

# 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)

## 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**.

Revises terminology pertaining to Construction Contractors Board dispute resolution.

## A BILL FOR AN ACT

1  
2 Relating to construction contractors; creating new provisions; and amending ORS 18.635, 87.058,  
3 87.093, 205.125, 205.126, 701.065, 701.085, 701.102, 701.103, 701.135, 701.139, 701.140, 701.143,  
4 701.145, 701.146, 701.147, 701.148, 701.149, 701.150, 701.175, 701.180, 701.227, 701.235, 701.252 and  
5 701.600.

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

7 **SECTION 1.** ORS 18.635 is amended to read:

8 18.635. (1) A writ of garnishment may be issued only by a person specified in this section.

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

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

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

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

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

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

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

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

24 **SECTION 2.** ORS 87.058 is amended to read:

25 87.058. (1) As used in this section:

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

27 (b) "Board" means the Construction Contractors Board established in ORS 701.205.

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

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

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

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

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

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

10 (c) The continued existence of the lien on which the suit is pending is attributable to the failure  
 11 of the contractor who has been paid by the owner to pay the person suing for that person’s contri-  
 12 bution toward completion of the structure.

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

15 (a) A certified copy of the [*claim*] **complaint** filed for processing by the board under ORS  
 16 701.145; and

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

18 (A) A description of the structure;

19 (B) The street address of the structure;

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

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

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

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

28 **SECTION 3.** ORS 87.093 is amended to read:

29 87.093. (1) The Construction Contractors Board shall adopt by rule a form entitled “Information  
 30 Notice to Owner” which shall describe, in nontechnical language and in a clear and coherent man-  
 31 ner using words in their common and everyday meanings, the pertinent provisions of the Con-  
 32 struction Lien Law of this state and the rights and responsibilities of an owner of property and an  
 33 original contractor under that law. The rights and responsibilities described in the form shall in-  
 34 clude, but not be limited to:

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

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

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

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

45 (A) The first purchaser of residential property constructed by the contractor and sold before or

1 within the 75-day period immediately following the completion of construction; and

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

4 (b) [When] If the residential construction or improvement contract is an oral contract, the ori-  
 5 ginal contractor shall mail or otherwise deliver the “Information Notice to Owner” not later than  
 6 five days after the contract is made.

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

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

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

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

26 (7) As used in this section:

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

32 (b) “Residential construction or improvement contract” means an agreement, oral or written,  
 33 between an original contractor and an owner for the performance of a home improvement and in-  
 34 cludes all labor, services and materials furnished and performed thereunder.

35 **SECTION 4.** ORS 205.125 is amended to read:

36 205.125. (1) The County Clerk Lien Record maintained under ORS 205.130 shall contain the fol-  
 37 lowing information for each order or warrant recorded:

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

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

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

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

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

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

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

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

12 (3) From the date that an order or warrant imposing a monetary obligation is recorded in the  
13 County Clerk Lien Record, the order or warrant becomes a lien upon the title to and interest in  
14 property of the person against whom it is issued in the same manner as a judgment that creates a  
15 judgment lien under ORS chapter 18.

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

18 **SECTION 5.** ORS 205.126 is amended to read:

19 205.126. (1) At any time after recording an order or warrant in the County Clerk Lien Record,  
20 a **complainant or** claimant or an attorney for an agency, **complainant** or claimant may file in the  
21 circuit court for the county where the order or warrant is recorded, a copy of the original order  
22 or warrant certified by the agency to be a true copy of original, and an affidavit of the  
23 **complainant**, claimant or attorney verifying that the order or warrant was recorded in the County  
24 Clerk Lien Record for that county, the date that the order or warrant was recorded and the date  
25 on which any notice of renewal was recorded under subsection (2) of this section. Subject to any  
26 other requirements that may apply to the enforcement remedy sought by the agency, **complainant**  
27 or claimant, proceedings may thereafter be commenced by the agency, **complainant** or claimant for  
28 the enforcement of the order or warrant, in the same manner as provided for the enforcement of  
29 judgments issued by a court. Enforcement proceedings may include:

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

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

32 (c) Garnishment proceedings under ORS 18.600 to 18.850.

