

Senate Bill 467

Sponsored by COMMITTEE ON COMMERCE (at the request of Oregon Landscape Contractors Association)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates licensing system for landscape maintenance businesses and landscape maintenance contractors. Prohibits unlicensed landscape maintenance contractor and landscape maintenance business activity after January 1, 2009. Provides exception. Makes violation subject to maximum penalty of one year's imprisonment, \$6,250 fine, or both. Makes violators subject to civil penalty not exceeding \$2,000. Makes violation of restrictions involving independent contractors subject to progressive schedule of sanctions.

Expands definition of landscape contractor. Allows State Landscape Contractors Board to establish continuing education requirements. Requires landscaping business to display license sticker on vehicles.

Clarifies misdemeanor classification for unlicensed landscaping activity.

A BILL FOR AN ACT

1
2 Relating to the State Landscape Contractors Board; creating new provisions; and amending ORS
3 671.321, 671.520, 671.525, 671.530, 671.540, 671.550, 671.555, 671.565, 671.568, 671.570, 671.572,
4 671.574, 671.575, 671.580, 671.590, 671.603, 671.607, 671.610, 671.613, 671.614, 671.625, 671.650,
5 671.660, 671.670, 671.690, 671.700, 671.703, 671.707, 671.710, 671.990, 671.997 and 701.005.

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

7 **SECTION 1. Sections 2 to 4 of this 2007 Act are added to and made a part of ORS 671.510**
8 **to 671.710.**

9 **SECTION 2. (1) Except as provided in subsection (3) of this section, a person may not**
10 **operate as a landscape maintenance contractor unless the person has a valid landscape**
11 **maintenance contractor license issued under section 3 of this 2007 Act.**

12 **(2) Except as provided in subsection (3) of this section, a person may not represent in**
13 **any manner that the person is a landscape maintenance contractor unless the person has a**
14 **valid landscape maintenance contractor license issued under section 3 of this 2007 Act. The**
15 **prohibition in this subsection includes, but is not limited to:**

16 **(a) Using the title of landscape maintenance contractor or any other title that indicates**
17 **or tends to indicate that the person is a landscape maintenance contractor; and**

18 **(b) Using any sign, card or device that indicates or tends to indicate that the person is**
19 **a landscape maintenance contractor.**

20 **(3) A landscape contractor licensed under ORS 671.560 may perform any work that could**
21 **be performed by a landscape maintenance contractor. The landscape contractor may repre-**
22 **sent that the contractor provides landscape maintenance services.**

23 **(4) Except as provided in subsection (6) of this section, a person may not operate as a**
24 **landscape maintenance business in this state unless the person has a valid landscape main-**
25 **tenance business license issued under section 4 of this 2007 Act.**

26 **(5) Except as provided in subsection (6) of this section, a person may not advertise or**
27 **represent in any manner that the person is a landscape maintenance business unless the**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 person has a valid landscape maintenance business license issued under section 4 of this 2007
2 Act. The prohibition in this subsection includes, but is not limited to:

3 (a) Using the title of landscape maintenance business or landscaping maintenance busi-
4 ness or any other title that indicates or tends to indicate that the person is a landscape
5 maintenance business; and

6 (b) Using any sign, card or device that indicates or tends to indicate that the person is
7 a landscape maintenance business.

8 (6) A landscaping business licensed under ORS 671.560 may engage in any activity that a
9 landscape maintenance business may engage in. The landscaping business may advertise or
10 otherwise represent that the business provides landscape maintenance services.

11 **SECTION 3.** (1) To obtain a license as a landscape maintenance contractor, except as
12 provided in ORS 671.590, a person must:

13 (a) Apply on a form supplied by the State Landscape Contractors Board.

14 (b) Pay the applicable fees required by the board by rule.

15 (c)(A) Pass an open-book examination administered by the board that measures the ap-
16 plicant's knowledge of basic business practices, laws and rules and of the skills necessary to
17 perform or supervise activities as a landscape maintenance contractor; or

18 (B) Present evidence satisfactory to the board that the person has three or more years
19 of significant experience in landscape maintenance acquired before January 1, 2008.

20 (2) A person renewing a landscape maintenance contractor license and engaged in per-
21 forming landscape maintenance work must submit the name of the person's employer.

22 (3) A landscape maintenance contractor is authorized to perform landscaping work only
23 while in the employ of a landscape maintenance business licensed and bonded as required by
24 ORS 671.510 to 671.710. If the landscape maintenance contractor is the sole proprietor, the
25 contractor must also obtain a license as a landscape maintenance business.

26 **SECTION 4.** (1) The State Landscape Contractors Board shall issue a landscape mainte-
27 nance business license to an applicant who complies with this section and satisfies the re-
28 quirements established by the board by rule.

29 (2) An applicant for a license under this section shall:

30 (a) Apply to the board upon a form furnished by the board.

31 (b) Provide any information the board considers necessary.

32 (c) Pay to the board the fees required by ORS 671.650.

33 (d) Employ at least one person with a landscape maintenance contractor license to su-
34 pervise the landscape maintenance operation of the business.

35 (e) File with the board a form of security acceptable under ORS 671.690.

36 (f) Indicate, as set forth in ORS 670.600, the basis under which the applicant qualifies as
37 an independent contractor.

38 (g) If renewing a license, submit the names of all employees who are licensed landscape
39 maintenance contractors.

40 (3) A landscape maintenance business shall, throughout the license period, have in effect
41 public liability, personal injury and property damage insurance covering the work of the
42 landscape maintenance business that is subject to ORS 671.510 to 671.710 for an amount not
43 less than \$100,000. The landscape maintenance business shall provide satisfactory evidence
44 to the board at the time of application and renewal that the insurance required by this sec-
45 tion has been procured and is in effect.

1 **(4) A landscape maintenance business may use a form of the word “landscape” in the title**
 2 **of the business only if the title clearly indicates the maintenance nature of the business. For**
 3 **purposes of this subsection, the term “landscape gardening” does not indicate the mainte-**
 4 **nance nature of a landscape maintenance business.**

5 **(5) A landscape maintenance business shall display a business license sticker issued by**
 6 **the board on all vehicles used by the business in performing landscape maintenance services.**

7 **SECTION 5.** ORS 671.321 is amended to read:

8 671.321. (1) ORS 671.310 to 671.459, 671.992 and 671.995 do not restrict or otherwise affect the
 9 right of any person to:

10 (a) Practice architecture under ORS 671.010 to 671.220;

11 (b) Practice engineering under ORS 672.002 to 672.325;

12 (c) Engage in the occupation of growing and marketing nursery stock, or use the title
 13 “nurseryman” or “landscape nurseryman”;

14 (d) Operate as a landscape contractor, [*or*] landscaping business, **landscape maintenance**
 15 **contractor or landscape maintenance business** under ORS 671.510 to 671.710 or use the title
 16 “landscape contractor” **or “landscape maintenance contractor”;**

17 (e) Perform work described under ORS 671.540;

18 (f) Engage in making plans or drawings for the selection, placement or use of plants or other
 19 site features unless the plans or drawings are for the purpose of providing construction details and
 20 specifications not otherwise exempted;

21 (g) Use the title “landscape designer” in connection with activities described under paragraph
 22 (f) of this subsection;

23 (h) Make any plans, drawings or specifications for property owned by that person; or

24 (i) Provide recommendations or written specifications for soil amendments or planting mediums
 25 if the recommendations or specifications are solely for purposes of plant installation and do not
 26 significantly alter the stability of the soil profile or surface drainage patterns.

