

Enrolled Senate Bill 94

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Construction Contractors Board)

CHAPTER

AN ACT

Relating to construction contractors; creating new provisions; and amending ORS 18.635, 87.058, 87.093, 205.125, 205.126, 701.065, 701.085, 701.102, 701.103, 701.135, 701.139, 701.140, 701.143, 701.145, 701.146, 701.147, 701.148, 701.149, 701.150, 701.175, 701.180, 701.227, 701.235, 701.252 and 701.600.

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

SECTION 1. ORS 18.635 is amended to read:

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

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

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

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

(c) On behalf of a **complainant or** claimant under an order recorded pursuant to ORS 671.707 or 701.150, if the **complainant or** claimant has complied with the requirements of ORS 205.126.

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

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

(b) An order or warrant that an agency has recorded in the County Clerk Lien Record as authorized by law, including any order that has been recorded pursuant to ORS 671.707 or 701.150.

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

SECTION 2. ORS 87.058 is amended to read:

87.058. (1) As used in this section:

(a) **Notwithstanding ORS 87.005**, “contractor” has the meaning given that term in ORS 701.005.

(b) “Board” means the Construction Contractors Board established in ORS 701.205.

(2) [When] **If a person files** a suit to enforce a lien perfected under ORS 87.035 [is filed] and the owner of the structure subject to that lien files a [claim] **complaint** that is being processed by the board under ORS 701.145 against a contractor who performed work on the structure, the owner may obtain a stay of proceedings on the suit to enforce the lien if:

(a) The owner already has paid the contractor for that contractor's work that is subject to this chapter on the structure;

(b) The person suing to enforce the lien perfected under ORS 87.035:

(A) Performed work that is subject to ORS chapter 701 on the structure for the contractor who has been paid by the owner;

(B) Furnished labor, services or materials or rented or supplied equipment used on the structure to the contractor who has been paid by the owner; or

(C) Otherwise acquired the lien as a result of a contribution toward completion of the structure for which the contractor has been paid by the owner; and

(c) The continued existence of the lien on which the suit is pending is attributable to the failure of the contractor who has been paid by the owner to pay the person suing for that person's contribution toward completion of the structure.

(3) The owner may petition for the stay of proceedings described in subsection (2) of this section by filing the following papers in the circuit court in which the suit on the lien is pending:

(a) A certified copy of the [*claim*] **complaint** filed for processing by the board under ORS 701.145; and

(b) An affidavit signed by the owner that contains:

(A) A description of the structure;

(B) The street address of the structure;

(C) A statement that the structure is the structure upon which the suit to enforce the lien is pending; and

(D) A statement that the petitioner is the owner of the structure.

(4) Upon receipt of a complete petition described in subsection (3) of this section, the circuit court shall stay proceedings on the suit to enforce the lien.

(5) After the board order on the [*claim*] **complaint** becomes final and the board issues any required notice for payment against the contractor's bond or deposit, the circuit court shall dissolve the stay ordered under subsection (4) of this section.

SECTION 3. ORS 87.093 is amended to read:

87.093. (1) The Construction Contractors Board shall adopt by rule a form entitled "Information Notice to Owner" which shall describe, in nontechnical language and in a clear and coherent manner using words in their common and everyday meanings, the pertinent provisions of the Construction Lien Law of this state and the rights and responsibilities of an owner of property and an original contractor under that law. The rights and responsibilities described in the form shall include, but not be limited to:

(a) Methods by which an owner may avoid multiple payments for the same materials and labor;

(b) The right to file a [*claim*] **complaint** against a licensed contractor with the Construction Contractors Board and, [*when*] **if** appropriate, to be reimbursed from the contractor's bond filed under ORS chapter 701; and

(c) The right to receive, upon written request therefor, a statement of the reasonable value of materials, equipment, services or labor provided from the persons providing the materials, equipment, services or labor at the request of an original contractor and who have also provided notices of right to a lien.

