

# Enrolled Senate Bill 62

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CHAPTER .....

AN ACT

Relating to landscaping; creating new provisions; and amending ORS 671.550, 671.607, 671.690, 671.700, 671.703, 671.707, 671.710 and 701.600.

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

**SECTION 1.** Section 2 of this 2007 Act is added to and made a part of ORS 671.510 to 671.710.

**SECTION 2.** A claim against a licensed landscaping business is payable from the bond, letter of credit or deposit required of the landscaping business under ORS 671.690 only if the claim arises from the performance, or a contract for the performance, of work that is subject to ORS 671.510 to 671.710. The claim must be of one or more of the following types:

(1) A claim against the landscaping business by the property owner or the owner's agent for any of the following:

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

(2) A claim against the landscaping business by the property owner or the owner's agent to discharge, or to recoup funds expended in discharging, a lien established under ORS 87.010 to 87.060 or 87.075 to 87.093. The State Landscape Contractors Board may reduce a claim described in this subsection by any amount the claimant owes the contractor. The board shall process claims described in this subsection only if:

(a) The owner paid the landscaping business for work subject to ORS 671.510 to 671.710; and

(b) A lien established against the property of the owner under ORS 87.010 to 87.060 or 87.075 to 87.093 is filed because the landscaping business failed to pay the person claiming the lien for that person's contribution toward completion of the improvement.

(3) A claim against a licensed subcontractor by a licensed landscaping business or by a construction contractor licensed under ORS chapter 701, for any of the following:

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

(4) A claim by a person furnishing labor to a landscaping business.

(5) A claim, as limited by rule of the board, by a person furnishing material or renting or supplying equipment to the landscaping business. The minimum limit set by the board may not be more than \$150.

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

**SECTION 3.** ORS 671.550 is amended to read:

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

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

(b) The financial records of a person who it reasonably believes is operating in violation of ORS 671.530.

(c) The services performed or materials furnished by a person who it reasonably believes is operating in violation of ORS 671.530.

(2) Except when used for legal action or to determine [*negligent or improper work under ORS 671.703*] a claim described in section 2 of this 2007 Act, the information obtained by an inspection authorized by this section is confidential. However, the board shall furnish copies of any inspection to the licensee or other person that is subjected to an inspection.

**SECTION 4.** ORS 671.607 is amended to read:

671.607. (1) As used in this section:

(a) "Landscaping business debt" means an amount owed under:

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

(B) A judgment or civil penalty arising from landscaping business activities in any state.

(b) "Landscaping business license" means a license issued within the United States to engage in a landscaping business.

(c) "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 qualifying as an officer under board rules. The definition of officer adopted by board rule may include persons not listed in this paragraph who may exercise substantial control over a business.

(d) "Owner" means a sole proprietor of, general partner in or holder of a controlling interest in a business, or a person defined as an owner by board rule.

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

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

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

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

(3) The board may suspend or refuse to issue a landscaping business license if:

(a) The business owes a landscaping business debt or has had a landscaping business license revoked;

(b) An owner or officer of the landscaping business owes a landscaping business debt or has had a landscaping business license revoked; or

(c) An owner or officer of the landscaping business was an owner or officer of another business at the time the other business incurred a landscaping business debt that is owing or at the time of an event that resulted in the revocation of the other business's landscaping business license.

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

**SECTION 5.** ORS 671.690 is amended to read:

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

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

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

(c) \$10,000 for an applicant who charges more than \$10,000, but less than \$25,000, for a landscape job.

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

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

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

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

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

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

(3) In lieu of the surety bond or letter of credit required under subsection (1) of this section, the landscaping business may file with the board, under the same terms and conditions as when a bond is filed, a deposit in cash or negotiable securities acceptable to the board.

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

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

(b) Surrender the license to the board and cease operating as a landscaping business.

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

(6) The landscaping business is responsible for all work that is subject to ORS 671.510 to 671.710.

**SECTION 6.** ORS 671.700 is amended to read:

671.700. (1) **If a claim is filed with the State Landscape Contractors Board against a licensed landscaping business for payment from the bond, letter of credit or deposit required of the business under ORS 671.690, the board may resolve the dispute involving the landscaping business.**

(2) A person having a claim against a landscaping business shall give the [*State Landscape Contractors*] board notice of the claim in writing 90 days before any action on the bond, **letter of credit** or deposit is commenced.

(3) **The board may not accept a claim against a landscaping business for processing if the claim is not filed with the board within one year after the business substantially completed work. The board may not issue an order for the payment of a court judgment or arbitration award from the bond, letter of credit or deposit of a landscaping business unless the person**

**has timely filed with the board a claim against the business regarding the same matter that resulted in the judgment or award.**

**SECTION 7.** ORS 671.703 is amended to read:

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

[(2) *Upon receipt of a claim that qualifies under subsection (1) of this section, the*

**(1) Upon acceptance of a claim described in section 2 of this 2007 Act, the State Landscape Contractors Board** shall initiate an investigation. Upon completion of the investigation, if the board determines that facts exist supporting an order for payment, the board may order the landscaping business to pay the claim. A party to the claim may request a hearing on the order issued by the board.

[(3)] **(2)** Subject to subsection [(6)] **(5)** of this section, if the resolution of [*a claim under this section*] **the claim** requires a hearing, the board may require that the hearing be conducted as a binding arbitration under rules adopted by the board under subsection [(5)] **(4)** of this section.

