] Does not perform any construction work on the property.]

[9] (11) “Officer” means any of the following persons:

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

(b) A general partner in a limited partnership.

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

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

(e) A trustee.

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

[(10) “Residential-only contractor” means a general contractor or specialty contractor who performs work exclusively in connection with residential structures and small commercial structures, and the appurtenances thereto. “Residential-only contractor” includes, but is not limited to:]

[a] A person who purchases or owns property and constructs or for compensation arranges for the construction of one or more residential structures or small commercial structures with the intent of selling the structures;]

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

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

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

(12) “Residential contractor” means a licensed contractor that holds an endorsement as a:

(a) Residential general contractor;

(b) Residential specialty contractor;

(c) Residential limited contractor; or

**(d) Residential developer.**

**(13) “Residential developer” means a developer of property that is zoned for or intended for use compatible with a residential or small commercial structure.**

*[(11) “Residential structure” means a residence, including a site-built home, modular home constructed off-site, floating home as defined in ORS 830.700, condominium unit, manufactured dwelling or duplex, or a multiunit residential building consisting of four units or less that is not part of a multistructure complex of buildings.]*

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

**(14) “Residential structure”:**

**(a) Means:**

**(A) A residence that is a site-built home;**

**(B) A structure that contains one or more dwelling units and is four stories or less above grade;**

**(C) A condominium, rental residential unit or other residential dwelling unit that is part of a larger structure, if the property interest in the unit is separate from the property interest in the larger structure;**

**(D) A modular home constructed off-site;**

**(E) A manufactured dwelling; or**

**(F) A floating home as defined in ORS 830.700.**

**(b) Does not mean:**

**(A) Subject to paragraph (a)(C) of this subsection, a structure that contains both residential and nonresidential units;**

**(B) Transient lodging;**

**(C) A residential school or residence hall;**

**(D) A state or local correctional facility other than a local facility for persons enrolled in work release programs maintained under ORS 144.460;**

**(E) A youth correction facility as defined in ORS 420.005;**

**(F) A youth care center operated by a county juvenile department under administrative control of a juvenile court pursuant to ORS 420.855 to 420.885;**

**(G) A detention facility as defined in ORS 419A.004;**

**(H) A nursing home;**

**(I) A hospital; or**

**(J) A place constructed primarily for recreational activities.**

**(15) “Small commercial structure” means:**

**(a) A nonresidential structure that has a ground area of 10,000 square feet or less, including exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish of the structure;**

**(b) A nonresidential leasehold, rental unit or other unit that is part of a larger structure, if the unit has a ground area of 12,000 square feet or less, excluding exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish of the unit; or**

**(c) A nonresidential structure of any size for which the contract price of all construction contractor work to be performed on the structure as part of a construction project does not total more than \$250,000.**

*[(13)]* **(16) “Specialty contractor” means a contractor who performs work on a structure, project, development or improvement and whose operations as such do not fall within the definition of “general contractor.” “Specialty contractor” includes a person who performs work regulated under ORS [chapter 446] 446.395.**

**SECTION 55.** If House Bill 2117 becomes law and Senate Bill 605 does not become law, section 13 of this 2007 Act (amending ORS 701.005) is repealed and ORS 701.005, as amended by section 41, chapter \_\_\_, Oregon Laws 2007 (Enrolled House Bill 2117), is amended to read: 701.005. As used in this chapter:

(1) "Board" means the Construction Contractors Board.

(2) "Commercial contractor" means a licensed contractor that holds an endorsement as a:

- (a) Commercial general contractor level 1;
- (b) Commercial specialty contractor level 1;
- (c) Commercial general contractor level 2;
- (d) Commercial specialty contractor level 2; or
- (e) Commercial developer.

(3) "Commercial developer" means a developer of property that is zoned for or intended for use compatible with a small commercial or large commercial structure.

[(2)] (4) "Construction debt" means an amount owed under:

- (a) A final order or arbitration award issued by the board; or
- (b) A judgment or civil penalty arising from construction activities within the United States.

[(3)] (5) "Contractor" means **any of the following:**

(a) A person who, for compensation or with the intent to sell, arranges or undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect, move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate or to do any part thereof. [*"Contractor" includes general contractors, residential-only contractors and specialty contractors as defined in this section.*]

(b) A person that purchases or owns property and constructs or for compensation arranges for the construction of one or more residential structures or small commercial structures with the intent of selling the structures.

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

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

(e) Any person except a landscape contracting business, nurseryman, gardener or person engaged in the commercial harvest of forest products, that is engaged as an independent contractor to remove trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying.

(f) A business that supplies the services of a home inspector certified under ORS 701.350, a lead-based paint inspector licensed under ORS 701.515 or a cross connection inspector and backflow assembly tester certified under ORS 448.279.

(6) "Developer" means a contractor that owns property or an interest in property and engages in the business of arranging for construction work or performing other activities associated with the improvement of real property, with the intent to sell the property.

[(4)] (7) "General contractor":

(a) Means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor supervises or performs in whole or part, whenever the sum of all contracts on any single property, including materials and labor, exceeds an amount established by rule by the board. [*"General contractor" does not include specialty contractors or limited contractors, as described in ORS 701.085.*]

(b) Does not mean a specialty contractor or a residential limited contractor.

[(5)] (8) "Home inspector" means a person who, for a fee, inspects and provides written reports on the overall physical condition of a residential structure and the appurtenances thereto. "Home

inspector” does not include persons certified under ORS chapter 455 to inspect new, repaired or altered structures for compliance with the state building code.

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

**(9) “Key employee” means an employee or owner of a contractor who is a corporate officer, manager, superintendent, foreperson or lead person or any other employee identified by the board by rule.**

[(7)] **(10) “Large commercial structure”** means a structure that is not a residential structure or small commercial structure.

[(8) “Licensed developer” means a contractor who owns property or an interest in property and arranges for construction work, if the contractor:]

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

[(b) Acts in association with one or more licensed general contractors and the general contractor or combination of general contractors have sole responsibility for overseeing all phases of construction activity on the property; and]

[(c) Does not perform any construction work on the property.]

[(9)] **(11) “Officer”** means any of the following persons:

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

(b) A general partner in a limited partnership.

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

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

(e) A trustee.

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

[(10) “Residential-only contractor” means a general contractor or specialty contractor who performs work exclusively in connection with residential structures and small commercial structures, and the appurtenances thereto. “Residential-only contractor” includes, but is not limited to:]

[(a) A person who purchases or owns property and constructs or for compensation arranges for the construction of one or more residential structures or small commercial structures with the intent of selling the structures;]

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

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

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

**(12) “Residential contractor” means a licensed contractor that holds an endorsement as a:**

**(a) Residential general contractor;**

**(b) Residential specialty contractor;**

**(c) Residential limited contractor; or**

**(d) Residential developer.**

**(13) “Residential developer” means a developer of property that is zoned for or intended for use compatible with a residential or small commercial structure.**

*[(11) “Residential structure” means a residence, including a site-built home, modular home constructed off-site, floating home as defined in ORS 830.700, condominium unit, manufactured dwelling or duplex, or a multiunit residential building consisting of four units or less that is not part of a multistructure complex of buildings.]*

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

**(14) “Residential structure”:**

**(a) Means:**

**(A) A residence that is a site-built home;**

**(B) A structure that contains one or more dwelling units and is four stories or less above grade;**

**(C) A condominium, rental residential unit or other residential dwelling unit that is part of a larger structure, if the property interest in the unit is separate from the property interest in the larger structure;**

**(D) A modular home constructed off-site;**

**(E) A manufactured dwelling; or**

**(F) A floating home as defined in ORS 830.700.**

**(b) Does not mean:**

**(A) Subject to paragraph (a)(C) of this subsection, a structure that contains both residential and nonresidential units;**

**(B) Transient lodging;**

**(C) A residential school or residence hall;**

**(D) A state or local correctional facility other than a local facility for persons enrolled in work release programs maintained under ORS 144.460;**

**(E) A youth correction facility as defined in ORS 420.005;**

**(F) A youth care center operated by a county juvenile department under administrative control of a juvenile court pursuant to ORS 420.855 to 420.885;**