27 (2) The scope of services described in ORS 671.310 (5) and (6) does not preclude a registered
 28 landscape architect from:

29 (a) Planning the development of land areas and elements used on land areas; or

30 (b) Performing services described in ORS 671.310 (5) and (6) in connection with the settings,
 31 approaches or environment for buildings, structures or facilities in accordance with legally estab-
 32 lished standards for public health, safety and welfare.

33 (3) ORS 671.310 to 671.459, 671.992 and 671.995 do not apply to:

34 (a) The preparation of detailed or shop drawings that a construction contractor is required to
 35 furnish or the administration of construction contracts by a person customarily engaged in con-
 36 tracting work.

37 (b) The preparation of technical submissions or the administration of construction contracts by
 38 employees of a landscape architect or a landscape architecture business when acting under the di-
 39 rect supervision of a registered landscape architect.

40 (c) Employees of the federal government acting within the scope of that employment.

41 **SECTION 6.** ORS 671.520 is amended to read:

42 671.520. As used in ORS 671.510 to 671.710, unless the context requires otherwise:

43 (1) “Landscape contractor” means any person who for compensation or with the intent to be
 44 compensated performs or supervises activities requiring the art, ability, experience, knowledge, sci-
 45 ence and skill to:

- 1 (a) Plan or install lawns, shrubs, vines, trees or nursery stock;
- 2 (b) Prepare property on which lawns, shrubs, vines, trees or nursery stock is to be installed;
- 3 **(c) Transplant lawns, shrubs, vines, trees or other decorative vegetation;**
- 4 [(c)] **(d)** Construct or repair ornamental water features, drainage systems or irrigation systems;
- 5 or
- 6 [(d)] **(e)** Plan or install fences, decks, arbors, patios, landscape edging, driveways, walkways or
- 7 retaining walls.

8 **(2) “Landscape maintenance business” means a business that offers or provides, for**
 9 **compensation or with the intent to be compensated, the services of a landscape maintenance**
 10 **contractor.**

11 **(3) “Landscape maintenance contractor” means a person who for compensation or with**
 12 **the intent to be compensated performs or supervises activities for the upkeep, preservation**
 13 **or renewal of existing lawns, shrubs, trees not more than 15 feet in height or bedding areas**
 14 **or of pathways of loose material.**

15 [(2)] **(4) “Landscaping business” means a business that for compensation or with the intent to**
 16 **be compensated arranges for or submits a bid or otherwise offers or contracts to provide the ser-**
 17 **vices of a landscape contractor.**

18 [(3)] **(5) “Licensee” means a person that is licensed under ORS 671.510 to 671.710 as a landscape**
 19 **contractor [or], landscape maintenance contractor, landscaping business or landscape mainte-**
 20 **nance business.**

21 [(4)] **(6) “Nursery stock” means nursery stock:**

- 22 (a) As defined by ORS 571.005 other than stock grown for commercial resale or reforestation;
- 23 or
- 24 (b) As defined by the State Landscape Contractors Board by rule.

25 [(5)] **(7) “Ornamental water features” means fountains, ponds, waterfalls, man-made streams and**
 26 **other decorative water-related constructions as identified by the board by rule.**

27 **SECTION 7.** ORS 671.525 is amended to read:

28 671.525. (1) An applicant for a landscaping business license **or landscape maintenance busi-**
 29 **ness license** must qualify as an independent contractor, under ORS 670.600, to be licensed with the
 30 State Landscape Contractors Board.

31 (2) The board shall establish two classes of independent contractor registration:

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

- 33 (A) Sole proprietorships, partnerships, corporations and limited liability companies with one or
- 34 more employees; and
- 35 (B) Partnerships, corporations and limited liability companies with more than two partners,
- 36 corporate officers or members if any of the partners, officers or members are not part of the same
- 37 family and related as parents, spouses, siblings, children, grandchildren, sons-in-law or daughters-
- 38 in-law.

39 (b) The exempt class is composed of all sole proprietorships, partnerships, corporations and
 40 limited liability companies that do not qualify as nonexempt. All partnerships, corporations and
 41 limited liability companies must have a federal tax identification number.

42 (3) If a licensee who qualifies for registration under subsection (2)(b) of this section hires one
 43 or more employees, or falls into any of the categories set out in subsection (2)(a)(B) of this section,
 44 the licensee is subject to penalties under ORS 671.997 and must reapply to the board for registration
 45 in the correct class.

1 (4) The decision of the board that a licensee is an independent contractor applies only when the
 2 licensee is performing *[work of the nature described in ORS 671.520 and 671.530]* **landscaping or**
 3 **landscape maintenance work.**

4 **SECTION 8.** ORS 671.530 is amended to read:

5 671.530. (1) A person may not operate as a landscape contractor in this state without a valid
 6 landscape *[contractor's]* **contractor** license issued *[pursuant to]* **under** ORS 671.560.

7 (2) A person may not represent in any manner that the person is a landscape contractor unless
 8 the person has a valid landscape *[contractor's]* **contractor** license issued *[pursuant to]* **under** ORS
 9 671.560. The prohibition in this subsection includes, but is not limited to:

10 (a) Using the title of landscape contractor, landscape gardener or landscaper or any other title
 11 using a form of the word "landscape" **that indicates or tends to indicate that the person is a**
 12 **landscape contractor;** and

13 (b) Using any *[title,]* sign, card or device that indicates or tends to indicate that the person is
 14 a landscape contractor.

15 (3) A person may not operate as a landscaping business in this state unless the person has a
 16 valid landscaping business license issued *[pursuant to]* **under** ORS 671.560.

17 (4) A person may not advertise or represent in any manner that the person is a landscape
 18 business unless the person has a valid landscaping business license issued *[pursuant to]* **under** ORS
 19 671.560. The prohibition in this subsection includes, but is not limited to:

20 (a) Using the title of landscape business or landscaping business **or any other title that indi-**
 21 **cates or tends to indicate that the person is a landscaping business;** and

22 (b) Using any *[title,]* sign, card or device that indicates or tends to indicate that the person is
 23 a landscaping business.

24 *[(5) A landscape maintenance business may use a form of the word "landscape" in the title of the*
 25 *business only if the title clearly indicates the maintenance nature of the business. For purposes of this*
 26 *subsection, the term "landscape gardening" does not indicate the maintenance nature of a landscape*
 27 *maintenance business.]*

28 *[(6)]* (5) A landscape contractor is authorized to perform landscaping work only while in the
 29 employ of a landscaping business licensed and bonded as required by ORS 671.510 to 671.710. If the
 30 landscape contractor is the sole proprietor, the contractor must also obtain a license as a land-
 31 scaping business.