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

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

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

44 (c) The date of recording and the recording number, the book and page number for the record-  
45 ing, 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

1 of the requirement;

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

4 (D) Enforcement of subsection (1) of this section would result in substantial injustice to the li-  
5 censed developer; or

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

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

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

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

10 (iii) Manufactures, distributes, rents or otherwise provides materials, supplies, equipment, sys-  
11 tems or products; and

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

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

20 **SECTION 7.** ORS 701.085 is amended to read:

21 701.085. (1) An applicant for issuance or renewal of a contractor license shall file with the  
22 Construction Contractors Board a surety bond with one or more corporate sureties authorized to  
23 do business in this state in the amount set forth in subsections (2) to (5) of this section. The surety  
24 bond must provide that the applicant, with regard to work subject to this chapter, will pay  
25 *[claims]* **amounts** ordered paid by the board under ORS 701.145 or 701.146. Bonds filed under this  
26 subsection shall remain in effect for at least one year or until depleted by *[claims paid]* **payments**  
27 under ORS 701.150, unless the surety sooner cancels the bond. At the discretion of the surety the  
28 bond may be continued for an additional period by continuation certificate. Except as provided in  
29 subsection (6) of this section, the aggregate liability of the surety under the bond for *[claims against*  
30 *the bond]* **complaints against the contractor** may not exceed the penal sum of the bond no matter  
31 how many years the bond is in force. Except as provided in subsection (6) of this section, an ex-  
32 tension by continuation certificate, reinstatement, reissue or renewal of the bond may not increase  
33 the liability of the surety.

34 (2) A general contractor or licensed developer shall obtain a surety bond in the amount of  
35 \$15,000.

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

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

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

42 (6) The board, by rule, may require a licensee to obtain a new surety bond if, pursuant to a  
43 board order for payment of a *[claim]* **complaint** described in ORS 701.140, the surety pays *[a*  
44 *claim]* **an amount** out of the bond of the licensee. The new surety bond must be in the amount set  
45 forth in subsections (2) to (5) of this section unless a higher amount is required by a board condition

1 or rule described in subsection (7) or (8) of this section. The board may allow a licensee to obtain,  
 2 instead of a new bond, a certification that the surety remains liable for the full penal sum of the  
 3 bond, notwithstanding payment by the surety on the *[claim]* **complaint**.

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

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

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

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

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

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

27 (a) Costs;

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

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

31 **SECTION 8.** ORS 701.102 is amended to read:

32 701.102. (1) As used in this section, "construction contractor license" means a license issued  
 33 within the United States to engage in the business of construction contracting.

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

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

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

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

43 (3) The board may place a contractor on probation if a total of three or more *[claims]* **com-**  
 44 **plaints** are filed with the board within a 12-month period against the contractor or a former licensed  
 45 construction contracting business in which the contractor held at least a 10 percent ownership in-

1 terest, measured as determined by board rule. A contractor may not be placed on probation unless  
 2 the board determines after investigation that it is likely that the contractor has caused harm to the  
 3 [*claimants*] **complainants**. The board may require a contractor that is placed on probation to de-  
 4 velop a corrective action plan, to attend specific classes and to resolve outstanding [*claims*] **com-**  
 5 **plaints**. The board may require a contractor that is placed on probation to take training and pass  
 6 a test, both as described in ORS 701.072. The board shall take action to terminate the contractor’s  
 7 license if the contractor is unwilling or unable to comply with the conditions of probation.

8 **SECTION 9.** ORS 701.103 is amended to read:

9 701.103. A lapse, surrender, suspension or other change in license status does not affect any  
 10 authority otherwise granted the Construction Contractors Board to proceed with an investigation,  
 11 conduct a disciplinary hearing or take disciplinary action against a person for a violation of this  
 12 chapter or rules of the board, or to determine a timely [*claim*] **complaint** described in ORS 701.140.