**(G) A detention facility as defined in ORS 419A.004;**

**(H) A nursing home;**

**(I) A hospital; or**

**(J) A place constructed primarily for recreational activities.**

**(15) “Small commercial structure” means:**

**(a) A nonresidential structure that has a ground area of 10,000 square feet or less, including exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish of the structure;**

**(b) A nonresidential leasehold, rental unit or other unit that is part of a larger structure, if the unit has a ground area of 12,000 square feet or less, excluding exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish of the unit; or**

**(c) A nonresidential structure of any size for which the contract price of all construction contractor work to be performed on the structure as part of a construction project does not total more than \$250,000.**

*[(13)]* **(16) “Specialty contractor” means a contractor who performs work on a structure, project, development or improvement and whose operations as such do not fall within the definition of “general contractor.” “Specialty contractor” includes a person who performs work regulated under ORS [chapter 446] 446.395.**

**SECTION 56. If both Senate Bill 605 and House Bill 2117 become law, section 13 of this 2007 Act (amending ORS 701.005) is repealed and ORS 701.005, as amended by section 1,**

**chapter 511, Oregon Laws 2007 (Enrolled Senate Bill 605), and section 41, chapter \_\_\_\_, Oregon Laws 2007 (Enrolled House Bill 2117), is amended to read:**

701.005. As used in this chapter:

(1) "Board" means the Construction Contractors Board.

(2) **"Commercial contractor" means a licensed contractor that holds an endorsement as a:**

- (a) **Commercial general contractor level 1;**
- (b) **Commercial specialty contractor level 1;**
- (c) **Commercial general contractor level 2;**
- (d) **Commercial specialty contractor level 2; or**
- (e) **Commercial developer.**

(3) **"Commercial developer" means a developer of property that is zoned for or intended for use compatible with a small commercial or large commercial structure.**

[2] (4) "Construction debt" means an amount owed under:

- (a) A final order or arbitration award issued by the board; or
- (b) A judgment or civil penalty arising from construction activities within the United States.

[3] (5) "Contractor" means **any of the following:**

(a) A person [*operating as a general contractor, residential-only contractor or specialty contractor business or other person*] who, for compensation or with the intent to sell, arranges or undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect, move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate, or to clean or service chimneys, or to do any part thereof.

(b) **A person that purchases or owns property and constructs or for compensation arranges for the construction of one or more residential structures or small commercial structures with the intent of selling the structures.**

(c) **A school district, as defined in ORS 332.002, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure.**

(d) **A community college district, as defined in ORS 341.005, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure.**

(e) **Any person except a landscape contracting business, nurseryman, gardener or person engaged in the commercial harvest of forest products, that is engaged as an independent contractor to remove trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying.**

(f) **A business that supplies the services of a home inspector certified under ORS 701.350, a lead-based paint inspector licensed under ORS 701.515 or a cross connection inspector and backflow assembly tester certified under ORS 448.279.**

(6) **"Developer" means a contractor that owns property or an interest in property and engages in the business of arranging for construction work or performing other activities associated with the improvement of real property, with the intent to sell the property.**

[4] (7) "General contractor":

(a) Means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor supervises or performs in whole or part, whenever the sum of all contracts on any single property, including materials and labor, exceeds an amount established by rule by the board. [*"General contractor" does not include specialty contractors or limited contractors, as described in ORS 701.085.*]

(b) **Does not mean a specialty contractor or a residential limited contractor.**

[5] (8) "Home inspector" means a person who, for a fee, inspects and provides written reports on the overall physical condition of a residential structure and the appurtenances thereto. "Home

inspector” does not include persons certified under ORS chapter 455 to inspect new, repaired or altered structures for compliance with the state building code.

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

**(9) “Key employee” means an employee or owner of a contractor who is a corporate officer, manager, superintendent, foreperson or lead person or any other employee identified by the board by rule.**

[(7)] **(10) “Large commercial structure”** means a structure that is not a residential structure or small commercial structure.

[(8) “Licensed developer” means a contractor who owns property or an interest in property and arranges for construction work, if the contractor:]

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

[(b) Acts in association with one or more licensed general contractors and the general contractor or combination of general contractors have sole responsibility for overseeing all phases of construction activity on the property; and]

[(c) Does not perform any construction work on the property.]

[(9)] **(11) “Officer”** means any of the following persons:

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

(b) A general partner in a limited partnership.

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

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

(e) A trustee.

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

[(10) “Residential-only contractor” means a general contractor or specialty contractor who performs work exclusively in connection with residential structures and small commercial structures, and the appurtenances thereto. “Residential-only contractor” includes, but is not limited to:]

[(a) A person who purchases or owns property and constructs or for compensation arranges for the construction of one or more residential structures or small commercial structures with the intent of selling the structures;]

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

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

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

**(12) “Residential contractor” means a licensed contractor that holds an endorsement as a:**

**(a) Residential general contractor;**

**(b) Residential specialty contractor;**

**(c) Residential limited contractor; or**

**(d) Residential developer.**

**(13) “Residential developer” means a developer of property that is zoned for or intended for use compatible with a residential or small commercial structure.**

*[(11) “Residential structure” means a residence, including a site-built home, modular home constructed off-site, floating home as defined in ORS 830.700, condominium unit, manufactured dwelling or duplex, or a multiunit residential building consisting of four units or less that is not part of a multistructure complex of buildings.]*

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

**(14) “Residential structure”:**

**(a) Means:**

**(A) A residence that is a site-built home;**

**(B) A structure that contains one or more dwelling units and is four stories or less above grade;**

**(C) A condominium, rental residential unit or other residential dwelling unit that is part of a larger structure, if the property interest in the unit is separate from the property interest in the larger structure;**

**(D) A modular home constructed off-site;**

**(E) A manufactured dwelling; or**

**(F) A floating home as defined in ORS 830.700.**

**(b) Does not mean:**

**(A) Subject to paragraph (a)(C) of this subsection, a structure that contains both residential and nonresidential units;**

**(B) Transient lodging;**

**(C) A residential school or residence hall;**

**(D) A state or local correctional facility other than a local facility for persons enrolled in work release programs maintained under ORS 144.460;**

**(E) A youth correction facility as defined in ORS 420.005;**

**(F) A youth care center operated by a county juvenile department under administrative control of a juvenile court pursuant to ORS 420.855 to 420.885;**

**(G) A detention facility as defined in ORS 419A.004;**

**(H) A nursing home;**

**(I) A hospital; or**

**(J) A place constructed primarily for recreational activities.**

**(15) “Small commercial structure” means:**

**(a) A nonresidential structure that has a ground area of 10,000 square feet or less, including exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish of the structure;**

**(b) A nonresidential leasehold, rental unit or other unit that is part of a larger structure, if the unit has a ground area of 12,000 square feet or less, excluding exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish of the unit; or**

**(c) A nonresidential structure of any size for which the contract price of all construction contractor work to be performed on the structure as part of a construction project does not total more than \$250,000.**

*[(13)] (16) “Specialty contractor” means a contractor who performs work on a structure, project, development or improvement and whose operations as such do not fall within the definition of “general contractor.” “Specialty contractor” includes a person who performs work regulated under ORS [chapter 446] 446.395.*

**SECTION 57. If House Bill 2498 becomes law, section 14 of this 2007 Act (amending ORS 701.010) is repealed and ORS 701.010, as amended by section 1, chapter \_\_, Oregon Laws 2007 (Enrolled House Bill 2498), is amended to read:**