32 (6) **A landscaping business shall display a business license sticker issued by the State**
 33 **Landscape Contractors Board on all vehicles used by the business in performing landscaping**
 34 **or landscape maintenance services.**

35 **SECTION 9.** ORS 671.540 is amended to read:

36 671.540. ORS 671.510 to 671.710 and 671.990 (2) do not apply to:

37 (1) Any federal or state agency or any political subdivision performing landscaping **or landscape**
 38 **maintenance** work on public property.

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

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

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

44 (b) The **contract amount or actual** value of all labor, materials or other items supplied for
 45 landscaping work *[at a]* **on each** job site does not exceed \$500 in a calendar year; and

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

3 **(4) Landscape maintenance work if:**

4 **(a) The contract amount or actual value of all labor, materials or other items supplied**
5 **for landscape maintenance work on each job site does not exceed \$500 in a calendar year; and**

6 **(b) The landscape maintenance work is of a casual, minor or inconsequential nature, as**
7 **those terms are defined by the board by rule.**

8 [(4)] **(5)** Installation of fences, decks, arbors, driveways, walkways or retaining walls if performed
9 by a person or business licensed with the Construction Contractors Board.

10 [(5)] **(6)** Rough grading of plots and areas of land performed in conjunction with new or remodel-
11 ing construction if performed by a person or business licensed with the Construction Contractors
12 Board.

13 [(6)] **(7)** Any owner of property who contracts for landscaping work to be performed by a person
14 licensed under ORS 671.560 **or for landscape maintenance work to be performed by a person**
15 **licensed under section 3 or 4 of this 2007 Act.** The exception provided by this subsection does
16 not apply to a person who, in pursuit of an independent business, performs or contracts for the
17 performance of landscaping **or landscape maintenance** work with the intent of offering for sale
18 before, upon or after completion of the landscaping **or landscape maintenance** work the property
19 upon which the [*landscaping*] work is performed.

20 [(7)] **(8)** Any landscaping work **or landscape maintenance work** performed by a person on
21 property that the person owns or in which the person has a legal interest. The exception provided
22 by this subsection does not apply to a person who, in pursuit of an independent business, performs
23 or contracts for the performance of landscaping **or landscape maintenance** work with the intent
24 of offering for sale before, upon or after completion of the landscaping **or landscape maintenance**
25 work the property on which the [*landscaping*] work is performed.

26 [(8)] **(9)** A general contractor licensed under ORS chapter 701 who performs landscaping **work**
27 **or landscape maintenance** work if the total value [*of the*] **for all** landscaping **work and landscape**
28 **maintenance work performed by the contractor** is less than \$2,500 per residential dwelling and
29 the landscaping **work or landscape maintenance** work is performed on residential property for
30 which the contractor is under contract for the construction of a new dwelling. The exception pro-
31 vided by this subsection does not apply to the performance of irrigation work by a general con-
32 tractor. The State Landscape Contractors Board shall revise the amount specified in this subsection
33 every five years, beginning in 2003, based on changes in the Portland-Salem, OR-WA Consumer Price
34 Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the
35 United States Department of Labor.

36 [(9)] **(10)** A general contractor licensed under ORS chapter 701 who performs landscaping **work**
37 **or landscape maintenance** work on residential property that is directly related to local building
38 code requirements or occupancy ordinances including, but not limited to, **landscaping work in-**
39 **volving** the placement of street trees. The exception provided by this subsection does not apply to
40 the performance of irrigation work by a general contractor.

41 [(10)] **(11)** A person engaged in making plans or drawings for the selection, placement or use of
42 plants or other site features, unless the plans or drawings are for the purpose of providing con-
43 struction details and specifications.

44 [(11)] **(12)** Use by a person other than a landscape contractor of the title "landscape designer"
45 when engaged in making plans or drawings described in subsection [(10)] **(11)** of this section.

1 [(12)] (13) A person providing recommendations or written specifications for soil amendments
 2 or planting media if the recommendations or specifications are solely for the purpose of plant in-
 3 stallation.

4 [(13)] (14) A person registered under ORS 447.010 to 447.156 when performing repair and main-
 5 tenance on piping for irrigation systems.

6 [(14)] (15) An employee, as defined in ORS 657.015, of a general contractor licensed under ORS
 7 chapter 701 when performing work that the contractor may perform under subsection [(8) or] (9) or
 8 (10) of this section.

9 [(15)] (16) An employee of a licensed landscaping business **or licensed landscape maintenance**
 10 **business** when performing work for the business under the direct supervision of a licensed land-
 11 scape contractor **or licensed landscape maintenance contractor**.

12 [(16)] (17) An employee of a worker leasing company or temporary service provider, both as
 13 defined in ORS 656.850, when performing work for a licensed landscaping business **or licensed**
 14 **landscape maintenance business** under the direct supervision of a licensed landscape contractor
 15 **or licensed landscape maintenance contractor**.

16 **SECTION 10.** ORS 671.550 is amended to read:

17 671.550. (1) The State Landscape Contractors Board may inquire into and inspect:

18 (a) Any services performed or materials furnished by a licensee under ORS 671.510 to 671.710.

19 (b) The financial records of a person [*who it*] **the board** reasonably believes is operating in vi-
 20 olation of ORS 671.530 **or section 2 of this 2007 Act**.

21 (c) The services performed or materials furnished by a person [*who it*] **the board** reasonably
 22 believes is operating in violation of ORS 671.530 **or section 2 of this 2007 Act**.

23 (2) Except when used for legal action or to determine negligent or improper work under ORS
 24 671.703, the information obtained by an inspection authorized by this section is confidential. How-
 25 ever, the board shall furnish copies of any inspection to the licensee or other person that is sub-
 26 jected to an inspection.

27 **SECTION 11.** ORS 671.555 is amended to read:

28 671.555. (1) The State Landscape Contractors Board may investigate the activities of any person
 29 engaged in [*the*] a landscaping **business or landscape maintenance** business to determine compli-
 30 ance with ORS 671.510 to 671.710.

31 (2) With the approval of the city or county, the board may conduct investigations with city or
 32 county inspectors, provided that the city or county is reimbursed by the board for the costs of
 33 [*such*] **the** investigations.

34 (3) Any inspector authorized by the board to determine compliance with the provisions of ORS
 35 671.510 to 671.710 is authorized to require any person who is engaged in any activity regulated by
 36 ORS 671.510 to 671.710 to demonstrate proof of compliance with the [*registration*] **license** require-
 37 ments of ORS 671.510 to 671.710. If a person who is contracting directly with the owner of the
 38 property does not demonstrate proof of compliance with the license requirements of ORS 671.510 to
 39 671.710, the inspector shall give notice of noncompliance to the person. The notice of noncompliance
 40 shall be in writing, shall specifically state that the person is not in compliance with the
 41 [*registration*] **license** requirements of ORS 671.510 to 671.710 and shall provide that unless the per-
 42 son demonstrates proof of compliance within two days of the date of the notice, the inspector may
 43 by order stop all work then being done by the person. The notice of noncompliance shall be served
 44 upon the person and shall be served upon or delivered to the owner of each property upon which
 45 the person is then performing work under contract. If more than one person is the owner of [*any*

1 *such*] a property, a copy of the notice need be given to only one of [*such*] **those** persons. If after
 2 receipt of the notice of noncompliance the person fails within the two-day period specified in the
 3 notice to demonstrate proof of compliance with the [*registration*] **license** requirements of ORS
 4 671.510 to 671.710, the inspector is authorized to order the work stopped by notice in writing served
 5 on any persons engaged in the activity. Any person so notified shall stop [*such*] work **that is the**
 6 **subject of the notice** until proof of compliance is demonstrated. However, the inspector may not
 7 order the work stopped until at least two days after the copies of the notice of noncompliance have
 8 been served upon or delivered to the owners.