[(4)] **(3)** The board may use arbitration, **mediation or other forms of dispute resolution** to resolve a landscaping dispute between any parties who agree to follow the rules of the board, including parties to a dispute [*not described under subsection (1) of this section*] **that is not a claim described in section 2 of this 2007 Act.**

[(5)] **(4)** Except as provided in this subsection, rules adopted by the board to regulate arbitration under subsections [(3)] **(2)** and [(4)] **(3)** 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 ORS 671.510 to 671.710;

(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 ORS 671.510 to 671.710.

[(6)] **(5)** A party to a claim that is subject to a board order of binding arbitration under subsection [(3)] **(2)** 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 a 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 the 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 licensed landscaping business 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 provisions of paragraph (b) of this subsection are in addition to any other requirements imposed by law regarding the filing of a complaint.

[(7)] (6) An arbitration conducted under subsection [(3)] (2) or [(4)] (3) of this section must be held before an administrative law judge acting as arbitrator. The administrative law judge assigned to act as arbitrator of the case on behalf of the board must be from the Office of Administrative Hearings established under ORS 183.605. The assignment of an administrative law judge to act as arbitrator is subject to a request for a different arbitrator under ORS 183.645 or a rule adopted pursuant to ORS 183.645.

[(8)] (7) If a party to a claim [*under subsection (1) of this section*] **described in section 2 of this 2007 Act** requests a contested case hearing, the board shall schedule the hearing. If a party [*requests that the claim be resolved by a court*] **files a court action to determine the matter described in the claim**, the board shall suspend further processing of the claim until the [*claim*] **action** is resolved by an appropriate court.

[(9)] (8) If the **matter described in a** claim is submitted for determination by a court, the board may require that the claimant provide status reports on the pending action. The board may dismiss or close a claim [*filed under subsection (1) of this section*] **described in section 2 of this 2007 Act** as established by rule of the board if the claimant fails to submit status reports on a pending action.

[(10)] (9) The board shall issue a final order [*or arbitration award*] in a form that indicates the maximum amount **that is** payable from the [*deposit,*] bond, [*or*] letter of credit **or deposit to satisfy an order, arbitration award or judgment**. If the landscaping business does not pay the claim on or before the 30th day after receiving the board order [*or award*], the board shall order the claim paid out of the [*deposit,*] bond, [*or*] letter of credit **or deposit** filed under ORS 671.690.

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

(a) The claimant does not permit the person against whom the claim is filed to be present at any [*inspection*] **on-site investigation** made by the board; or

(b) The board determines that the person 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 person to comply with the recommendations. The board may dismiss or close a claim under this paragraph only if the person was licensed at the time the work was first performed and is licensed at the time the board makes its recommendations.

[(12)] (11) The board may suspend processing a claim if 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.

**SECTION 8.** ORS 671.707 is amended to read:

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

(2) An order of the board that determines a claim under ORS 671.703 that becomes final by operation of law or on appeal and remains unpaid for 20 days after the order becomes final is an order in favor of the claimant against the [*registrant*] **landscaping business** and may be recorded 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 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.

**SECTION 9.** ORS 671.710 is amended to read:

671.710. (1) Determinations by the State Landscape Contractors Board or judgments against the surety bond, letter of credit or deposit of a landscaping business for claims filed during a 90-day

period shall be satisfied in the priority listed in subsections (2) to (4) of this section. The payment of a claim filed during a 90-day period has priority over any claim filed during a subsequent 90-day period. A 90-day period begins on the date the first claim is filed with the board. A subsequent 90-day period begins on the date the first claim is filed with the board after the close of the preceding 90-day period.

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

(3) If the total of all claims **filed** against a landscaping business by *[owners of property]* **property owners or their agents** under subsection (2) of this section **within a 90-day period** does not exhaust the bond, letter of credit or deposit, amounts due as a result of all other claims filed within *[that]* **the same** 90-day period may be satisfied from the remainder of the bond, letter of credit or deposit, **except that the total amount paid from any one bond to nonowner claimants may not exceed \$3,000.**

(4) If the total of all claims against a landscaping business within a **single** 90-day period exceeds the amount of the bond, letter of credit or deposit available for payment of those claims, payment from the bond, letter of credit or deposit shall be apportioned as the board determines, subject to the claim payment priorities established under this section.

**(5) The total amount paid from any one bond for recovery of dispute resolution costs, interest and attorney fees may not exceed \$3,000.**

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

**SECTION 10.** ORS 701.600 is amended to read:

701.600. ORS 701.560 to 701.595 and 701.605 do not apply:

(1) To personal injury or death claims.

(2) To claims filed pursuant to ORS *[671.703 or]* 701.139 **or section 2 of this 2007 Act.**

(3) To claims against a person licensed under ORS 671.010 to 671.220.

**SECTION 11. (1) Section 2 of this 2007 Act and the amendments to ORS 671.700, 671.710 and 701.600 by sections 6, 9 and 10 of this 2007 Act apply to claims filed with the State Landscape Contractors Board on or after the effective date of this 2007 Act.**

**(2) The amendments to ORS 671.703 by section 7 of this 2007 Act apply to claims filed with the board before, on or after the effective date of this 2007 Act.**

**Passed by Senate February 12, 2007**

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Secretary of Senate

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President of Senate

**Passed by House May 14, 2007**

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Speaker of House

**Received by Governor:**

.....M,....., 2007

**Approved:**

.....M,....., 2007

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Governor

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