(2)(a) Each original contractor shall provide a copy of the "Information Notice to Owner" adopted by the Construction Contractors Board under this section to:

(A) The first purchaser of residential property constructed by the contractor and sold before or within the 75-day period immediately following the completion of construction; and

(B) The owner or an agent of the owner, other than an original contractor, at the time of signing a written residential construction or improvement contract with the owner.

(b) [*When*] **If** the residential construction or improvement contract is an oral contract, the original contractor shall mail or otherwise deliver the "Information Notice to Owner" not later than five days after the contract is made.

(3) This section applies only to a residential construction or improvement contract for which the aggregate contract price exceeds \$1,000. If the price of a [home] **residential** improvement contract was initially less than \$1,000, but during the course of the performance of the contract exceeds that amount, the original contractor shall mail or otherwise deliver the "Information Notice to Owner" not later than five days after the contractor knows or should reasonably know that the contract price will exceed \$1,000.

(4) **Notwithstanding subsections (2) and (3) of this section, the original contractor need not send the owner** an "Information Notice to Owner" [*need not be sent when*] **if** the owner is a contractor licensed with the Construction Contractors Board under ORS chapter 701.

(5) Notwithstanding ORS 87.010, if an original contractor does not provide an owner or agent with an "Information Notice to Owner" as required under subsections (2) and (3) of this section, the original contractor may not claim any lien created under ORS 87.010 upon any improvement, lot or parcel of land of the owner for labor, services or materials supplied under the residential construction or improvement contract for which the "Information Notice to Owner" was not provided.

(6) If an original contractor does not provide an owner or agent with an "Information Notice to Owner" as required under subsection (2) of this section, the Construction Contractors Board may suspend the license of the original contractor for any period of time that the board considers appropriate or impose a civil penalty of not more than \$5,000 upon the original contractor as provided in ORS 701.992.

(7) As used in this section:

(a) "Residential construction or improvement" means the original construction of residential property and constructing, repairing, remodeling or altering residential property and includes, but is not limited to, the construction, repair, replacement or improvement of driveways, swimming pools, terraces, patios, fences, porches, garages, basements and other structures or land adjacent to a residential dwelling.

(b) "Residential construction or improvement contract" means an agreement, oral or written, between an original contractor and an owner for the performance of a home improvement and includes all labor, services and materials furnished and performed thereunder.

SECTION 4. ORS 205.125 is amended to read:

205.125. (1) The County Clerk Lien Record maintained under ORS 205.130 shall contain the following information for each order or warrant recorded:

(a) The name of any person subject to the order or warrant.

(b) The name of the officer and the agency that issued the order or warrant or the name of the **complainant or** claimant in whose favor an order of the Construction Contractors Board or State Landscape Contractors Board has been given. The name of the agency or board that issued the order or warrant must be clearly printed on the order or warrant.

(c) The amount of any monetary obligation imposed by the order or warrant, and the [*name*] **names** of all persons against whom the obligation is imposed.

(d) The date on which the order or warrant was received and recorded.

(e) Full or partial satisfaction, if any, of any lien claim created by the order or warrant.

(f) County Clerk Lien Record instruments filed under ORS 205.130 (3)(c)(A) shall be on official letterhead and include the seals, if any, of the officers and agencies.

(g) Such other information as may be considered necessary by the county clerk.

(2) From the date that an order or warrant is recorded in the County Clerk Lien Record, the order or warrant shall have the attributes and effect of a judgment that has been entered in the register of the circuit court for that county, including but not limited to the creation of a judgment lien for any monetary obligation in favor of the officer or agency issuing the order or warrant or in favor of the **complainant or** claimant in the proceedings before the Construction Contractors Board or State Landscape Contractors Board, renewal and enforcement by supplementary proceedings, writs of execution, notices of garnishment and writs of garnishment.