9 (4) Notwithstanding subsection (3) of this section, the board may order work stopped imme-
 10 diately if the landscape contractor **or landscape maintenance contractor** working on a worksite
 11 has never [*registered with*] **been licensed by** the board or if the contractor cannot demonstrate that
 12 the contractor has [*been registered*] **held a valid license** at any time within the two years imme-
 13 diately preceding work on the worksite.

14 (5) The board has the power to administer oaths, issue notices and subpoenas in the name of the
 15 board, compel the attendance of witnesses and the production of evidence, hold hearings and per-
 16 form [*such*] other acts [*as are*] reasonably necessary to carry out [*its*] duties **of the board** under
 17 ORS 671.510 to 671.710.

18 (6) If any person fails to comply with a subpoena issued under subsection (5) of this section or
 19 refuses to testify on matters on which the person may be lawfully interrogated, the board shall
 20 compel obedience in the manner provided in ORS 183.440.

21 **SECTION 12.** ORS 671.565 is amended to read:

22 671.565. (1) Each person applying for a landscaping business license shall:

23 (a) Pay to the State Landscape Contractors Board the applicable landscaping business license
 24 fee established by the board under ORS 671.650.

25 (b) Employ at least one person with a landscape contractor license to supervise the landscaping
 26 operation of the business.

27 (c) Submit the names of all employees who are licensed **landscape** contractors.

28 (d) File with the board a form of security acceptable under ORS 671.690.

29 (e) File with the board a certificate of public liability, personal injury and property damage in-
 30 surance covering the work of the landscaping business that is subject to ORS 671.510 to 671.710 for
 31 an amount not less than \$100,000.

32 (f) Indicate, as set forth in ORS 670.600, the basis under which the applicant qualifies as an in-
 33 dependent contractor.

34 (2) At the time of application for a license, for renewal of a license in active status or for return
 35 of a license to active status, the landscaping business shall provide evidence satisfactory to the
 36 board that the public liability, personal injury and property damage insurance required by sub-
 37 section (1)(e) of this section is in effect. During a license period, the landscaping business shall
 38 provide, to the extent required by the board, satisfactory evidence of continued public liability,
 39 personal injury and property damage insurance coverage.

40 **SECTION 13.** ORS 671.568 is amended to read:

41 671.568. (1) If a licensed landscaping business **or landscape maintenance business** is not op-
 42 erating [*as a landscaping*] **under the license of the** business, the State Landscape Contractors
 43 Board may, upon request, place the license of the [*landscaping*] business in inactive status.

44 (2) A landscaping business in inactive status remains subject to board jurisdiction and is re-
 45 quired to comply with the requirements for a landscaping business other than the security require-

1 ment under ORS 671.690 and the insurance requirements under ORS 671.565. **A landscape**
 2 **maintenance business in inactive status remains subject to board jurisdiction and is required**
 3 **to comply with the requirements for a landscape maintenance business other than the se-**
 4 **curity requirement under ORS 671.690 and the insurance requirements under section 4 of this**
 5 **2007 Act.**

6 (3) A landscaping business that is in inactive status may not:

- 7 (a) Perform work as a landscaping business;
- 8 (b) Offer or provide for the performance of landscaping work as a landscaping business; or
- 9 (c) Obtain a building permit for work involving landscaping work by the business.

10 **(4) A landscape maintenance business that is in inactive status may not:**

11 **(a) Perform work as a landscape maintenance business; or**

12 **(b) Offer or provide for the performance of landscape maintenance work as a landscape**
 13 **maintenance business.**

14 [(4)] (5) A landscaping business license **or landscape maintenance business license** may not
 15 be placed or maintained in inactive status more than once during a licensing period.

16 **SECTION 14.** ORS 671.570 is amended to read:

17 671.570. Each person applying for a landscape [*contractor's*] **contractor** license shall pay to the
 18 State Landscape Contractors Board the fee required by ORS 671.650 and:

19 (1) Pass an examination, which shall be offered at least once each six months by the board to
 20 determine the fitness of the applicant for licensing and have:

21 (a) Within 10 years before the day the application for a license is made, at least:

22 (A) Twenty-four months of employment with a landscape contractor; or

23 (B) Twelve months of employment with a landscape contractor and one full year of training in
 24 an area related to landscaping at an accredited school or college; or

25 (b) Proven to the satisfaction of the board by test and experience that the applicant is qualified.

26 (2) Be employed by a landscaping business if performing landscaping work.

27 (3) Pay a nonrefundable examination fee.

28 **(4) Submit the name of the applicant's employer if the applicant is currently performing**
 29 **landscaping work.**

30 **SECTION 15.** ORS 671.572 is amended to read:

31 671.572. Notwithstanding the provisions of ORS 671.570 regarding experience and employment
 32 status, the State Landscape Contractors Board may adopt alternative standards for licensure [*with*
 33 *the board*] **as a landscape contractor** for a person who is already licensed as a contractor under
 34 ORS chapter 701.

35 **SECTION 16.** ORS 671.574 is amended to read:

36 671.574. (1) If a landscape contractor **or landscape maintenance contractor** is not operating
 37 as a landscape contractor **or landscape maintenance contractor**, the State Landscape Contractors
 38 Board may, upon request, place the license of the [*landscape*] contractor in inactive status.

39 (2) A landscape contractor **or landscape maintenance contractor** in inactive status remains
 40 subject to board jurisdiction, licensing requirements and fees.

41 (3) A landscape contractor that is in inactive status may not perform or supervise work as a
 42 landscape contractor. **A landscape maintenance contractor that is in inactive status may not**
 43 **perform or supervise work as a landscape maintenance contractor.**

44 (4) A landscape contractor **or landscape maintenance contractor** license may not be placed
 45 or maintained in inactive status more than once during a licensing period.

1 **SECTION 17.** ORS 671.575 is amended to read:

2 671.575. (1) A landscaping business **or landscape maintenance business** may not file a lien, file
3 a claim with the State Landscape Contractors Board or bring or maintain in any court of this state
4 a suit or action for compensation for the performance of any work or for the breach of any contract
5 for work [*which*] **that** is subject to ORS 671.510 to 671.710 [*and 671.997*], unless the [*landscaping*]
6 business was:

7 (a) Licensed **to perform the work** under ORS 671.510 to 671.710 [*and 671.997*] at the time the
8 [*landscaping*] business bid or entered into the contract for performance of the work; and

9 (b) Licensed continuously while performing the work for which compensation is sought.