13 **SECTION 10.** ORS 701.135 is amended to read:

14 701.135. (1) The Construction Contractors Board may revoke, suspend or refuse to issue or re-  
 15 issue a license and the board may assess a civil penalty as provided in ORS 701.992 if the board  
 16 determines after notice and opportunity for hearing:

- 17 (a) That the licensee or applicant has violated ORS 701.055 or 701.078.
- 18 (b) That the licensee has violated a rule or order of the board.
- 19 (c) That the licensee has knowingly assisted an unlicensed person to act in violation of this  
 20 chapter.
- 21 (d) That a lien was filed on a structure under ORS 87.010 to 87.060 and 87.075 to 87.093 because  
 22 the licensee or applicant wrongfully failed to perform a contractual duty to pay money to the person  
 23 claiming the lien.
- 24 (e) That the licensee has knowingly provided false information to the board.
- 25 (f) That the licensee has worked without a construction permit where a permit is required and  
 26 the work resulted in a [*claim*] **complaint** being filed with the board. For purposes of this paragraph,  
 27 “construction permit” includes a building permit, electrical permit, mechanical permit or plumbing  
 28 permit.
- 29 (g) That the number of licensed contractors working together on the same task on the same job  
 30 site, where one of the contractors is licensed as exempt under ORS 701.035 (2)(b), exceeded the fol-  
 31 lowing:

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

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

- 38 (A) Murder;
- 39 (B) Assault in the first degree;
- 40 (C) Kidnapping;
- 41 (D) Rape, sodomy or unlawful sexual penetration;
- 42 (E) Sexual abuse;
- 43 (F) Arson in the first degree;
- 44 (G) Robbery in the first degree;
- 45 (H) Theft in the first degree; or



1 (I) Theft by extortion.

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

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

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

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

14 (A) Lack of a surety bond required by ORS 701.085;

15 (B) Lack of liability insurance required by ORS 701.105;

16 (C) Hiring employees while licensed as exempt under ORS 701.035; or

17 (D) Conduct as a construction contractor that is dishonest or fraudulent.

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

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

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

34 (5) If the board suspends or revokes the license of an individual contractor or contractor busi-  
 35 ness for a violation of subsection (1)(g) of this section, the board may not restore or reissue the li-  
 36 cense unless the individual contractor or a responsible managing individual, as defined in ORS  
 37 701.078, for the contractor business has successfully completed the training and testing described in  
 38 ORS 701.072.

39 **SECTION 11.** ORS 701.139 is amended to read:

40 701.139. Except as provided in ORS 701.148 (2), the Construction Contractors Board may resolve  
 41 a dispute against a licensed contractor only if a *[claim]* **complaint** is made against the contractor's  
 42 surety bond required by ORS 701.085. In order to have access to the bond, a person must file a  
 43 *[claim]* **complaint** of a type described in ORS 701.140 within the applicable time limitation described  
 44 in ORS 701.143. The *[claim]* **complaint** must be filed and resolved as follows:

45 (1) A *[claim]* **complaint** that involves work on a residential structure or an appurtenance to

1 [the] a **residential** structure must be resolved as provided under ORS 701.145.

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

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

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

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

13 **SECTION 12.** ORS 701.140 is amended to read:

14 701.140. A [claim] **complaint** made against a licensed contractor's bond required by ORS 701.085  
15 must arise from the performance, or a contract for the performance, of work that is subject to this  
16 chapter. The [claim] **complaint** must be of one or more of the following types:

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

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

22 (2) A [claim] **complaint** against a contractor by the owner of a structure or other real property  
23 to discharge, or to recoup funds expended in discharging, a lien established under ORS 87.010 to  
24 87.060 and 87.075 to 87.093 under circumstances described under this subsection. If the [claim]  
25 **complaint** is processed under ORS 701.145, the Construction Contractors Board may reduce [a  
26 claim] **the amount of the complaint** by any amount the [claimant] **complainant** owes the con-  
27 tractor. The board shall process [claims] **complaints** described in this subsection under ORS 701.145  
28 only if:

- 29 (a) The owner paid the contractor for that contractor's work subject to this chapter; and
- 30 (b) A lien is filed against the property of the owner under ORS 87.010 to 87.060 and 87.075 to  
31 87.093 because the contractor failed to pay the person claiming the lien for that person's contribu-  
32 tion toward completion of the improvement.