(3) From the date that an order or warrant imposing a monetary obligation is recorded in the County Clerk Lien Record, the order or warrant becomes a lien upon the title to and interest in

property of the person against whom it is issued in the same manner as a judgment that creates a judgment lien under ORS chapter 18.

(4) In addition to any other remedy provided by law, orders and warrants recorded in the County Clerk Lien Record may be enforced as provided in ORS 205.126.

SECTION 5. ORS 205.126 is amended to read:

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

- (a) Writ of execution proceedings under ORS 18.252 to 18.993.
- (b) Proceedings in support of execution under ORS 18.265, 18.268 and 18.270.
- (c) Garnishment proceedings under ORS 18.600 to 18.850.

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

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

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

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

(3) For the purposes of this section:

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

(b) "**Complainant or** claimant" means a person in favor of which a board order has been recorded under the provisions of ORS 671.707 or 701.150.

SECTION 6. ORS 701.065 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 7. ORS 701.085 is amended to read:

701.085. (1) An applicant for issuance or renewal of a contractor license shall file with the Construction Contractors Board a surety bond with one or more corporate sureties authorized to do business in this state in the amount set forth in subsections (2) to (5) of this section. The surety bond must provide that the applicant, with regard to work subject to this chapter, will pay [*claims*] **amounts** ordered paid by the board under ORS 701.145 or 701.146. Bonds filed under this subsection shall remain in effect for at least one year or until depleted by [*claims paid*] **payments**

under ORS 701.150, unless the surety sooner cancels the bond. At the discretion of the surety the bond may be continued for an additional period by continuation certificate. Except as provided in subsection (6) of this section, the aggregate liability of the surety under the bond for *[claims against the bond]* **complaints against the contractor** may not exceed the penal sum of the bond no matter how many years the bond is in force. Except as provided in subsection (6) of this section, an extension by continuation certificate, reinstatement, reissue or renewal of the bond may not increase the liability of the surety.

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

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

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

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

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

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

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

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

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

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

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

(a) Costs;

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

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

SECTION 8. ORS 701.102 is amended to read:

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

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

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

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

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

(3) The board may place a contractor on probation if a total of three or more *[claims]* **complaints** are filed with the board **under ORS 701.139** within a 12-month period against the contractor or a former licensed construction contracting business in which the contractor held at least a 10 percent ownership interest, measured as determined by board rule. A contractor may not be placed on probation unless the board determines after investigation that it is likely that the contractor has caused harm to the *[claimants]* **complainants**. The board may require a contractor that is placed on probation to develop a corrective action plan, to attend specific classes and to resolve outstanding *[claims]* **complaints**. The board may require a contractor that is placed on probation to take training and pass a test, both as described in ORS 701.072. The board shall take action to terminate the contractor's license if the contractor is unwilling or unable to comply with the conditions of probation.

SECTION 9. ORS 701.103 is amended to read:

701.103. A lapse, surrender, suspension or other change in license status does not affect any authority otherwise granted the Construction Contractors Board to proceed with an investigation, conduct a disciplinary hearing or take disciplinary action against a person for a violation of this chapter or rules of the board, or to determine a timely *[claim]* **complaint** described in ORS 701.140.

SECTION 10. ORS 701.135 is amended to read:

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

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

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

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

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

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

(f) That the licensee has worked without a construction permit where a permit is required and the work resulted in a *[claim]* **complaint** being filed with the board **under ORS 701.139**. For purposes of this paragraph, "construction permit" includes a building permit, electrical permit, mechanical permit or plumbing permit.

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

(A) Two sole proprietors;

(B) One partnership;

(C) One corporation; or

(D) One limited liability company.

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

(A) Murder;

(B) Assault in the first degree;

- (C) Kidnapping;
- (D) Rape, sodomy or unlawful sexual penetration;
- (E) Sexual abuse;
- (F) Arson in the first degree;
- (G) Robbery in the first degree;
- (H) Theft in the first degree; or
- (I) Theft by extortion.