10 (2) If the court determines that the landscaping **business or landscape maintenance** business
11 was not aware of the requirement that the [*contractor be registered*] **business be licensed**, a court
12 may choose not to apply subsection (1) of this section if the court finds that to do so would result
13 in a substantial injustice to the unlicensed [*landscaping*] business.

14 (3) If a landscaping **business or landscape maintenance** business falsely swears to information
15 provided [*under ORS 671.560 or 671.565*] **in an application for licensure by the board** or know-
16 ingly violates the provisions of ORS 656.029, 670.600, 671.560 or 671.565 **or section 4 of this 2007**
17 **Act**, the [*landscaping*] business may not file a lien, file a claim with the State Landscape Contractors
18 Board or bring or maintain in any court of this state a suit or action for compensation for the per-
19 formance of any work or for the breach of any contract for work [*which*] **that** is subject to ORS
20 671.510 to 671.710 [*and 671.997*].

21 **SECTION 18.** ORS 671.580 is amended to read:

22 671.580. A landscape [*contractor's*] **contractor** license issued [*pursuant to*] **under** ORS 671.560
23 **or a landscape maintenance contractor license issued under section 3 of this 2007 Act** is a
24 personal privilege and is not transferable.

25 **SECTION 19.** ORS 671.590 is amended to read:

26 671.590. The State Landscape Contractors Board may license without examination any person
27 who is a landscape contractor **or landscape maintenance contractor** licensed, certified or regis-
28 tered under the laws of another state, territory of the United States, the District of Columbia or
29 another country where the requirements on the date the applicant was licensed, certified or regis-
30 tered were substantially equal to the requirements for [*licensing of landscape contractors*] **obtaining**
31 **an equivalent license** in this state on the date of application by the person.

32 **SECTION 20.** ORS 671.603 is amended to read:

33 671.603. (1) A landscape contractor, **a landscape maintenance contractor** or a person operat-
34 ing as a landscaping business **or landscape maintenance business** shall notify the State Landscape
35 Contractors Board of a change of address for the contractor or business that occurs while the con-
36 tractor or business is licensed by the board or within one year after a license expires. The landscape
37 contractor [*or*], **landscape maintenance contractor or person operating as a** landscaping busi-
38 ness **or landscape maintenance business** shall ensure that the board receives notice of the change
39 of address no later than the 10th day after the change of address occurs.

40 (2) Initial notice of a contested case or arbitration directed by the board to the last-known ad-
41 dress of record for a landscape contractor [*or*], **landscape maintenance contractor**, landscaping
42 business **or landscape maintenance business** is considered delivered to the contractor or business
43 when deposited in the United States mail and sent registered, certified or post office receipt secured.
44 Any other communication directed by the board to the last-known address of record for a landscape
45 contractor [*or*], **landscape maintenance contractor**, landscaping business **or landscape mainte-**

1 **nance business** is considered delivered to the contractor or business when deposited in the United
 2 States mail, regular mail.

3 **SECTION 21.** ORS 671.607 is amended to read:

4 671.607. (1) As used in this section:

5 (a) “[*Landscaping*] Business debt” means an amount owed under:

6 (A) A final order or arbitration award issued by the State Landscape Contractors Board for a
 7 claim filed under ORS 671.703; or

8 (B) A judgment or civil penalty arising from landscaping business **or landscape maintenance**
 9 **business** activities in any state.

10 (b) **“Landscape maintenance business license” means a license issued within the United**
 11 **States to engage in a landscape maintenance business.**

12 [(b)] (c) “Landscape business license” means a license issued within the United States to en-
 13 gage in a landscaping business.

14 [(c)] (d) “Officer” means any of the following persons:

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

16 (B) A general partner in a limited partnership.

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

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

19 (E) A trustee.

20 (F) A person qualifying as an officer under board rules. The definition of officer adopted by
 21 board rule may include persons not listed in this paragraph who may exercise substantial control
 22 over a business.

23 [(d)] (e) “Owner” means a sole proprietor of, general partner in or holder of a controlling in-
 24 terest in a business, or a person defined as an owner by board rule.

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

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

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

30 (c) A limited partner in a limited partnership who does not participate in the control of the
 31 business of the limited partnership.

32 (3) The board may suspend or refuse to issue a landscaping business license **or landscape**
 33 **maintenance business license** if:

34 (a) The business owes a [*landscaping*] business debt or has had a landscaping business license
 35 **or landscape maintenance business license** revoked;

36 (b) An owner or officer of the [*landscaping*] business owes a [*landscaping*] business debt or has
 37 had a landscaping business license **or landscape maintenance business license** revoked; or

38 (c) An owner or officer of the [*landscaping*] business was an owner or officer of another business
 39 at the time the other business incurred a [*landscaping*] business debt that is owing or at the time
 40 of an event that resulted in the revocation of the other business’s landscaping business license **or**
 41 **landscape maintenance business license.**

42 (4) The board may hold the suspension or refusal of a license under subsection (3) of this section
 43 in abeyance if the person owing a [*landscaping*] business debt is adhering to a board-approved plan
 44 for restitution of the amount owed.

45 **SECTION 22.** ORS 671.610 is amended to read:

1 671.610. (1) In addition to any civil penalty assessed under ORS 671.997, the State Landscape
2 Contractors Board may suspend, revoke or refuse to issue or renew the license of a landscape con-
3 tractor [*or*], **landscape maintenance contractor**, landscaping business **or landscape maintenance**
4 **business** that does any of the following:

5 (a) Obtains or attempts to obtain a license under ORS 671.510 to 671.710 by fraud or material
6 misrepresentation.

7 (b) Makes a material misrepresentation about the quality of any material or service the person
8 provides.

9 (c) Performs defective work.

10 (d) Furnishes defective materials.

11 (e) Makes misleading statements when advertising services or materials.

12 (f) Violates a provision of ORS 671.510 to 671.710.

13 (g) Fails to have a replacement bond, letter of credit or deposit on file at the time of a termi-
14 nation, cancellation, reduction or withdrawal of the bond, letter of credit or deposit required by ORS
15 671.690.

16 (h) Fails to maintain public liability, personal injury and property damage insurance as required
17 by ORS 671.565 **or section 4 of this 2007 Act** throughout a licensing period.

18 (i) Violates a voluntary compliance agreement entered into under ORS 646.605 to 646.652.

19 (j) Performs work for which a permit is required under the state building code without obtaining
20 the required permit, if the work results in the filing of a claim with the board.

21 (k) Violates a rule or order of the board.

22 (L) Refuses to comply with a subpoena issued by the board.

23 (m) Fails to pay in full any amount owed to a claimant under a final order of the board or an
24 arbitration award, or under a judgment rendered in this or any other state.

25 (n) Does not make payment, including any interest due, for labor or materials contracted for by
26 the person pursuant to a contract for a public improvement within 90 days after the date the person
27 receives payment from a public contracting agency or, if the person is a subcontractor, from the
28 contractor.

29 (o) Engages in conduct as a landscape contractor [*or*], **landscape maintenance contractor**,
30 landscaping business **or landscape maintenance business** that is dishonest or fraudulent or that
31 the board finds injurious to the welfare of the public.

32 (p) Fails to comply with the requirements of ORS 652.120.