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

- (1) A person who is constructing, altering, improving or repairing personal property.
- (2) A person who is constructing, altering, improving or repairing a structure located within the boundaries of any site or reservation under the jurisdiction of the federal government.
- (3) A person who furnishes materials, supplies, equipment or finished product and does not fabricate them into, or consume them, in the performance of the work of a contractor.
- (4) A person working on one structure or project, under one or more contracts, when the aggregate price of all of that person's contracts for labor, materials and all other items is less than \$500 and such work is of a casual, minor or inconsequential nature. This subsection does not apply to a person who advertises or puts out any sign or card or other device that might indicate to the public that the person is a contractor.
- (5) An owner who contracts for work to be performed by a licensed contractor. This subsection does not apply to a person who, in the pursuit of an independent business, constructs, remodels, repairs or for compensation and with the intent to sell the structure, arranges to have constructed, remodeled or repaired a structure with the intent of offering the structure for sale before, upon or after completion. It is prima facie evidence that there was an intent of offering the structure for sale if the person who constructed, remodeled or repaired the structure or arranged to have the structure constructed, remodeled or repaired does not occupy the structure after its completion.
- (6) An owner who contracts for one or more licensed contractors to perform work wholly or partially within the same calendar year on not more than three existing residential structures of the owner. This subsection does not apply to an owner contracting for work that requires a building permit unless the work that requires a permit is performed by, or under the direction of, a **residential** general contractor.
- (7) A person performing work on a property that person owns or performing work as the owner's employee, whether the property is occupied by the owner or not, or a person performing work on that person's residence, whether or not that person owns the residence. This subsection does not apply to a person performing work on a structure owned by that person or the owner's employee, if the work is performed in the pursuit of an independent business with the intent of offering the structure for sale before, upon or after completion.
- (8) A person licensed in one of the following trades or professions when operating within the scope of that license:
  - (a) An architect licensed by the State Board of Architect Examiners.
  - (b) A registered professional engineer licensed by the State Board of Examiners for Engineering and Land Surveying.
  - (c) A water well contractor licensed by the Water Resources Department.
  - (d) A sewage disposal system installer licensed by the Department of Environmental Quality.
  - (e) A landscaping business licensed under ORS 671.510 to 671.710 that constructs fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls and that meets the applicable bonding requirements under ORS 671.690.
  - (f) A pesticide operator licensed under ORS 634.116 who does not conduct inspections for wood destroying organisms for the transfer of real estate.
  - (g) An appraiser certified or licensed under ORS chapter 674 or an appraiser assistant registered under ORS chapter 674 by the Appraiser Certification and Licensure Board.
- (9) A person who performs work subject to this chapter as an employee of a contractor.
- (10) A manufacturer of a manufactured home constructed under standards established by the federal government.
- (11) A person involved in the movement of:
  - (a) Modular buildings or structures other than manufactured structures not in excess of 14 feet in width.

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

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

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

(14) Units of government other than those specified in ORS 701.005 [(10)(b) and (c)] **(5)(c) and (d)**.

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

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

**(17) City or county inspectors acting under ORS 701.225 or inspectors described in ORS 455.715.**

**SECTION 58. If Senate Bill 94 becomes law, section 18 of this 2007 Act (amending ORS 701.065) is repealed and ORS 701.065, as amended by section 6, chapter \_\_, Oregon Laws 2007 (Enrolled Senate Bill 94), is amended to read:**

701.065. (1) Except as provided in subsection (2) of this section, a contractor may not perfect a construction lien, file a complaint with the Construction Contractors Board or commence an arbitration or a court action for compensation for the performance of any work or for the breach of any contract for work that is subject to this chapter, unless the contractor had a valid license issued by the board **and properly endorsed for the work performed:**

- (a) At the time the contractor bid or entered into the contract for performance of the work; and
- (b) Continuously while performing the work for which compensation is sought.

(2) The board, arbitrator or court may not apply the provisions of subsection (1) of this section to a contractor if the board, arbitrator or court determines that:

(a) The contractor either did not have a valid license **with a proper endorsement** at any time required under subsection (1) of this section, or had an initial issuance of a valid license, and:

(A) The contractor was not aware of the requirement that the contractor be licensed **or properly endorsed for the work performed**, and the contractor submitted a completed application for a license within a number of days established by the board, but not more than 90 days, of the date the contractor became aware of the requirement;

(B) At the time the contractor perfected a construction lien or commenced any proceeding subject to the provisions of subsection (1) of this section, the contractor was licensed by the board **and properly endorsed for the work performed**; and

(C) Enforcement of the provisions of subsection (1) of this section would result in substantial injustice to the contractor;

(b) The contractor was licensed by the board for some but not all of the times required under subsection (1) of this section and had a lapse in the license and:

(A) The contractor was not aware of the lapse in the license for more than a number of days established by the board, but not to exceed 90 days, before submitting a completed application for license renewal with the board;

(B) Except for perfection of a construction lien and a court action to foreclose the lien, at the time the contractor commenced any proceeding subject to the provisions of subsection (1) of this section the contractor's license was renewed under ORS 701.115 to include the entire time period for which a license was required under subsection (1) of this section; and

(C) For perfection of a construction lien and a court action to foreclose the lien, the contractor's license was renewed under ORS 701.115 for the entire time period for which a license was required under subsection (1) of this section, but not later than 90 days following perfection of the lien; **or**

*[(c)(A) The contractor is a licensed developer and did not have a valid license during all or part of the period described in subsection (1) of this section;]*

*[(B) The licensed developer was unaware of the license requirement and obtained a license within a time established by the board, not to exceed 90 days after the licensed developer learned of the requirement;]*

*[(C) The licensed developer was licensed at the time the licensed developer perfected the lien or commenced the proceeding; and]*

*[(D) Enforcement of subsection (1) of this section would result in substantial injustice to the licensed developer; or]*

*[(d)]* (c) The proceeding:

(A) Is directed against a person or entity that:

(i) Is subject to this chapter or ORS chapter 671 or 672;

(ii) Provides construction or design labor or services of any kind; or

(iii) Manufactures, distributes, rents or otherwise provides materials, supplies, equipment, systems or products; and

(B) Arises out of defects, deficiencies or inadequate performance in the construction, design, labor, services, materials, supplies, equipment, systems or products provided.

(3) If a contractor falsely swears to information provided under ORS 701.075 or knowingly violates the provisions of ORS 656.029, 670.600 or 701.075, the contractor may not perfect a construction lien, file a complaint with the board or commence an arbitration or a court action for compensation for the performance of any work on a residential structure or for the breach of any contract for work on a residential structure that is subject to this chapter.

**SECTION 58a. If House Bill 2654 becomes law, section 20 of this 2007 Act (amending ORS 701.075) is repealed and ORS 701.075, as amended by section 24, chapter \_\_\_, Oregon Laws 2007 (Enrolled House Bill 2654), is amended to read:**

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

(a) *[Classification of the license]* **The endorsement** being sought.

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

(c) For each person described in paragraphs (h) and (i) of this subsection, a Social Security number.

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

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

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

(g) Federal employer identification number, if the applicant is required to have a federal employer identification number.

(h) The name and address of:

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

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

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

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

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

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

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

(H) The responsible managing individual designated by the applicant.

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

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

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

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

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

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

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

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

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

(j) For each person described in paragraphs (h) and (i) of this subsection, information as required by board rule regarding the following if related to construction activities:

(A) A final judgment against the person by a court in any state entered within five years preceding the application date that requires the person to pay money to another person or to a public body if the judgment remains unsatisfied on the application date.

(B) A final order against the person by an administrative agency in any state issued within five years preceding the application date that requires the person to pay money to another person or to a public body if the order remains unsatisfied on the application date.

(C) A court action against the person in any state pending on the application date that alleges the person owes money to another person or to a public body.

(D) An action by an administrative agency in any state pending on the application date that seeks an order that the person pay money to another person or to a public body.

(E) A conviction for a crime listed in ORS 701.135 [(1)(h)] (1)(i) entered within five years preceding the application date.

(F) An indictment for a crime listed in ORS 701.135 [(1)(h)] (1)(i) filed within five years preceding the application date.

(k) The basis on which the applicant meets the standards for independent contractor status under ORS 670.600.

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

(a) Is in compliance with ORS 701.078.