33 (3) A [claim] **complaint** against a licensed subcontractor by a licensed contractor for the fol-  
34 lowing:

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

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

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

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

44 **SECTION 13.** ORS 701.143 is amended to read:

45 701.143. The Construction Contractors Board may not process a [claim] **complaint** against a li-

1 censed contractor, including a *[claim]* **complaint** based upon a court judgment or **an** arbitration  
 2 award, unless the *[claim is filed]* **complaint is filed with the board** in a timely manner as follows:

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

5 (a) One year after the date the structure was first occupied; or

6 (b) Two years after substantial completion of the structure by the contractor filed against.

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

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

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

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

21 (a) Fourteen months after the date the structure was first occupied; or

22 (b) Two years after substantial completion of the structure.

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

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

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

34 **SECTION 14.** ORS 701.145 is amended to read:

35 701.145. For a *[claim]* **complaint** described in ORS 701.139 (1) involving work on a residential  
 36 structure or an appurtenance *[thereto, a claim]* **to a residential structure, a complaint** described  
 37 in ORS 701.139 (2) involving work on a small commercial structure or an appurtenance *[thereto]* **to**  
 38 **a small commercial structure** that is not resolved under ORS 701.146 or an owner's *[claim]*  
 39 **complaint** described in ORS 701.139 (4) involving work on a large commercial structure or an  
 40 appurtenance *[thereto]* **to a large commercial structure** that is not resolved under ORS 701.146:

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

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

45 (a) The same facts and issues involved in the *[claim]* **complaint** have been submitted to a court

1 of competent jurisdiction for determination or have been submitted to any other entity authorized  
2 by law or the parties to effect a resolution or settlement; or

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

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

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

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

16 (c) The amount in controversy is less than an amount adopted by the board and not more than  
17 \$250.

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

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

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

31 (b) Refer the matter for hearing.

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

34 **SECTION 15.** ORS 701.146 is amended to read:

35 701.146. For a *[claim]* **complaint** described in ORS 701.139 (3) involving work on a large com-  
36 mercial structure or an appurtenance *[thereto, a claim]* **to a large commercial structure, a com-**  
37 **plaint** described in ORS 701.139 (2) involving work on a small commercial structure or an  
38 appurtenance *[thereto]* **to a small commercial structure** that is not resolved under ORS 701.145  
39 or an owner's *[claim]* **complaint** described in ORS 701.139 (4) involving work on a large commercial  
40 structure or an appurtenance *[thereto]* **to a large commercial structure** that is not resolved under  
41 ORS 701.145:

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

44 (a) Bring an action on the *[claim]* **dispute** against the licensed contractor in a court of compe-  
45 tent jurisdiction; or

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

3 (2) The [*claimant*] **complainant** must file the [*claim*] **complaint** with the Construction Contrac-  
4 tors Board by delivering to the board a copy of the [*complaint*] **complainant's court pleading** or  
5 the demand for arbitration or other document necessary to initiate arbitration. The [*complaint,*]  
6 **pleading**, demand or other document must be accompanied by a [*statement of claim in a form pre-*  
7 *scribed by board rule*] **completed board complaint form**. The [*claimant*] **complainant** must also  
8 give notice to the surety on the bond by delivering to the surety a copy of the [*complaint,*]  
9 **complainant's court pleading or the** demand for arbitration or other document necessary to ini-  
10 tiate arbitration and a copy of the [*statement of claim*] **completed board complaint form**. Delivery  
11 to the board and the surety must be accomplished by certified mail, return receipt requested, no  
12 later than the earlier of:

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

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

16 (c) The 30th day before:

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

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

19 (3) Filing the [*claim*] **complaint** with the board under subsection (2) of this section constitutes  
20 filing the [*claim*] **complaint** for purposes of establishing timeliness of the [*claim*] **complaint** under  
21 ORS 701.143 and priority of the [*claim*] **complaint for possible payment from the bond** under ORS  
22 701.150.