33 (q) Is convicted of a crime under ORS 163.115, 163.185, 163.225, 163.235, 163.355, 163.365, 163.375,
34 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 164.055, 164.075, 164.325 or
35 164.415, provided that the facts supporting the conviction and all intervening circumstances make
36 the determination to suspend, revoke or refuse to issue or renew the license consistent with ORS
37 670.280.

38 (2) The board may suspend or refuse to renew the license of a landscape contractor [*or*], **land-**
39 **scape maintenance contractor**, landscaping business **or landscape maintenance business** with-
40 out prior hearing if, after investigating and setting forth in writing the facts supporting the action,
41 the board determines that continued activity by the landscape contractor [*or*], **landscape mainte-**
42 **nance contractor**, landscaping business **or landscape maintenance business** poses an imminent
43 threat of serious harm to the public welfare. Facts sufficient to support a suspension or refusal to
44 renew under this subsection include, but are not limited to:

45 (a) The lack of a surety bond, letter of credit or deposit required under ORS 671.690;

1 (b) The lack of public liability, personal injury or property damage insurance required under
2 ORS 671.565 **or section 4 of this 2007 Act**;

3 (c) The hiring of employees while registered as exempt under ORS 671.525;

4 (d) Conduct as a landscape contractor [*or a*], **landscape maintenance contractor**, landscaping
5 business **or landscape maintenance business** that is dishonest; [*or*]

6 (e) Operation of a landscaping business that does not employ at least one licensed landscape
7 contractor[.]; **or**

8 **(f) Operation of a landscape maintenance business that does not employ at least one li-**
9 **censed landscape maintenance contractor.**

10 (3) A person whose license is suspended or refused renewal under subsection (2) of this section
11 may request a hearing within 90 days after receiving the notice of the suspension or refusal to re-
12 new. Except as provided in this subsection, the board shall give a contested case hearing requested
13 under this subsection priority over other hearings and schedule the hearing for the earliest practi-
14 cable date. If a citation is issued to the person and the order of suspension or refusal to renew will
15 terminate by its terms if a court renders a final judgment regarding the citation in favor of the
16 person, the person may request that the board hold the requested contested case hearing in abey-
17 ance until after the court has rendered a final judgment.

18 (4) A person whose license is revoked under this section is not eligible to apply for a license
19 under ORS 671.510 to 671.710 until two years after the effective date of the revocation.

20 (5) The board may suspend, revoke or refuse to reissue the license of a landscaping business
21 **or landscape maintenance business**, and may impose a civil penalty, all as provided under ORS
22 671.997 (4), if the board determines, after notice and opportunity for a hearing, that the
23 [*landscaping*] business was working with other landscaping businesses **or landscape maintenance**
24 **businesses** on the same task and work site where one of the landscaping **or landscape mainte-**
25 **nance** businesses is registered as an exempt independent contractor under ORS 671.525 (2)(b) and
26 the total number of landscaping **or landscape maintenance** businesses working on the task ex-
27 ceeded:

28 (a) Two sole proprietors;

29 (b) One partnership;

30 (c) One corporation; or

31 (d) One limited liability company.

32 **SECTION 23.** ORS 671.613 is amended to read:

33 671.613. (1) The failure of a landscaping business **or landscape maintenance business** to com-
34 ply with [*the provisions of this section and*] ORS 279C.800 to 279C.870, 656.021, 657.665, 670.600,
35 [671.520,] 671.525[,] **and** 671.530 [*and 671.575*] or to be in conformance with the provisions of ORS
36 279.835 to 279.855 or ORS chapter 279A, 279B, 279C, 316, 571, 656 or 657 is a basis for suspension
37 [*of the landscaping business license, revocation of the landscaping business license*], **revocation or**
38 refusal to issue or reissue a landscaping business **or landscape maintenance business** license, as-
39 sessment of a civil penalty as set forth in ORS 671.997 or a combination of these sanctions.

40 (2) Any action against a landscaping business **or landscape maintenance business** under this
41 section shall be conducted in conformance with the provisions of ORS 183.413 to 183.497.

42 **SECTION 24.** ORS 671.614 is amended to read:

43 671.614. (1) The State Landscape Contractors Board may issue an order placing a landscaping
44 business, or any landscape contractor that is employed by the landscaping business or is a land-
45 scaping business owner or officer as defined in ORS 671.607, on probation if three or more claims

1 are filed against the landscaping business's bond, letter of credit or deposit within a 12-month pe-
2 riod.

3 **(2) The board may issue an order placing a landscape maintenance business, or any**
4 **landscape maintenance contractor that is employed by the landscape maintenance business**
5 **or is a landscape maintenance business owner or officer as defined in ORS 671.607, on pro-**
6 **bation if three or more claims are filed against the landscape maintenance business's bond,**
7 **letter of credit or deposit within a 12-month period.**

8 [(2)] (3) The board may place a [landscaping] business or [landscape] contractor on probation
9 under this section only if the board determines after investigation of the complaints that a signif-
10 icant likelihood exists that continued activity by the [landscaping] business or [landscape] contractor
11 without board supervision will result in additional claims against the [landscaping] business.

12 [(3)] (4) The board may require as a condition of probation imposed under this section that
13 [the] a landscape contractor **or landscape maintenance contractor** take a board-approved educa-
14 tion course in one or more subjects relating to landscape contracting **or landscape maintenance**
15 **contracting.**

16 [(4)] (5) The board may require as a condition of probation imposed under this section that the
17 owner or officer of [the] landscaping **or landscape maintenance** business take a board-approved
18 education course in one or more subjects relating to landscaping **or landscape maintenance** busi-
19 ness or general business practices.

20 [(5)] (6) The board may take action to suspend, revoke or refuse to renew the license of [the
21 landscaping] a business or [landscape] contractor if the contractor or business fails to fulfill the
22 terms of the probation.

23 **SECTION 25.** ORS 671.625 is amended to read:

24 671.625. (1) The State Landscape Contractors Board shall by rule adopt minimum standards for
25 written contracts and billings of [the] landscaping businesses **and landscape maintenance busi-**
26 **nesses.** The standards shall set forth requirements for information that [must be contained in] con-
27 tracts and billings **must contain.** The information required shall be any information the board
28 determines is necessary to provide protection for consumers of the services and materials provided
29 by landscaping businesses **and landscape maintenance businesses.**

30 (2) Work by a landscaping business **or landscape maintenance business** subject to ORS
31 671.510 to 671.710 shall only be performed subject to a written contract. Any contract or billing for
32 such work must conform to the standards adopted under subsection (1) of this section.

33 (3) A contract that does not substantially comply with this section may not be enforced by a
34 landscaping business **or landscape maintenance business** in any court or other proceedings within
35 this state.

36 **SECTION 26.** ORS 671.650 is amended to read:

37 671.650. (1) The State Landscape Contractors Board shall establish fees, including but not lim-
38 ited to annual [landscape contractor's] **contractor** license fees and annual [landscaping] business li-
39 cense fees.

40 (2) The license fee [for] **that the board charges** an out-of-state [landscaping] business operating
41 in Oregon must be the same as [for] **the license fee that the board charges** an Oregon [land-
42 scaping] business.