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

(3) Subsection (2)(a) of this section does not apply to [*a licensed*] **an applicant for licensing with endorsement solely as a residential or commercial developer.**

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

**SECTION 59. If Senate Bill 94 becomes law and House Bill 2654 does not become law, section 22 of this 2007 Act (amending ORS 701.085) is repealed and ORS 701.085, as amended by section 7, chapter \_\_\_, Oregon Laws 2007 (Enrolled Senate Bill 94), is amended to read:**

701.085. (1) An applicant for issuance or renewal of a contractor license shall file with the Construction Contractors Board a surety bond with one or more corporate sureties authorized to do business in this state in the amount set forth in *[subsections (2) to (5) of this section]* **section 3 or 4 of this 2007 Act.**

**(2) If an applicant for issuance, renewal or an additional endorsement of a license will hold endorsements as both a residential contractor and a commercial contractor, the applicant shall file with the board a surety bond for each endorsement in the amount set forth in section 3 or 4 of this 2007 Act.**

(3) The surety bond must provide that the applicant, with regard to work subject to this chapter, will pay amounts ordered paid by the board under ORS 701.145 or 701.146. Bonds filed under this *[subsection]* **section** shall remain in effect for at least one year or until depleted by payments under ORS 701.150 **and sections 10 and 11 of this 2007 Act**, unless the surety sooner cancels the bond. At the discretion of the surety the bond may be continued for an additional period by continuation certificate. Except as provided in subsection *[(6)] (4)* of this section, the aggregate liability of the surety under the bond for complaints against the contractor may not exceed the penal sum of the bond no matter how many years the bond is in force. Except as provided in subsection *[(6)] (4)* of this section, an extension by continuation certificate, reinstatement, reissue or renewal of the bond may not increase the liability of the surety.

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

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

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

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

*[(6)] (4)* The board, by rule, may require a licensee to obtain a new surety bond if, pursuant to a board order for payment of a complaint described in ORS 701.140, the surety pays an amount out of the bond of the licensee. The new surety bond must be in the **applicable** amount set forth in *[subsections (2) to (5) of this section]* **section 3 or 4 of this 2007 Act** unless a higher amount is required by a board condition or rule described in subsection *[(7) or (8)] (5) or (6)* of this section. The board may allow a licensee to obtain, instead of a new bond, a certification that the surety remains liable for the full penal sum of the bond, notwithstanding payment by the surety on the complaint.

*[(7)] (5)* If the amount the licensee must pay against the bond under **subsection (3) of this section** exceeds the amount of the bond, the board shall suspend the contractor's license until the amount owed is paid. The board, as a condition of ending the suspension, may require a contractor requesting reinstatement of a license to file a bond of an amount up to five times as much as the amount required ordinarily of a licensee under *[this section]* **section 3 or 4 of this 2007 Act.**

*[(8)] (6)* The board by rule may establish conditions for applicants or persons licensed under this chapter under which the applicant or licensee must file a bond of an amount up to five times as much as the amount required ordinarily of an applicant or licensee under *[this section]* **section 3 or 4 of this 2007 Act.** The board may reduce the amount of bond it would otherwise require if the contractor demonstrates satisfactory completion of approved elective classes on dispute resolution and prevention, basic accounting and record keeping or such other classes as the board may prescribe.

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

*[(10)] (8)* Upon determination under ORS 701.145 or 701.146 of a complaint against a contractor who holds a bond required under this section, the board shall notify the surety on the bond of the final order in a manner determined by the board by rule. The notification shall include a list of all complaints upon which a final order has been issued.

[(11)] (9) A court action may not be commenced against a surety on a bond required under this section until 30 days after the date that the surety is notified by the board under ORS 701.150 that payment is due on the final order.

[(12)] (10) In any action against a surety on a bond under this section that is based on the failure of the surety to pay a final order, the court may award:

(a) Costs;

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

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

**SECTION 60. If House Bill 2654 becomes law and Senate Bill 94 does not become law, section 22 of this 2007 Act (amending ORS 701.085) is repealed and ORS 701.085, as amended by section 22, chapter \_\_, Oregon Laws 2007 (Enrolled House Bill 2654), is amended to read:**

701.085. (1) An applicant for issuance or renewal of a contractor license shall file with the Construction Contractors Board a surety bond with one or more corporate sureties authorized to do business in this state in the amount set forth in [subsections (2) to (5) of this section] **section 3 or 4 of this 2007 Act.**

**(2) If an applicant for issuance, renewal or an additional endorsement of a license will hold endorsements as both a residential contractor and a commercial contractor, the applicant shall file with the board a surety bond for each endorsement in the amount set forth in section 3 or 4 of this 2007 Act.**

(3) The surety bond must provide that the applicant, with regard to work subject to this chapter, will pay claims ordered paid by the board under ORS 701.145 or 701.146. Bonds filed under this [subsection] **section** shall remain in effect for at least one year or until depleted by claims paid under ORS 701.150 **and sections 10 and 11 of this 2007 Act**, unless the surety sooner cancels the bond. At the discretion of the surety the bond may be continued for an additional period by continuation certificate. Except as provided in subsection [(6)] (4) of this section, the aggregate liability of the surety under the bond for claims against the bond may not exceed the penal sum of the bond no matter how many years the bond is in force. Except as provided in subsection [(6)] (4) of this section, an extension by continuation certificate, reinstatement, reissue or renewal of the bond may not increase the liability of the surety.

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

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

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

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

[(6)] (4) The board, by rule, may require a licensee to obtain a new surety bond if, pursuant to a board order for payment of a claim described in ORS 701.140, the surety pays a claim out of the bond of the licensee. The new surety bond must be in the **applicable** amount set forth in [subsections (2) to (5) of this section] **section 3 or 4 of this 2007 Act** unless a higher amount is required by a board condition or rule described in subsection [(7) or (8)] (5) or (6) of this section. The board may allow a licensee to obtain, instead of a new bond, a certification that the surety remains liable for the full penal sum of the bond, notwithstanding payment by the surety on the claim.

[(7)] (5) If the amount the licensee must pay against the bond under **subsection (3) of this section** exceeds the amount of the bond, the board shall suspend the contractor's license until the amount owed is paid. The board, as a condition of ending the suspension, may require a contractor requesting reinstatement of a license to file a bond of an amount up to five times as much as the amount required ordinarily of a licensee under [this section] **section 3 or 4 of this 2007 Act.**

[(8)] (6) The board by rule may establish conditions for applicants or persons licensed under this chapter under which the applicant or licensee must file a bond of an amount up to five times as

much as the amount required ordinarily of an applicant or licensee under *[this section]* **section 3 or 4 of this 2007 Act**. The board may reduce the amount of bond it would otherwise require if the contractor demonstrates satisfactory completion of approved elective classes on dispute resolution and prevention, basic accounting and record keeping or such other classes as the board may prescribe.

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

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

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

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

(a) Costs;

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

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

**SECTION 61. If both Senate Bill 94 and House Bill 2654 become law, section 22 of this 2007 Act (amending ORS 701.085) is repealed and ORS 701.085, as amended by section 7, chapter \_\_\_, Oregon Laws 2007 (Enrolled Senate Bill 94), and section 22, chapter \_\_\_, Oregon Laws 2007 (Enrolled House Bill 2654), is amended to read:**

701.085. (1) An applicant for issuance or renewal of a contractor license shall file with the Construction Contractors Board a surety bond with one or more corporate sureties authorized to do business in this state in the amount set forth in *[subsections (2) to (5) of this section]* **section 3 or 4 of this 2007 Act**.

**(2) If an applicant for issuance, renewal or an additional endorsement of a license will hold endorsements as both a residential contractor and a commercial contractor, the applicant shall file with the board a surety bond for each endorsement in the amount set forth in section 3 or 4 of this 2007 Act.**

(3) The surety bond must provide that the applicant, with regard to work subject to this chapter, will pay amounts ordered paid by the board under ORS 701.145 or 701.146. Bonds filed under this *[subsection]* **section** shall remain in effect for at least one year or until depleted by payments under ORS 701.150 **and sections 10 and 11 of this 2007 Act**, unless the surety sooner cancels the bond. At the discretion of the surety the bond may be continued for an additional period by continuation certificate. Except as provided in subsection *[(6)] (4)* of this section, the aggregate liability of the surety under the bond for complaints against the contractor may not exceed the penal sum of the bond no matter how many years the bond is in force. Except as provided in subsection *[(6)] (4)* of this section, an extension by continuation certificate, reinstatement, reissue or renewal of the bond may not increase the liability of the surety.