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

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

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

1 **complainant** and the surety are the only parties to the administrative process set forth in sub-  
2 section (7) of this section.

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

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

14 (b) Whether the surety received timely notice as provided in subsections (2) and (6) of this sec-  
15 tion.

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

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

18 **SECTION 16.** ORS 701.147 is amended to read:

19 701.147. (1) Unless otherwise provided by the Construction Contractors Board by rule, before  
20 filing a *[claim]* **complaint** under ORS 701.139, a person must send notice to the contractor that the  
21 person intends to file the *[claim]* **complaint**. The person must send the notice at least 30 days before  
22 filing the *[claim]* **complaint**. The notice must be mailed by certified mail to the last known address  
23 of the contractor as shown in board records. The board by rule may:

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

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

29 (2) If the notice described in subsection (1) of this section is mailed to the contractor fewer than  
30 45 days before expiration of the time limitation under ORS 701.143 for the board to receive the  
31 *[claim]* **complaint**, the time limitation for the board to receive the *[claim]* **complaint** does not expire  
32 until 60 days after the notice is mailed.

33 (3) The board by rule may impose a processing fee for *[claims]* **complaints** filed under ORS  
34 701.139. The fee amount may not exceed the amount of the filing fee provided by ORS 21.110 (1) for  
35 a plaintiff filing a civil action in circuit court. The board may impose different processing fees for  
36 *[claims]* **complaints** processed under ORS 701.145 than for *[claims]* **complaints** processed under ORS  
37 701.146.

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

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

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

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

6 **SECTION 17.** ORS 701.148 is amended to read:

7 701.148. (1) Subject to subsection (4) of this section, if the resolution of a [*claim*] **complaint**  
 8 under ORS 701.145 requires a hearing, the Construction Contractors Board may require that the  
 9 hearing be conducted as a binding arbitration under rules adopted by the board under subsection  
 10 (3) of this section. This subsection does not authorize the board to require binding arbitration of a  
 11 [*claim*] **complaint** that is subject to ORS 701.146.

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

15 (3) Except as provided in this subsection, rules adopted by the board to regulate arbitration  
 16 under subsections (1) and (2) of this section must substantially conform with the provisions of ORS  
 17 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.  
 18 The rules may:

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

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

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

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

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

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

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

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

1 **a response pleading all facts and issues of the board complaint. The board complainant** has  
 2 the burden of proving the elements of the [*claim in any*] **board complaint in a court** action de-  
 3 scribed in this paragraph.

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

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

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

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

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

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

23 **SECTION 18.** ORS 701.149 is amended to read:

24 701.149. (1) An arbitration conducted under ORS 701.148 must be held before an administrative  
 25 law judge assigned under ORS 183.600 to 183.690 to act as arbitrator on behalf of the Construction  
 26 Contractors Board. The assignment of an administrative law judge to act as arbitrator is subject to  
 27 a request for a different arbitrator under ORS 183.645 or a rule adopted pursuant to ORS 183.645.

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

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

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

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

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

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



1        **SECTION 19.** ORS 701.150 is amended to read:

2        701.150. (1) If a Construction Contractors Board final order is not paid by the contractor, the  
3 board shall notify the surety on the bond. The surety may not pay [a claim] **on a complaint** until  
4 the surety receives notice from the board that the [claim] **complaint** is ready for payment.

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

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

13        (4) Payments from the surety bond of a contractor pursuant to board order and notice are sat-  
14 isfied in the following priority in any 90-day period. A 90-day period begins on the date the first  
15 [claim] **complaint** is filed with the board. Subsequent 90-day periods begin on the date the first  
16 [claim] **complaint** is filed with the board after the close of the preceding 90-day period. Within a  
17 90-day period:

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

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

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

29        (A) Labor, including employee benefits.