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

(j) That the licensee or applicant has repeatedly reported bad faith or false *[claims]* **complaints** of nonpayment against contractors or subcontractors.

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

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

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

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

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

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

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

SECTION 11. ORS 701.139 is amended to read:

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

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

(2) A *[claim]* **complaint** that involves work on a small commercial structure or an appurtenance *[thereto]* **to a small commercial structure** may be resolved as provided in ORS 701.145 or 701.146.

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

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

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

SECTION 12. ORS 701.140 is amended to read:

701.140. A *[claim]* **complaint** made against a licensed contractor's bond required by ORS 701.085 must arise from the performance, or a contract for the performance, of work that is subject to this chapter. The *[claim]* **complaint** must be of one or more of the following types:

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

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

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

(a) The owner paid the contractor for that contractor's work subject to this chapter; and

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

(3) A *[claim]* **complaint** against a licensed subcontractor by a licensed contractor for the following:

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

(4) A *[claim]* **complaint** by a person furnishing labor to a contractor.

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

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

SECTION 13. ORS 701.143 is amended to read:

701.143. The Construction Contractors Board may not process a *[claim]* **complaint** against a licensed contractor, including a *[claim]* **complaint** based upon a court judgment or an arbitration award, unless the *[claim is filed]* **complaint is filed with the board** in a timely manner as follows:

(1) Except as otherwise provided in this section, if the owner of a new structure files the *[claim]* **complaint**, the board must receive the *[claim]* **complaint** no later than the earlier of:

- (a) One year after the date the structure was first occupied; or
- (b) Two years after substantial completion of the structure by the contractor filed against.

(2) Except as otherwise provided in this section, if the owner of an existing structure files the [claim] **complaint**, the board must receive the [claim] **complaint** no later than one year after the date the work was substantially completed by the contractor filed against.

(3) Regardless of whether the [claim] **complaint** involves a new or **an** existing structure, if the owner of the structure files the [claim] **complaint** and the licensed contractor failed to begin the work, the board must receive the [claim] **complaint** no later than one year after the date the parties entered into the contract.

(4) Regardless of whether the [claim] **complaint** involves a new or **an** existing structure, if the owner of the structure files the [claim] **complaint** and the licensed contractor failed to substantially complete the work, the board must receive the [claim] **complaint** no later than one year after the date the contractor ceased to work on the structure.

(5) Except as otherwise provided in this section, if a licensed contractor files the [claim] **complaint** against the licensed contractor performing work as a subcontractor on a new structure, the board must receive the [claim] **complaint** no later than the earlier of:

- (a) Fourteen months after the date the structure was first occupied; or
- (b) Two years after substantial completion of the structure.

(6) Except as otherwise provided in this section, if a licensed contractor files the [claim] **complaint** against the licensed contractor performing work as a subcontractor on an existing structure, the board must receive the [claim] **complaint** no later than 14 months after the date the work on the structure was substantially completed.

(7) If a licensed contractor files the [claim] **complaint** against the licensed contractor performing work as a subcontractor on a structure and the subcontractor failed to substantially complete the work, the board must receive the [claim] **complaint** no later than 14 months after the date the subcontractor ceased to work on the structure.

(8) If the licensed contractor's employee, subcontractor or material or equipment supplier files the [claim] **complaint**, the board must receive the [claim] **complaint** no later than one year after the date the contractor incurred the indebtedness.

SECTION 14. ORS 701.145 is amended to read:

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

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

(2) The board may suspend processing of the [claim] **complaint** if:

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

(b) The board determines that the nature or complexity of the [claim] **dispute described in the complaint** is such that a court is the appropriate forum for the adjudication of the [claim] **dispute**.

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

(a) **The complainant does not respond to a board request and the request is necessary to the board's investigation of the complaint.**

(b) **The complainant does not allow the board to conduct one or more on-site meetings to mediate or investigate the complaint.**

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

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

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

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

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

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

(b) Refer the matter for hearing.