43 **SECTION 27.** ORS 671.660 is amended to read:

44 671.660. (1) The fee for renewal of a license issued under ORS 671.510 to 671.710 shall be paid
45 annually on or before the last day of the month of the anniversary of issuance.

1 (2) A person who has been previously licensed under ORS 671.510 to 671.710 and whose license
 2 has expired shall not be issued another license except upon written application to the State Land-
 3 scape Contractors Board with the required annual fee. The board may require the person to also
 4 pay a penalty fee.

5 (3) If a license lapses for two years or more, the individual or business must reapply as for ini-
 6 tial issuance of the license.

7 *[(4) When a business renews its license the business must submit the names of all employees who
 8 are licensed landscape contractors.]*

9 *[(5) When a person renews a landscape contractor's license, the person must submit the name of
 10 the employer if the person is currently performing landscaping work.]*

11 **SECTION 28.** ORS 671.670 is amended to read:

12 671.670. (1) In accordance with any applicable provision of ORS chapter 183, the State Land-
 13 scape Contractors Board may adopt rules the board considers reasonable for the administration and
 14 enforcement of ORS 671.510 to 671.710 and 671.997.

15 **(2) The board, by rule, may establish continuing education requirements for professions
 16 licensed by the board. The board may establish a system to approve programs for continuing
 17 education credit and may charge appropriate fees. The board may sponsor continuing edu-
 18 cation programs and charge fees for program attendance.**

19 **(3) The board, by rule, may establish standards of conduct for professions and businesses
 20 licensed by the board.**

21 **SECTION 29.** ORS 671.690 is amended to read:

22 671.690. (1) An applicant for a license as a landscaping business **or landscape maintenance**
 23 **business** shall file with the State Landscape Contractors Board a surety bond with one or more
 24 corporate sureties authorized to do business in this state, or an irrevocable letter of credit issued
 25 by an insured institution, as defined in ORS 706.008. The amount of the bond or letter of credit shall
 26 be:

27 (a) \$3,000 for an applicant, unless the applicant is described in paragraph (b), (c) or (d) of this
 28 subsection.

29 (b) \$10,000 for an applicant who, not in conjunction with the performance of landscaping work,
 30 constructs fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls,
 31 unless the applicant is made subject to paragraph (d) of this subsection by work on other jobs per-
 32 formed by the applicant.

33 (c) \$10,000 for an applicant who charges more than \$10,000, but less than \$25,000, for a land-
 34 scape job.

35 (d) \$15,000 for an applicant who charges \$25,000 or more for a landscape job.

36 (2) The bond or letter of credit required under subsection (1) of this section shall be conditioned
 37 that the applicant pays:

38 (a) All taxes and contributions due to the State of Oregon;

39 (b) All persons furnishing labor or material, or renting or supplying equipment to the business;

40 (c) All amounts that may be adjudged against the business by reason of negligent or improper
 41 work or breach of contract in performing any work subject to ORS 671.510 to 671.710; and

42 (d) All amounts from the bond, letter of credit or deposit the board orders paid under ORS
 43 671.703.

44 (3) In lieu of the surety bond or letter of credit required under subsection (1) of this section, the
 45 landscaping business **or landscape maintenance business** may file with the board, under the same

1 terms and conditions as when a bond is filed, a deposit in cash or negotiable securities acceptable
2 to the board.

3 (4) The bond, letter of credit or deposit required by this section must be continuously on file
4 with the board in the amount required by this section and is for the exclusive purpose of payment
5 of final orders and arbitration awards of the board in accordance with ORS 671.703. Upon termi-
6 nation or cancellation of the bond, withdrawal of the deposit or reduction of the bond, letter of
7 credit or deposit to less than the required amount, the licensee shall immediately:

8 (a) File a replacement bond, letter of credit or deposit; or

9 (b) Surrender the license to the board and cease operating as a landscaping business **or land-**
10 **scape maintenance business.**

11 (5) If the cost of a project makes, or foreseeably will make, a licensee subject to a higher bond
12 or letter of credit requirement under subsection (1) of this section, the licensee shall immediately
13 file additional bonds, letters of credit or deposits to meet the higher requirements.

14 (6) ~~[The]~~ **A landscaping business or landscape maintenance business** is responsible for all
15 work that is subject to ORS 671.510 to 671.710 **performed by a contractor on behalf of the**
16 **business.**

17 **SECTION 30.** ORS 671.700 is amended to read:

18 671.700. A person having a claim against a landscaping business **or landscape maintenance**
19 **business** shall give the State Landscape Contractors Board notice of the claim in writing 90 days
20 before any action on the bond or deposit is commenced.

21 **SECTION 31.** ORS 671.703 is amended to read:

22 671.703. (1) If a person has a claim against a licensed landscaping business **or landscape**
23 **maintenance business** for negligent or improper work performed by the [*landscaping*] business, or
24 for alleged breach of contract by the [*landscaping*] business, the person may file the claim with the
25 State Landscape Contractors Board.

26 (2) Upon receipt of a claim that qualifies under subsection (1) of this section, the board shall
27 initiate an investigation. Upon completion of the investigation, if the board determines that facts
28 exist supporting an order for payment, the board may order the [*landscaping*] business to pay the
29 claim. A party to the claim may request a hearing on the order issued by the board.

30 (3) Subject to subsection (6) of this section, if the resolution of a claim under this section re-
31 quires a hearing, the board may require that the hearing be conducted as a binding arbitration un-
32 der rules adopted by the board under subsection (5) of this section.

33 (4) The board may use arbitration to resolve a landscaping **or landscape maintenance** dispute
34 between any parties who agree to follow the rules of the board, including parties to a dispute not
35 described under subsection (1) of this section.

36 (5) Except as provided in this subsection, rules adopted by the board to regulate arbitration
37 under subsections (3) and (4) of this section must substantially conform with the provisions of ORS
38 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.
39 The rules may:

40 (a) Require that a hearing under ORS 183.413 to 183.470 be conducted for issues for which a
41 petition could be filed under ORS 36.615, 36.620, 36.625 and 36.640;

42 (b) Limit orders and awards made by the arbitrator as necessary to comply with ORS 671.510
43 to 671.710;

44 (c) Require that a request that an arbitrator modify or correct an award under ORS 36.690 be
45 submitted in a form specified by the rule;

1 (d) Require that a petition under ORS 36.705 (2) or 36.710 (1) be filed in a shorter period of time
2 than provided by ORS 36.705 and 36.710; and

3 (e) Include any other provision necessary to conform the arbitration to ORS 671.510 to 671.710.

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

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

11 (b) If the party files a complaint in a court, the party must, within the time specified in para-
12 graph (c) of this subsection, deliver a copy of the complaint to the board and to all parties entitled
13 by the board rule to receive a copy of the complaint. If the party filing the complaint is the claim-
14 ant, the claimant must allege all elements of the claim in the complaint. If the complaint is filed
15 by the [*licensed landscaping*] business against [*whom*] **which** a claim is alleged, the complaint may
16 be a complaint for damages, a complaint for declaratory judgment or other complaint that allows the
17 claimant to file a response alleging the elements of the claim. The claimant has the burden of
18 proving the elements of the claim in any action described in this paragraph.