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

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

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

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

*[(6)] (4)* The board, by rule, may require a licensee to obtain a new surety bond if, pursuant to a board order for payment of a complaint described in ORS 701.140, the surety pays an amount out

of the bond of the licensee. The new surety bond must be in the **applicable** amount set forth in [subsections (2) to (5) of this section] **section 3 or 4 of this 2007 Act** unless a higher amount is required by a board condition or rule described in subsection [(7) or (8)] **(5) or (6)** of this section. The board may allow a licensee to obtain, instead of a new bond, a certification that the surety remains liable for the full penal sum of the bond, notwithstanding payment by the surety on the complaint.

[(7)] **(5)** If the amount the licensee must pay against the bond under **subsection (3)** of this section exceeds the amount of the bond, the board shall suspend the contractor's license until the amount owed is paid. The board, as a condition of ending the suspension, may require a contractor requesting reinstatement of a license to file a bond of an amount up to five times as much as the amount required ordinarily of a licensee under [this section] **section 3 or 4 of this 2007 Act**.

[(8)] **(6)** The board by rule may establish conditions for applicants or persons licensed under this chapter under which the applicant or licensee must file a bond of an amount up to five times as much as the amount required ordinarily of an applicant or licensee under [this section] **section 3 or 4 of this 2007 Act**. The board may reduce the amount of bond it would otherwise require if the contractor demonstrates satisfactory completion of approved elective classes on dispute resolution and prevention, basic accounting and record keeping or such other classes as the board may prescribe.

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

[(10)] **(8)** Upon determination under ORS 701.145 or 701.146 of a complaint against a contractor who holds a bond required under this section, the board shall notify the surety on the bond of the final order in a manner determined by the board by rule. The notification shall include a list of all complaints upon which a final order has been issued.

[(11)] **(9)** A court action may not be commenced against a surety on a bond required under this section until 30 days after the date that the surety is notified by the board under ORS 701.150 that payment is due on the final order.

[(12)] **(10)** In any action against a surety on a bond under this section that is based on the failure of the surety to pay a final order, the court may award:

- (a) Costs;
- (b) Reasonable attorney fees to the prevailing party as part of the costs; and
- (c) Twice the amount of any damages that the board ordered the surety to pay on the complaint, if the surety arbitrarily and capriciously refused to pay upon order of the board.

**SECTION 62. If House Bill 2654 does not become law, section 26 of this 2007 Act (amending ORS 701.135) is repealed and ORS 701.135, as amended by section 10, chapter 114, Oregon Laws 2007 (Enrolled House Bill 2109), is amended to read:**

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

(a) That the licensee or applicant has violated [ORS 701.055 or 701.078 or section 4, 5, 6 or 7 of this 2007 Act] **a provision of this chapter**.

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

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

**(d) That the licensee has knowingly assisted a licensed contractor to perform work for which the contractor is not properly endorsed.**

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

[(e)] **(f)** That the licensee has knowingly provided false information to the board.

[(f)] **(g)** That the licensee has worked without a construction permit where a permit is required and the work resulted in a claim being filed with the board. For purposes of this paragraph, "con-

struction permit” includes a building permit, electrical permit, mechanical permit or plumbing permit.

[(g)] (h) That the number of licensed contractors working together on the same task on the same job site, where one of the contractors is [licensed] **classed** as exempt under ORS 701.035 (2)(b), exceeded the following:

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

[(h)] (i) Consistent with the provisions of ORS 670.280, that the licensee or applicant has been convicted of one of the following crimes:

- (A) Murder;
- (B) Assault in the first degree;
- (C) Kidnapping;
- (D) Rape, sodomy or unlawful sexual penetration;
- (E) Sexual abuse;
- (F) Arson in the first degree;
- (G) Robbery in the first degree;
- (H) Theft in the first degree; or
- (I) Theft by extortion.

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

[(j)] (k) That the licensee or applicant has repeatedly reported bad faith or false claims of non-payment against contractors or subcontractors.

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

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

- (A) Lack of a surety bond required by ORS 701.085;
- (B) Lack of liability insurance required by ORS 701.105;
- (C) Hiring employees while [licensed] **classed** as exempt under ORS 701.035; or
- (D) Conduct as a construction contractor that is dishonest or fraudulent.

(b) If the licensee or applicant demands a hearing within 90 days after the date of notice to the licensee or applicant of the suspension or refusal to renew, then a hearing must be granted to the licensee or applicant as soon as practicable after the demand, and the administrator shall issue an order pursuant to the hearing as required by ORS chapter 183 confirming, altering or revoking the administrator’s earlier order. Notwithstanding ORS 670.325, a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to a citation for violation that is subject to judicial determination in any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee or applicant.

(3) In addition to all other remedies, if it appears to the board that a person has engaged in, or is engaging in, any act, practice or transaction that violates the provisions of this chapter, the board may direct the Attorney General or the district attorney of the county in which the act, practice or transaction occurs, to apply to the court for an injunction restraining the person from violating the provisions of this chapter. An injunction may not issue for failure to maintain the list provided for in section 4 [of this 2007 Act], **chapter 114, Oregon Laws 2007 (Enrolled House Bill 2109)**, unless the court determines that the failure is intentional.

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

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

**SECTION 63. If House Bill 2654 becomes law, section 26 of this 2007 Act (amending ORS 701.135) is repealed and ORS 701.135, as amended by section 10, chapter 114, Oregon Laws 2007 (Enrolled House Bill 2109), and section 28b, chapter \_\_, Oregon Laws 2007 (Enrolled House Bill 2654), is amended to read:**

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

(a) That the licensee or applicant has violated a provision of [ORS 701.055 or 701.078 or section 2 (1), 4 or 7, chapter 114, Oregon Laws 2007 (Enrolled House Bill 2109), or section 7, 11 or 13 of this 2007 Act or a rule adopted under section 14 (4) of this 2007 Act] **this chapter**.

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

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

**(d) That the licensee has knowingly assisted a licensed contractor to perform work for which the contractor is not properly endorsed.**

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

[(e)] (f) That the licensee has knowingly provided false information to the board.

[(f)] (g) That the licensee has worked without a construction permit where a permit is required and the work resulted in a claim being filed with the board. For purposes of this paragraph, "construction permit" includes a building permit, electrical permit, mechanical permit or plumbing permit.

[(g)] (h) That the number of licensed contractors working together on the same task on the same job site, where one of the contractors is [licensed] **classed** as exempt under ORS 701.035 (2)(b), exceeded the following:

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

[(h)] (i) Consistent with the provisions of ORS 670.280, that the licensee or applicant, or an owner or officer of the licensee or applicant has been convicted of one of the following crimes in this state or an equivalent crime in another state:

- (A) Murder;
- (B) Assault in the first degree;
- (C) Kidnapping;
- (D) Rape, sodomy or unlawful sexual penetration;
- (E) Sexual abuse;
- (F) Arson in the first degree;
- (G) Robbery in the first degree;
- (H) Theft in the first degree; or
- (I) Theft by extortion.

[(i)] (j) That the licensee or applicant has not, within 90 days after the date when payment was received from the public contracting agency, or contractor in the case of a subcontractor, made

payment to any person for supplying labor or materials contracted for with a public contract for a public improvement plus the amount of interest due.

[(j)] **(k)** That the licensee or applicant has repeatedly reported bad faith or false claims of non-payment against contractors or subcontractors.

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

(2) The board may revoke, suspend or refuse to issue or reissue a license if the board determines after notice and opportunity for hearing that an applicant or licensee is unfit for licensure based upon information submitted under ORS 701.075 or discovered by a board investigation under ORS 701.225.

(3) The board may assess a civil penalty as provided in ORS 701.992 if the board determines after notice and opportunity for hearing that any person has violated [*ORS 701.055 (I)*] **section 2 of this 2007 Act.**

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

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

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

(C) Hiring employees while [*licensed*] **classed** as exempt under ORS 701.035;

(D) Conduct as a construction contractor that is dishonest or fraudulent; or

(E) Failure to pay a construction debt.

(b) If the licensee or applicant demands a hearing within 90 days after the date of notice to the licensee or applicant of the suspension or refusal to renew, then a hearing must be granted to the licensee or applicant as soon as practicable after the demand, and the administrator shall issue, pursuant to the hearing as required by ORS chapter 183, an order confirming, altering or revoking the administrator's earlier order. Notwithstanding ORS 670.325, a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to a citation for violation that is subject to judicial determination in any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee or applicant.