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

SECTION 15. ORS 701.146 is amended to read:

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

(1) The person seeking to file the [claim] **complaint with the Construction Contractors Board** must:

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

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

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

(a) The 90th day after [the complaint,] **filing the court action or after filing or making the arbitration demand** or other [document was filed or made] **initiation of arbitration;**

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

(c) The 30th day before:

(A) The court issues a judgment *[on the complaint]* **in the action**; or

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

(3) Filing the *[claim]* **complaint** with the board under subsection (2) of this section constitutes filing the *[claim]* **complaint** for purposes of establishing timeliness of the *[claim]* **complaint** under ORS 701.143 and priority of the *[claim]* **complaint for possible payment from the bond** under ORS 701.150.

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

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

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

(7) Upon receipt of a timely delivered certified copy of the judgment as described in subsection (6) of this section, the board shall issue a proposed order in the amount of the judgment together with any costs, interest and attorney fees awarded under the judgment, to the extent that the judgment, costs, interest and fees are within the jurisdiction of the board. The board's determination of the *[claim]* **complaint** is limited to whether the *[claim]* **complaint** comes within the jurisdiction of the board and is subject to payment by the surety. The board shall issue the proposed order in a form that indicates the surety's maximum liability to the *[claimant]* **complainant**. If a hearing is not requested within the time set forth in the proposed order, the proposed order becomes final without any further action by the board. If a hearing is requested, unless review of an issue is precluded under subsection (5) of this section, the board may determine:

(a) Whether the *[claim]* **complaint** was timely filed with the board as provided in ORS 701.143.

(b) Whether the surety received timely notice as provided in subsections (2) and (6) of this section.

(c) Whether the *[claim]* **complaint** is for work subject to this chapter.

(d) The extent of the surety's liability to the *[claimant]* **complainant**.

SECTION 16. ORS 701.147 is amended to read:

701.147. (1) Unless otherwise provided by the Construction Contractors Board by rule, before filing a *[claim]* **complaint** under ORS 701.139, a person must send notice to the contractor that the person intends to file the *[claim]* **complaint**. The person must send the notice at least 30 days before

filing the *[claim]* **complaint**. The notice must be mailed by certified mail to the last known address of the contractor as shown in board records. The board by rule may:

(a) Specify the manner in which the person may show compliance with this subsection at the time of filing the *[claim]* **complaint**.

(b) Provide that all or part of the requirements for sending a notice under this subsection may be waived if the contractor, by other means, has actual notice of the dispute with the person filing the *[claim]* **complaint**.

(2) If the notice described in subsection (1) of this section is mailed to the contractor fewer than 45 days before expiration of the time limitation under ORS 701.143 for the board to receive the *[claim]* **complaint**, the time limitation for the board to receive the *[claim]* **complaint** does not expire until 60 days after the notice is mailed.

(3) The board by rule may impose a processing fee for *[claims]* **complaints** filed under ORS 701.139. The fee amount may not exceed the amount of the filing fee provided by ORS 21.110 (1) for a plaintiff filing a civil action in circuit court. The board may impose different processing fees for *[claims]* **complaints** processed under ORS 701.145 than for *[claims]* **complaints** processed under ORS 701.146.

(4) If the board adopts rules under subsection (3) of this section, the rules:

(a) Except as provided in paragraphs (b) and (c) of this subsection, must provide that a prevailing *[claimant]* **complainant** recover processing fees as damages in the final order of the board.

(b) Must provide that the board may waive or defer all or part of the processing fee upon application by the person filing the *[claim]* **complaint** that shows the person is unable to pay all or part of the fee. The application must be made under oath and notarized. The application must show the average monthly income and expenses of the *[claimant]* **complainant**, assets and liabilities of the *[claimant]* **complainant** and any other information required by board rule.