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

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

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

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

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

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

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

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

4 **SECTION 20.** ORS 701.175 is amended to read:

5 701.175. A contract that is for the performance of work on a residential structure and that is  
6 subject to this chapter may not contain a provision that limits the right of a person to file a  
7 *[claim]* **complaint** described in ORS 701.140 with the Construction Contractors Board. A contract  
8 described in this section may contain a provision requiring mediation or arbitration of a dispute  
9 arising from the contract.

10 **SECTION 21.** ORS 701.180 is amended to read:

11 701.180. Notwithstanding the provisions of ORS 36.600 to 36.740, any other provision of law or  
12 any contractual provision, failure of a contractor to initiate mediation or arbitration proceedings  
13 within 30 days after notification by the Construction Contractors Board of a *[claim]* **complaint** un-  
14 der ORS 701.145 is a waiver by the contractor of any contractual right to mediation or arbitration.

15 **SECTION 22.** ORS 701.227 is amended to read:

16 701.227. (1) The Construction Contractors Board shall begin an action to determine whether a  
17 contractor or a subcontractor shall *[not]* be considered **not** qualified to hold or participate in a  
18 public contract for a public improvement upon receipt of information from a public contracting  
19 agency or from any person who supplied labor or materials in connection with a public contract for  
20 a public improvement indicating that the contractor or subcontractor has not made payment to  
21 persons who supplied labor or materials within 60 days after the date when the payment was re-  
22 ceived by the contractor or subcontractor and that the payment was not a subject of a good faith  
23 dispute as defined in ORS 279C.580.

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

34 (3) If the board determines that the claim **or complaint** made against a contractor or subcon-  
35 tractor was made in bad faith or was false, the person filing the bad faith or false claim **or com-**  
36 **plaint** shall be placed on the list of persons who have been determined *[not]* to be **not** qualified to  
37 hold or participate in a public contract for a public improvement.

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

44 **SECTION 23.** ORS 701.235 is amended to read:

45 701.235. (1) The Construction Contractors Board shall adopt rules to carry out the provisions

1 of this chapter including, but not limited to, rules that:

2 (a) Establish language for surety bonds;

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

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

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

11 (e) Designate a form to be used by an owner of residential property under ORS 87.007 for the  
12 purpose of indicating the method the owner has selected to comply with the requirements of ORS  
13 87.007 (2) or to indicate that ORS 87.007 (2) does not apply.

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

17 **SECTION 24.** ORS 701.252 is amended to read:

18 701.252. The Construction Contractors Board shall maintain and make available to the public a  
19 record of grievances made to the board against contractors that are licensed under this chapter.  
20 The board shall separately record:

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

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

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

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

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

29 **SECTION 25.** ORS 701.600 is amended to read:

30 701.600. ORS 701.560 to 701.595 and 701.605 do not apply:

31 (1) To personal injury or death claims.

32 (2) To claims **or complaints** filed pursuant to ORS 671.703 or 701.139.

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

34 **SECTION 26. A claim filed with the Construction Contractors Board before the effective**  
35 **date of the amendments to ORS 18.635, 87.058, 87.093, 205.125, 205.126, 701.065, 701.085, 701.102,**  
36 **701.103, 701.135, 701.139, 701.140, 701.143, 701.145, 701.146, 701.147, 701.148, 701.149, 701.150,**  
37 **701.175, 701.180, 701.227, 701.235, 701.252 and 701.600 by sections 1 to 25 of this 2007 Act is a**  
38 **complaint filed with the board for purposes of ORS 18.635, 87.058, 87.093, 205.125, 205.126,**  
39 **701.065, 701.085, 701.102, 701.103, 701.135, 701.139, 701.140, 701.143, 701.145, 701.146, 701.147,**  
40 **701.148, 701.149, 701.150, 701.175, 701.180, 701.227, 701.235, 701.252 and 701.600 as amended by**  
41 **sections 1 to 25 of this 2007 Act.**