(5)(a) In addition to all other remedies, if the board has reason to believe that a person is engaging in an act, practice or transaction that violates this chapter or a board rule, the board may issue an order directing the person to cease the act or to take corrective action.

(b) The board shall mail a copy of an order issued under this subsection to the person by first class mail with certificate of mailing. The board shall include with the order a notice informing the person of the right to request a hearing concerning the order. The notice shall inform the person that any hearing request must be received by the board no later than 21 days after the date the order was mailed by the board.

(c) If the board receives a timely request for a hearing concerning an order issued under this subsection, the board shall schedule the hearing no later than 30 days after receiving the request. The board shall mail written notice of the hearing to the person by first class mail with certificate of mailing no later than seven days before the scheduled hearing date.

(d) An order described in this subsection becomes final if the person does not file a timely request for a hearing concerning the order or fails to appear at the requested hearing as scheduled.

(e) The issuance of a board order under this subsection is subject to ORS 183.413 to 183.497.

(6) In addition to all other remedies, if it appears to the board that a person has engaged in, or is engaging in, any act, practice or transaction that violates the provisions of this chapter, the board may direct the Attorney General or the district attorney of the county in which the act, practice or transaction occurs, to apply to the court for an injunction restraining the person from violating the provisions of this chapter. An injunction may not issue for failure to maintain the list provided for in section 4, chapter 114, Oregon Laws 2007 (Enrolled House Bill 2109), unless the court determines that the failure is intentional.

(7) A certified copy of the record of conviction shall be conclusive evidence of a conviction under subsection [(1)(h)] (1)(i) of this section.

(8) If the board suspends or revokes the license of an individual contractor or contractor business for a violation of subsection [(1)(g)] (1)(h) of this section, the board may not restore or reissue the license unless the individual contractor or a responsible managing individual for the contractor business has successfully completed the training and testing described in ORS 701.072.

**SECTION 64. If Senate Bill 94 becomes law, section 28 of this 2007 Act (amending ORS 701.139) is repealed and ORS 701.139, as amended by section 11, chapter \_\_, Oregon Laws 2007 (Enrolled Senate Bill 94), is amended to read:**

701.139. *[Except as provided in ORS 701.148 (2), the Construction Contractors Board may resolve a dispute against a licensed contractor only if a complaint is made against the contractor's surety bond required by ORS 701.085. In order to have access to the bond,]* **The Construction Contractors Board may determine the validity of a complaint described in ORS 701.140 filed against a licensed contractor.** A person must file [a] the complaint [of a type described in ORS 701.140] within the applicable time limitation described in ORS 701.143. The complaint must be filed and resolved as follows:

(1) **A complaint against a residential contractor that is not also endorsed as a commercial contractor must be resolved as provided in ORS 701.145.**

(2) **A complaint against a commercial contractor that is not also endorsed as a residential contractor must be resolved as provided in ORS 701.146.**

(3) **A complaint against a contractor that is endorsed as both a residential contractor and a commercial contractor:**

[(1)] (a) *[A complaint]* That involves work on a residential structure or an appurtenance to a residential structure must be resolved as provided under ORS 701.145.

[(2)] (b) *[A complaint]* That involves work on a small commercial structure or an appurtenance to a small commercial structure may be resolved as provided in ORS 701.145 or 701.146, **at the complainant's election.**

[(3)] (c) *[Except as provided in subsections (4) and (5) of this section, a complaint]* That involves work on a large commercial structure or an appurtenance to a large commercial structure must be resolved as provided in ORS 701.146.

[(4)] *A complaint by an owner that involves work on a large commercial structure or an appurtenance to a large commercial structure when the total contract involved in the complaint is \$25,000 or less may be resolved as provided in ORS 701.145 or 701.146.*

[(5)] (4) Notwithstanding subsections (1) to [(4)] (3) of this section **and except as provided in ORS 701.148**, with prior agreement of the complainant and the licensed contractor, a complaint may be resolved by the board through binding arbitration under ORS 701.148.

**SECTION 65. If Senate Bill 94 becomes law, section 29 of this 2007 Act (amending ORS 701.140) is repealed and ORS 701.140, as amended by section 12, chapter \_\_, Oregon Laws 2007 (Enrolled Senate Bill 94), is amended to read:**

701.140. A complaint *[made against a licensed contractor's bond required by ORS 701.085]* **under ORS 701.139** must arise from the performance, or a contract for the performance, of work that *[is subject to this chapter]* **requires a contractor license issued by the Construction Contractors Board.** The complaint must be of one or more of the following types:

(1) A complaint against a contractor by the owner of a structure or other real property for the following:

- (a) Negligent work.
- (b) Improper work.
- (c) Breach of contract.

(2) A complaint against a contractor by the owner of a structure or other real property to discharge, or to recoup funds expended in discharging, a lien established under ORS 87.010 to 87.060 and 87.075 to 87.093 under circumstances described under this subsection. If the complaint is processed under ORS 701.145, the Construction Contractors Board may reduce the amount of the com-

plaint by any amount the complainant owes the contractor. The board shall process complaints described in this subsection under ORS 701.145 only if:

- (a) The owner paid the contractor for that contractor's work subject to this chapter; *[and]*
- (b) A lien is filed against the property of the owner under ORS 87.010 to 87.060 and 87.075 to 87.093 because the contractor failed to pay the person claiming the lien for that person's contribution toward completion of the improvement; **and**

**(c) The complaint is described in ORS 701.139 (1) or (3)(a) or (b).**

(3) A complaint against a licensed subcontractor by a licensed contractor for the following:

- (a) Negligent work;
- (b) Improper work; or
- (c) Breach of contract.

(4) A complaint by a person furnishing labor to a contractor **or owed employee benefits by a contractor.**

(5) A complaint, as limited by rule of the board, by a person furnishing material or renting or supplying equipment to a contractor. The minimum limit set by the board may not exceed \$150.

(6) A complaint by a subcontractor against a contractor for unpaid labor or materials arising out of a contract.

**SECTION 66. If Senate Bill 94 becomes law, section 30 of this 2007 Act (amending ORS 701.145) is repealed and ORS 701.145, as amended by section 14, chapter \_\_, Oregon Laws 2007 (Enrolled Senate Bill 94), is amended to read:**

701.145. For a complaint described in ORS 701.139 (1) *[involving work on a residential structure or an appurtenance to a residential structure, a complaint described in ORS 701.139 (2) involving work on a small commercial structure or an appurtenance to a small commercial structure that is not resolved under ORS 701.146 or an owner's complaint described in ORS 701.139 (4) involving work on a large commercial structure or an appurtenance to a large commercial structure that is not resolved under ORS 701.146]* **or (3)(a) or a complaint under ORS 701.139 (3)(b) that a complainant elects to have resolved under this section:**

(1) The complainant must file the complaint with the Construction Contractors Board in a form prescribed by the board.

(2) The board may suspend processing of the complaint if:

(a) The same facts and issues involved in the complaint have been submitted to a court of competent jurisdiction for determination or have been submitted to any other entity authorized by law or the parties to effect a resolution or settlement; or

(b) The board determines that the nature or complexity of the dispute described in the complaint is such that a court is the appropriate forum for the adjudication of the dispute.

(3) The board may dismiss or close the complaint as established by rule of the board if any of the following conditions apply:

(a) The complainant does not respond to a board request and the request is necessary to the board's investigation of the complaint.

(b) The complainant does not allow the board to conduct one or more on-site meetings to mediate or investigate the complaint.

(c) The complainant does not permit the contractor against whom the complaint is filed to be present at an on-site investigation made by the board.

(d) The board determines that the contractor against whom the complaint is filed is capable of complying with recommendations made by the board relative to the complaint, but the complainant does not permit the contractor to comply with the recommendations. The board may refuse to accept or further process a complaint under this paragraph only if the contractor was licensed at the time the work was first performed and is licensed at the time the board makes its recommendations.

(e) The amount in controversy is less than an amount adopted by the board and not more than \$250.