(c) May provide for the processing fee to be waived for all *[claims]* **complaints** that are based on the furnishing of labor by a *[claimant]* **complainant** to a contractor. The board may provide for processing fee waiver under this paragraph only if, in the opinion of the board, a majority of *[claimants]* **complainants** who file *[claims]* **complaints** based on the furnishing of labor to contractors are eligible for fee waivers as described in paragraph (b) of this subsection.

SECTION 17. ORS 701.148 is amended to read:

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

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

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

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

(b) Limit orders and awards made by the arbitrator as necessary to comply with this chapter;

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

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

(e) Include any other provision necessary to conform the arbitration to this chapter.

(4) A party to a *[claim]* **complaint** that is subject to a board order of binding arbitration under subsection (1) of this section may avoid the arbitration if the party requests to have the *[claim]*

complaint resolved through a contested case hearing or files *[a complaint in]* a court **action**. A party making a **hearing** request or filing a *[complaint]* **court action** under this subsection is subject to the following provisions:

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

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

(c) A party that is subject to paragraph (a) or (b) of this subsection must deliver *[a request or complaint]* **the contested case hearing request or the copy of the party's court pleading** to the board as described in paragraphs (a) and (b) of this subsection no later than the 30th day after the board sends notice that an arbitration hearing has been scheduled. Failure to timely deliver a request or *[complaint]* **court pleading** under this paragraph constitutes consent to the binding arbitration.

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

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

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

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

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

SECTION 18. ORS 701.149 is amended to read:

701.149. (1) An arbitration conducted under ORS 701.148 must be held before an administrative law judge assigned under ORS 183.600 to 183.690 to act as arbitrator on behalf of the Construction Contractors Board. 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.

(2) If a party to a *[claim]* **complaint** under ORS 701.145 requests a contested case hearing, the board shall schedule the hearing.

(3) The board may adopt rules governing the avoidance of a contested case hearing. The rules may include, but need not be limited to, a limit on the time period during which a party to a *[claim]* **complaint** may avoid a contested case hearing by filing a *[complaint in a]* court **action**.

(4) Contested case hearings before the board must be conducted by an administrative law judge assigned under ORS 183.600 to 183.690. Notwithstanding ORS 670.325, the board may delegate authority to the administrative law judge to issue a final order in any matter.

(5) In assigning administrative law judges for arbitration and contested case hearings conducted under this section, the chief administrative law judge of the Office of Administrative Hearings established under ORS 183.605 shall defer to board requests.

(6) If a *[claim is submitted for determination by a court]* **complainant to the board files a court action**, the board may require that the *[claimant]* **complainant** provide status reports on the pending **court** action. The board may dismiss or close a *[claim]* **complaint** filed under ORS 701.139 if the *[claimant]* **complainant** fails to submit status reports on a pending **court** action.

(7) ORS 183.600 to 183.690 do not limit in any way the ability of the board to make full use of alternative dispute resolution, including mediation or arbitration, to resolve *[claims]* **complaints** against contractors filed under ORS 701.139.

SECTION 19. ORS 701.150 is amended to read:

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

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

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

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

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

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

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

(A) Labor, including employee benefits.

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

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

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

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

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

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

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

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

SECTION 20. ORS 701.175 is amended to read:

701.175. A contract that is for the performance of work on a residential structure and that is subject to this chapter may not contain a provision that limits the right of a person to file a *[claim]* **complaint** described in ORS 701.140 with the Construction Contractors Board. A contract described in this section may contain a provision requiring mediation or arbitration of a dispute arising from the contract.

SECTION 21. ORS 701.180 is amended to read:

701.180. Notwithstanding the provisions of ORS 36.600 to 36.740, any other provision of law or any contractual provision, failure of a contractor to initiate mediation or arbitration proceedings within 30 days after notification by the Construction Contractors Board of a *[claim]* **complaint** under ORS 701.145 is a waiver by the contractor of any contractual right to mediation or arbitration.