19 (c) A party that is subject to paragraph (a) or (b) of this subsection must deliver a request or
20 complaint to the board as described in paragraphs (a) and (b) of this subsection no later than the
21 30th day after the board sends notice that an arbitration hearing has been scheduled. Failure to
22 timely deliver a request or complaint under this paragraph constitutes consent to the binding arbi-
23 tration.

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

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

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

31 (7) An arbitration conducted under subsection (3) or (4) of this section must be held before an
32 administrative law judge acting as arbitrator. The administrative law judge assigned to act as
33 arbitrator of the case on behalf of the board must be from the Office of Administrative Hearings
34 established under ORS 183.605. The assignment of an administrative law judge to act as arbitrator
35 is subject to a request for a different arbitrator under ORS 183.645 or a rule adopted pursuant to
36 ORS 183.645.

37 (8) If a party to a claim under subsection (1) of this section requests a contested case hearing,
38 the board shall schedule the hearing. If a party requests that the claim be resolved by a court, the
39 board shall suspend further processing of the claim until the claim is resolved by an appropriate
40 court.

41 (9) If the claim is submitted for determination by a court, the board may require that the
42 claimant provide status reports on the pending action. The board may dismiss or close a claim filed
43 under subsection (1) of this section as established by rule of the board if the claimant fails to submit
44 status reports on a pending action.

45 (10) The board shall issue a final order or arbitration award in a form that indicates the maxi-

1 mum amount payable from the deposit, bond or letter of credit. If the landscaping business **or**
 2 **landscape maintenance business** does not pay the claim on or before the 30th day after receiving
 3 the board order or award, the board shall [*order*] **issue an order for** the claim paid out of the de-
 4 posit, bond or letter of credit filed under ORS 671.690.

5 (11) The board may dismiss or close a claim as established by rule of the board if:

6 (a) The claimant does not permit the [*person*] **business** against [*whom*] **which** the claim is filed
 7 to be present at any inspection made by the board; or

8 (b) The board determines that the [*person*] **business** against [*whom*] **which** the claim is filed is
 9 capable of complying with recommendations made by the board relative to the claim, but the
 10 claimant does not permit the [*person*] **business** to comply with the recommendations. The board may
 11 dismiss or close a claim under this paragraph only if the [*person*] **business** was licensed at the time
 12 the work was first performed and is licensed at the time the board makes its recommendations.

13 (12) The board may suspend processing a claim if the board determines that the nature or
 14 complexity of the claim is such that a court is the appropriate forum for the adjudication of the
 15 claim.

16 **SECTION 32.** ORS 671.707 is amended to read:

17 671.707. (1) If a final order of the State Landscape Contractors Board is not paid by the [*regis-*
 18 *trant*] **licensee**, the board shall notify the surety on the [*registrant's*] **licensee's** bond.

19 (2) An order of the board that determines a claim under ORS 671.703 that becomes final by op-
 20 eration of law or on appeal and remains unpaid for 20 days after the order becomes final is an order
 21 in favor of the claimant against the [*registrant*] **licensee** and may be recorded with the county clerk
 22 in any county of this state.

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

27 **SECTION 33.** ORS 671.710 is amended to read:

28 671.710. (1) Determinations by the State Landscape Contractors Board or judgments against the
 29 surety bond, letter of credit or deposit of a landscaping business **or landscape maintenance busi-**
 30 **ness** for claims filed during a 90-day period shall be satisfied in the priority listed in subsections (2)
 31 to (4) of this section. The payment of a claim filed during a 90-day period has priority over any claim
 32 filed during a subsequent 90-day period. A 90-day period begins on the date the first claim is filed
 33 with the board. A subsequent 90-day period begins on the date the first claim is filed with the board
 34 after the close of the preceding 90-day period.

35 (2) Determinations and judgments as a result of claims filed within the 90-day period against a
 36 landscaping business **or landscape maintenance business** by owners of property upon which
 37 landscaping **or landscape maintenance** work was performed, or was contracted to [*perform*] **be**
 38 **performed**, have payment priority to the full extent of the bond, letter of credit or deposit over all
 39 other claims filed within that 90-day period.

40 (3) If the total of all claims against a landscaping business **or landscape maintenance business**
 41 by owners of property under subsection (2) of this section does not exhaust the bond, letter of credit
 42 or deposit, amounts due as a result of all other claims filed within that 90-day period may be satis-
 43 fied from the remainder of the bond, letter of credit or deposit.

44 (4) If the total of all claims against a landscaping business **or landscape maintenance business**
 45 within a 90-day period exceeds the amount of the bond, letter of credit or deposit available for

1 payment of those claims, payment from the bond, letter of credit or deposit shall be apportioned as
2 the board determines, subject to the claim payment priorities established under this section.

3 (5) The bond, letter of credit or deposit may not be used to satisfy claims filed more than one
4 year following the date the work was completed.

5 **SECTION 34.** ORS 671.990 is amended to read:

6 671.990. (1) Violation of any of the provisions of ORS 671.010 to 671.220 is subject to the pro-
7 visions of ORS 671.220.

8 (2) Violation of ORS 671.530 **or section 2 of this 2007 Act** is a **Class A** misdemeanor.

9 **SECTION 35.** ORS 671.997 is amended to read:

10 671.997. (1) Except as provided in subsection (4) of this section, a person who violates any pro-
11 vision of ORS 671.510 to 671.710 or a rule adopted [*pursuant to*] **under** subsection (5) of this section
12 or ORS 670.310, 670.605 or 671.670 shall forfeit and pay to the State Landscape Contractors Board
13 a civil penalty in an amount determined by the board of not more than \$2,000 for each offense.

14 (2) The board shall impose civil penalties under this section as provided in ORS 183.745.

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

17 (4) If a landscaping business **or landscape maintenance business** commits an act described
18 under ORS 671.610 (5), the board shall impose penalties and sanctions on both the [*landscaping*]
19 business to which the contract is awarded and the [*landscaping*] business that awards the contract
20 as follows:

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

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

23 (c) Suspension of license or refusal to reissue license for six months for a third offense;

24 (d) Revocation of license for three years for a fourth offense; and

25 (e) Permanent revocation of the [*landscaping*] business's license for a fifth offense.

26 (5) The board shall provide by rule a process and criteria that must be met for restoration of
27 a license that has been revoked.

28 **SECTION 36.** ORS 701.005 is amended to read:

29 701.005. As used in this chapter:

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

31 (2) "Construction debt" means an amount owed under:

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

33 (b) A judgment or civil penalty arising from construction activities within the United States.

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

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

45 (5) "Home inspector" means a person who, for a fee, inspects and provides written reports on

1 the overall physical condition of a residential structure and the appurtenances thereto. “Home in-
 2 spector” does not include persons certified under ORS chapter 455 to inspect new, repaired or al-
 3 tered structures for compliance with the state building code.

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

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

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

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

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

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

20 (9) “Officer” means any of the following persons:

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

22 (b) A general partner in a limited partnership.

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

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

25 (e) A trustee.

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

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

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

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

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

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

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

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

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

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

11 **SECTION 37. Section 2 of this 2007 Act becomes operative January 1, 2009.**