(4) Upon acceptance of the complaint, the board shall give notice to the contractor against whom the complaint is made and shall initiate proceedings to determine the validity of the com-

plaint. If, after investigation, the board determines that a violation of this chapter or of any rule adopted thereunder has occurred, or damage has been caused by the contractor, the board may recommend to the contractor such action as the board considers appropriate to compensate the complainant. If the contractor performs accordingly, the board shall give that fact due consideration in any subsequent disciplinary proceeding brought by the board. The board may conduct one or more on-site meetings to mediate or investigate the complaint.

(5) Subject to ORS 701.148, if the board is unable to resolve the complaint under subsection (4) of this section, the board may issue a contested case notice under ORS 183.415 and:

(a) Issue a proposed default order under ORS 183.415 to become effective only if a party does not request a contested case hearing; or

(b) Refer the matter for hearing.

(6) The board shall send a copy of the notice and any proposed order described in subsection (5) of this section to the surety on the contractor bond required by ORS 701.085.

**SECTION 67. If Senate Bill 94 becomes law, section 31 of this 2007 Act (amending ORS 701.146) is repealed and ORS 701.146, as amended by section 15, chapter \_\_\_, Oregon Laws 2007 (Enrolled Senate Bill 94), is amended to read:**

701.146. For a complaint described in ORS 701.139 [(3) *involving work on a large commercial structure or an appurtenance to a large commercial structure, a complaint described in ORS 701.139 (2) involving work on a small commercial structure or an appurtenance to a small commercial structure that is not resolved under ORS 701.145 or an owner's complaint described in ORS 701.139 (4) involving work on a large commercial structure or an appurtenance to a large commercial structure that is not resolved under ORS 701.145*] **(2) or (3)(c) or a complaint under ORS 701.139 (3)(b) that a complainant elects to have resolved under this section:**

(1) The person seeking to file the complaint with the Construction Contractors Board must:

(a) Bring an action on the dispute against the licensed contractor in a court of competent jurisdiction; or

(b) Initiate a proceeding to resolve the dispute through binding arbitration substantially in conformance with ORS 36.600 to 36.740.

(2) The complainant must file the complaint with the Construction Contractors Board by delivering to the board a copy of the complainant's court pleading or the demand for arbitration or other document necessary to initiate arbitration. The pleading, demand or other document must be accompanied by a completed board complaint form. The complainant must also give notice to the surety on the bond by delivering to the surety a copy of the complainant's court pleading or the demand for arbitration or other document necessary to initiate arbitration and a copy of the completed board complaint form. Delivery to the board and the surety must be accomplished by certified mail, return receipt requested, no later than the earlier of:

(a) The 90th day after filing the court action or after filing or making the arbitration demand or other initiation of arbitration;

(b) The 14th day before the first day of trial or arbitration; or

(c) The 30th day before:

(A) The court issues a judgment in the action; or

(B) The arbitrator issues an award on the arbitration.

(3) Filing the complaint with the board under subsection (2) of this section constitutes filing the complaint for purposes of establishing timeliness of the complaint under ORS 701.143 and priority of the complaint for possible payment from the bond under [ORS 701.150] **section 11 of this 2007 Act.**

(4) Except as provided in this subsection and subsection (7) of this section, if the complainant properly gives notice to the surety under subsection (2) of this section, a judgment or award against the contractor entered in the action or arbitration is binding on the surety. If the complainant delivers the notice required under subsection (2) of this section to the wrong surety, the surety receiving the notice may avoid being bound by a judgment or award by delivering notice of the mistake to the complainant or the complainant's attorney of record, and to the board, on or before

the 30th day after the surety receives notice under subsection (2) of this section. Delivery of the notice of mistake must be by certified mail, return receipt requested, or by facsimile machine or other form of transmission with an acknowledgment of receipt.

(5) A surety under subsection (2) of this section has an absolute right to intervene in an action or arbitration brought or initiated under subsection (1) of this section. A complainant may not join a surety as a party to an action or arbitration unless the complainant disputes the validity or timeliness of the surety's notice of mistake or the surety disputes the validity or timeliness of the delivery to the surety of the notice required by subsection (2) of this section. If the surety elects to intervene or is joined as a party, the surety is bound by all issues of fact and law determined by the court or arbitrator and may not seek board review of those determinations.

(6) If a court issues a judgment on an action, or reduces an arbitration award to judgment, against a contractor on a complaint described in subsection (1) of this section, the complainant must deliver a certified copy of the judgment to the board and to the surety no later than the 30th day after entry of the judgment in order to maintain the complaint and possibly receive payment from the bond. The entry of a final judgment against the contractor concludes the contractor's involvement in any proceedings to determine whether the complaint is subject to payment from the bond. The complainant and the surety are the only parties to the administrative process set forth in subsection (7) of this section.

(7) Upon receipt of a timely delivered certified copy of the judgment as described in subsection (6) of this section, the board shall issue a proposed order in the amount of the judgment together with any costs, interest and attorney fees awarded under the judgment, to the extent that the judgment, costs, interest and fees are within the jurisdiction of the board. The board's determination of the complaint is limited to whether the complaint comes within the jurisdiction of the board and is subject to payment by the surety. The board shall issue the proposed order in a form that indicates the surety's maximum liability to the complainant. If a hearing is not requested within the time set forth in the proposed order, the proposed order becomes final without any further action by the board. If a hearing is requested, unless review of an issue is precluded under subsection (5) of this section, the board may determine:

(a) Whether the complaint was timely filed with the board as provided in ORS 701.143.

(b) Whether the surety received timely notice as provided in subsections (2) and (6) of this section.

(c) Whether the complaint is for work subject to this chapter.

(d) The extent of the surety's liability to the complainant.

**SECTION 68. If Senate Bill 94 becomes law, section 32 of this 2007 Act (amending ORS 701.148) is repealed and ORS 701.148, as amended by section 17, chapter \_\_, Oregon Laws 2007 (Enrolled Senate Bill 94), is amended to read:**

701.148. (1) Subject to subsection (4) of this section, if the resolution of a complaint under ORS 701.145 requires a hearing, the Construction Contractors Board may require that the hearing be conducted as a binding arbitration under rules adopted by the board under subsection (3) of this section. This subsection does not authorize the board to require binding arbitration of a complaint that is subject to ORS 701.146.

(2) The board may use mediation or arbitration to resolve a construction dispute between any parties who agree to follow the rules of the board, [*including but not limited to parties to a complaint that is subject to ORS 701.146*] **other than a dispute involving work on a large commercial structure.**

(3) Except as provided in this subsection, rules adopted by the board to regulate arbitration under subsections (1) and (2) of this section must substantially conform with the provisions of ORS 36.600, 36.610 to 36.630, 36.635 (2), 36.640, 36.645 (2), 36.650 to 36.680, 36.685 (1) and 36.690 to 36.740. The rules may:

(a) Require that a hearing under ORS 183.413 to 183.470 be conducted for issues for which a petition could be filed under ORS 36.615, 36.620, 36.625 and 36.640;

(b) Limit orders and awards made by the arbitrator as necessary to comply with this chapter;

(c) Require that a request that an arbitrator modify or correct an award under ORS 36.690 be submitted in a form specified by the rule;

(d) Require that a petition under ORS 36.705 (2) or 36.710 (1) be filed in a shorter period of time than provided by ORS 36.705 and 36.710; and

(e) Include any other provision necessary to conform the arbitration to this chapter.

(4) A party to a complaint that is subject to a board order of binding arbitration under subsection (1) of this section may avoid the arbitration if the party requests to have the complaint resolved through a contested case hearing or files a court action. A party making a hearing request or filing a court action under this subsection is subject to the following provisions:

(a) If the party requests to have a complaint resolved through a contested case hearing, the party must, within the time specified in paragraph (c) of this subsection, deliver the request in writing to the board and to all parties entitled by board rule to receive a copy of the request.

(b) If the party files a court action, the party must, within the time specified in paragraph (c) of this subsection, deliver a copy of the party's court pleading to the board and to all persons entitled by board rule to receive a copy of the pleading. If the party filing the court action is the complainant to the board, the complainant must plead all facts and issues of the board complaint in the court action. If the court action is filed by the contractor against whom a board complaint is alleged, the court action must be an action for damages, an action for declaratory judgment or another action that allows the board complainant to file a response pleading all facts and issues of the board complaint. The board complainant has the burden of proving the elements of the board complaint in a court action described in this paragraph.