SECTION 22. ORS 701.227 is amended to read:

701.227. (1) The Construction Contractors Board shall begin an action to determine whether a contractor or a subcontractor shall *[not]* be considered **not** qualified to hold or participate in a public contract for a public improvement upon receipt of information from a public contracting agency or from any person who supplied labor or materials in connection with a public contract for a public improvement indicating that the contractor or subcontractor has not made payment to persons who supplied labor or materials within 60 days after the date when the payment was received by the contractor or subcontractor and that the payment was not a subject of a good faith dispute as defined in ORS 279C.580.

(2) If the board determines after notice and opportunity for hearing that a contractor or a subcontractor did not make payment to persons who supplied labor or materials in connection with a public contract for a public improvement within 60 days after the date when payment was received by the contractor or subcontractor, the board shall place the contractor or the subcontractor on the list of persons who have been determined *[not]* to be **not** qualified to hold or participate in a public contract for a public improvement. The board may not place a contractor or subcontractor on the list if the only reason that the contractor or subcontractor did not make payment to a person when payment was due is that the contractor or subcontractor did not receive payment from the public contracting agency, contractor or subcontractor when payment was due. The contractor or subcontractor shall remain on the list for a period of not less than six months.

(3) If the board determines that the *[claim made]* **information supplied to the board** against a contractor or subcontractor was *[made]* **supplied** in bad faith or was false, the person *[filing the bad faith or false claim]* **who supplied the information in bad faith or supplied false information** shall be placed on the list of persons who have been determined *[not]* to be **not** qualified to hold or participate in a public contract for a public improvement.

(4) The board shall create and maintain a list of contractors and subcontractors who have been determined *[not]* to be **not** qualified to hold or participate in a public contract for a public improvement. The list may include any corporation, partnership or other business entity of which the contractor or subcontractor is an owner, shareholder or officer of the business or was an owner or officer of the business. The board shall provide access to the list to all public contracting agencies, contractors and subcontractors.

SECTION 23. ORS 701.235 is amended to read:

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

(a) Establish language for surety bonds;

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

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

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

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

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

SECTION 24. ORS 701.252 is amended to read:

701.252. The Construction Contractors Board shall maintain and make available to the public a record of grievances made to the board against contractors that are licensed under this chapter. The board shall separately record:

(1) Inquiries for which no investigation has taken place;

(2) *[Claims]* **Complaints** that are being processed but upon which action has not been completed;

(3) *[Claims]* **Complaints** that have been voluntarily settled by the contractor and the *[claimant]* **complainant**;

(4) *[Claims]* **Complaints** that have resulted in a final order of the board to dismiss the *[claim]* **complaint**; and

(5) *[Claims]* **Complaints** that have resulted in a final order of the board to require payment to the *[claimant]* **complainant**.

SECTION 25. 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 **or complaints** filed pursuant to ORS 671.703 or 701.139.

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

SECTION 26. A claim filed with the Construction Contractors Board before the effective date of the amendments to ORS 18.635, 87.058, 87.093, 205.125, 205.126, 701.065, 701.085, 701.102, 701.103, 701.135, 701.139, 701.140, 701.143, 701.145, 701.146, 701.147, 701.148, 701.149, 701.150, 701.175, 701.180, 701.227, 701.235, 701.252 and 701.600 by sections 1 to 25 of this 2007 Act is a complaint filed with the board for purposes of ORS 18.635, 87.058, 87.093, 205.125, 205.126, 701.065, 701.085, 701.102, 701.103, 701.135, 701.139, 701.140, 701.143, 701.145, 701.146, 701.147, 701.148, 701.149, 701.150, 701.175, 701.180, 701.227, 701.235, 701.252 and 701.600 as amended by sections 1 to 25 of this 2007 Act.

Passed by Senate March 29, 2007

Repassed by Senate June 15, 2007

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Secretary of Senate

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President of Senate

Passed by House June 13, 2007

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Speaker of House

Received by Governor:

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

Approved:

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

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Governor

Filed in Office of Secretary of State:

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

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Secretary of State