(c) A party that is subject to paragraph (a) or (b) of this subsection must deliver the contested case hearing request or the copy of the party's court pleading to the board as described in paragraphs (a) and (b) of this subsection no later than the 30th day after the board sends notice that an arbitration hearing has been scheduled. Failure to timely deliver a request or court pleading under this paragraph constitutes consent to the binding arbitration.

(d) If a party makes a timely request under paragraph (a) of this subsection for a contested case hearing and another party timely files a court action and complies with paragraph (b) of this subsection, the filing of the court action supersedes the request for a contested case hearing.

(e) A party may not withdraw a request made in compliance with paragraph (a) of this subsection unless all parties agree to the withdrawal.

(f) The board may adopt a rule that a contested case hearing for a complaint seeking less than \$1,000 is not available under this subsection.

(g) The provisions of paragraph (b) of this subsection are in addition to any other requirements imposed by law regarding the filing of a court action.

(5) The board may refuse to accept a dispute for mediation or arbitration under subsection (1) or (2) of this section if the board determines that the nature or complexity of the dispute is such that a court or other forum is more appropriate for resolution of the dispute.

**SECTION 69. If Senate Bill 94 becomes law, section 33 of this 2007 Act (amending ORS 701.150) is repealed and ORS 701.150, as amended by section 19, chapter \_\_\_, Oregon Laws 2007 (Enrolled Senate Bill 94), is amended to read:**

**701.150. (1) A Construction Contractors Board final order that is not paid by the contractor and that:**

**(a) Arises out of a complaint filed under ORS 701.145 must be satisfied from a bond required for a residential contractor.**

**(b) Arises out of a complaint filed under ORS 701.146 must be satisfied from a bond required for a commercial contractor.**

**(2) If a [Construction Contractors] board final order is not paid by the contractor, the board shall notify the surety on the bond. The surety may not pay on a complaint until the surety receives notice from the board that the complaint is ready for payment.**

*[(2) If an order of the board that determines a complaint under ORS 701.145 becomes final by operation of law or on appeal and remains unpaid 10 days after the date the order becomes final, the complainant may file the order with the county clerk in any county of this state.]*

*[(3) Upon receipt, the clerk shall record the order in the County Clerk Lien Record. In addition to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.]*

*[(4) Payments from the surety bond of a contractor pursuant to board order and notice are satisfied in the following priority in any 90-day period. A 90-day period begins on the date the first complaint is filed with the board. Subsequent 90-day periods begin on the date the first complaint is filed with the board after the close of the preceding 90-day period. Within a 90-day period:]*

*[(a) Board orders as a result of complaints against a contractor by the owner of a residential or small commercial structure have payment priority to the full extent of the bond over all other types of complaints.]*

*[(b) If the complaints described in paragraph (a) of this subsection do not exhaust the bond, then amounts due as a result of all other types of residential or small commercial structure complaints filed within that 90-day period may be satisfied from the bond, except that the total amount paid from any one bond to nonowner complainants may not exceed \$3,000.]*

*[(c) If payments involving residential and small commercial structures do not exhaust the bond, board orders and notice involving large commercial structure complaints are satisfied in the following priority, except that the total amount paid from any one bond to nonowner complainants may not exceed \$3,000:]*

*[(A) Labor, including employee benefits.]*

*[(B) All other complaints involving large commercial structures except costs, interest and attorney fees.]*

*[(C) Any costs, interest and attorney fees the plaintiff may be entitled to recover.]*

*[(d) If the total complaints filed with the board against a contractor within 90 days after the board receives notice of the first complaint against the contractor exceed the amount of the bond available for those complaints, the bond shall be apportioned as the board determines, subject to the priorities established under this section.]*

*[(e) If the total amounts due as a result of complaints filed with the board within 90 days after the first complaint is filed do not exceed the amount of the bond available for those complaints, all amounts due as a result of complaints filed within the 90-day period shall have priority over all complaints subsequently filed until the amount of the bond available for the payment of complaints is exhausted.]*

*[(5)] (3) Notwithstanding [subsection (4) of this section] **sections 10 and 11 of this 2007 Act**, a bond is not subject to payment for a complaint that is filed more than 14 months after the earlier of:*

*(a) The expiration or cancellation date of the license that was in force when the work that is the subject of the complaint was completed or abandoned; or*

*(b) The date that the surety canceled the bond.*

*[(6) The total amount paid from any one bond for costs, interest and attorney fees may not exceed \$3,000.]*

**SECTION 70.** (1) **Sections 3 to 6, 8 and 10 to 12 of this 2007 Act, the amendments to sections 10 and 11 of this 2007 Act by sections 52 and 53 of this 2007 Act, the amendments to ORS 18.635, 18.800, 205.126, 279C.375, 656.021, 701.005, 701.010, 701.060, 701.072, 701.075, 701.078, 701.085, 701.105, 701.138, 701.139, 701.140, 701.145, 701.146, 701.148, 701.150, 701.205 and 701.235 by sections 13, 14, 17, 19 to 24, 27 to 34, 36, 39 to 43, 48, 54 to 57, 58a, 59 to 61 and 64 to 69 of this 2007 Act and the repeal of ORS 701.058 and 701.252 by section 51 of this 2007 Act become operative July 1, 2008.**

**(2) Sections 3, 4 and 8 of this 2007 Act and the amendments to ORS 656.021, 701.060, 701.075, 701.085 and 701.105 by sections 17, 20, 22 to 24, 48, 58a and 59 to 61 of this 2007 Act apply to licenses issued or renewed on or after July 1, 2008.**

(3) Sections 10 and 11 of this 2007 Act and the amendments to ORS 18.635, 18.800, 205.126, 701.139, 701.140, 701.145, 701.146, 701.150 and 701.235 by sections 28 to 31, 33, 36, 39 to 41, 64 to 67 and 69 of this 2007 Act apply to claims or complaints filed against persons whose contractor licenses are issued or renewed on or after July 1, 2008.

(4) Sections 2 and 9 of this 2007 Act, the amendments to section 6 of this 2007 Act by section 7 of this 2007 Act and the amendments to ORS 279C.465, 279C.585, 479.940, 646.551, 656.027, 671.540, 701.035, 701.055, 701.065, 701.115, 701.135, 701.230, 701.990 and 701.992 and sections 2 and 5, chapter 114, Oregon Laws 2007 (Enrolled House Bill 2109), by sections 15, 16, 16a, 16b, 18, 25, 26, 35, 37, 38, 44 to 47, 49, 50, 58, 62 and 63 of this 2007 Act become operative July 1, 2010.

(5) The amendments to ORS 701.205 by section 34 of this 2007 Act do not affect the term of office served by any member of the Construction Contractors Board appointed to a term beginning before July 1, 2009. For appointments to terms beginning on or after July 1, 2009, the Governor shall appoint members to achieve the board composition described in ORS 701.205 as amended by section 34 of this 2007 Act no later than July 1, 2013.

(6) The Construction Contractors Board may take all necessary actions prior to the operative dates specified in this section for the efficient administration and enforcement of this 2007 Act.

**SECTION 71.** Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 1, chapter 462, Oregon Laws 2007 (Enrolled House Bill 5013), for the biennium beginning July 1, 2007, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Construction Contractors Board, is increased by \$315,000 for the purpose of carrying out the duties, functions and powers of the board under sections 3 to 6, 8, 10 to 12 and 70 of this 2007 Act and the amendments to ORS 701.005, 701.010, 701.060, 701.072, 701.075, 701.078, 701.085, 701.105, 701.138, 701.139, 701.140, 701.145, 701.146, 701.148, 701.150, 701.205 and 701.235 by sections 13, 14, 17, 19 to 24, 27 to 34, 36, 54 to 57, 58a, 59 to 61 and 64 to 69 of this 2007 Act.

**SECTION 72.** This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect July 1, 2007.

**Passed by House June 25, 2007**

**Repassed by House June 28, 2007**

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Chief Clerk of House

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Speaker of House

**Passed by Senate June 27, 2007**

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President of Senate

**Received by Governor:**

.....M,....., 2007

**Approved:**

.....M,....., 2007

.....  
Governor

**Filed in Office of Secretary of State:**

.....M,....., 2007

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Secretary of State