

Senate Bill 97

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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**.

Requires construction contractor to retain written evidence that contractor timely delivered consumer notification form to owner of residential structure. Provides that failure to retain written evidence of notification form delivery creates rebuttable presumption that form was not timely delivered.

Makes violation subject to civil penalty, not to exceed \$5,000.

A BILL FOR AN ACT

1
2 Relating to construction contractors; creating new provisions; and amending ORS 701.055, 701.135
3 and 701.590.

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

5 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS chapter 701.**

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

14 **(2) A contractor shall deliver the consumer notification form to the property owner when**
15 **the contractor submits a bid or proposal for work on a residential structure. The contractor**
16 **may reproduce the form on the contractor's bid proposal. The contractor shall retain written**
17 **evidence of timely delivery of the consumer notification form to the property owner for at**
18 **least:**

19 **(a) Two years after substantial completion of the work performed by the contractor on**
20 **the residential structure; or**

21 **(b) One year after delivery of the form, if the contractor and property owner do not enter**
22 **into an agreement for work on a residential structure.**

23 **(3) If the board proposes to assess a civil penalty for failure to timely deliver a consumer**
24 **notification form to a property owner, the failure of a contractor to retain written evidence**
25 **of delivery as required by subsection (2) of this section creates a rebuttable presumption that**
26 **the contractor failed to timely deliver the notification form to the property owner.**

27 **(4) The board shall adopt rules specifying the type of written evidence that a contractor**
28 **must retain to comply with subsection (2) of this section.**

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.

SECTION 3. ORS 701.055 is amended to read:

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

(2) A licensed partnership or corporation shall notify the board immediately upon any change in licensed partners or corporate officers. If a partnership no longer has a licensed partner, the partnership may not conduct activities that require a license under this chapter.

(3) A city, county or the State of Oregon may not issue a building permit to any person required to be licensed under this chapter that does not have a current, valid license. A county, city or state agency that requires the issuance of a permit as a condition precedent to construction, alteration, improvement, demolition, movement or repair of any building or structure or the appurtenances to the structure shall, as a condition for issuing the permit, require that the applicant for a permit file a written statement, subscribed by the applicant. The statement must affirm that the applicant is licensed under this chapter, give the license number and state that the license is in full force and effect, or, if the applicant is exempt from licensing under this chapter, list the basis for the exemption. The city, county or state agency shall list the contractor’s license number on the permit obtained by that contractor.

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

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

(b) I own, reside in or will reside in the completed dwelling. My general contractor is _____, Construction Contractors Board license no. _____, license expiration date _____. I will instruct my general contractor that all subcontractors who work on this dwelling must be licensed with the Construction Contractors Board; or

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

(d) I will be my own general contractor and, if I hire subcontractors, I will hire only subcontractors licensed with the Construction Contractors Board.

(e) If I change my mind and do hire a general contractor, I will contract with a general contractor who is licensed with the Construction Contractors Board and I will immediately notify the office issuing this building permit of the name of the general contractor _____.

(5) The board shall adopt by rule a form entitled “Information Notice to Property Owners About Construction Responsibilities” that shall describe, in nontechnical language and in a clear and co-

1 herent manner using words in their common and everyday meaning, the responsibilities property
 2 owners are undertaking by acting as their own general contractor and the problems that could de-
 3 velop. The responsibilities described in the form shall include, but not be limited to:

4 (a) Compliance with state and federal laws regarding Social Security tax, income tax and un-
 5 employment tax.

6 (b) Workers' compensation insurance on workers.

7 (c) Liability and property damage insurance.

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

11 (7) A city or county that requires a business license for engaging in a business subject to reg-
 12 ulation under this chapter shall require that the licensee or applicant for issuance or renewal of the
 13 business license file, or have on file, with the city or county, a signed statement that the licensee
 14 or applicant is licensed under this chapter.

15 (8) It is prima facie evidence of doing business as a contractor if a person for that person's own
 16 use performs, employs others to perform, or for compensation and with the intent to sell the struc-
 17 ture, arranges to have performed any work described in ORS 701.005 (3) if within any 36-month pe-
 18 riod that person offers for sale two or more newly built structures on which that work was
 19 performed.

20 (9) Licensure under this chapter is prima facie evidence that the licensee conducts a separate,
 21 independent business.

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

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

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

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

31 (11)(a) A contractor shall maintain a list that includes the following information about all sub-
 32 contractors or other contractors performing work on a project for that contractor:

33 (A) Names and addresses.

34 (B) License numbers.

35 (b) The contractor must deliver the list referred to in paragraph (a) of this subsection to the
 36 board within 72 hours after a board request made during reasonable working hours.

37 (12) A contractor may not hire any subcontractor or other contractor to perform work unless
 38 the subcontractor or contractor is licensed under this chapter or exempt from licensure under ORS
 39 701.010.

40 *[(13) A consumer notification form designed to specifically inform a property owner what the*
 41 *property owner should do to protect themselves in a residential repair, remodel or construction project*
 42 *shall be prepared by the board and provided at no cost to all licensed contractors. The contractor shall*
 43 *deliver the form to the property owner when the contractor submits a bid or proposal for work on a*
 44 *residential structure. The form shall include an explanation of the meaning of licensure, including a*
 45 *statement that licensure is not an endorsement of a contractor's work, and an explanation of the bond*

1 *and insurance levels required of contractors for the benefit of property owners. The form must not be*
 2 *larger than one side of a sheet of paper that is 8-1/2 inches by 11 inches. The contractor may reproduce*
 3 *the form on the contractor's bid proposal.]*

4 [(14)] (13) A contractor may not perform work subject to this section for an owner of a resi-
 5 dential structure without a written contract if the aggregate contract price exceeds \$2,000. If the
 6 price of a contract was initially less than \$2,000, but during the course of performance the contract
 7 exceeds that amount, the contractor shall mail or otherwise deliver a written contract to the owner
 8 not later than five days after the contractor knows or should reasonably know that the contract
 9 price will exceed \$2,000. Failure to have a written contract will not void the contract.

10 [(15)] (14) Except as provided in ORS 671.540, a contractor that is not licensed under ORS
 11 671.560 shall hire a person licensed under ORS 671.560 to perform landscaping work.

12 **SECTION 4.** ORS 701.135 is amended to read:

13 701.135. (1) The Construction Contractors Board may revoke, suspend or refuse to issue or re-
 14 issue a license and the board may assess a civil penalty as provided in ORS 701.992 if the board
 15 determines after notice and opportunity for hearing:

16 (a) That the licensee or applicant has violated ORS 701.055 or 701.078 **or section 2 of this 2007**
 17 **Act.**

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 being filed with the board. For purposes of this paragraph, "con-
 27 struction permit" includes a building permit, electrical permit, mechanical permit or plumbing per-
 28 mit.

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 of nonpay-
 7 ment 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 5.** ORS 701.590 is amended to read:

40 701.590. (1) A contractor shall deliver a notice of the procedure contained in ORS 701.565 to
 41 701.580 to an owner along with the consumer notification form required to be delivered to an owner
 42 under [ORS 701.055 (13)] **section 2 of this 2007 Act.** The notice must be conspicuous and may be
 43 included as part of the underlying contract.

44 (2) The notice required by subsection (1) of this section must be in substantially the following
 45 form:

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OREGON LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY COMMENCE ARBITRATION OR A COURT ACTION AGAINST ANY CONTRACTOR, SUBCONTRACTOR OR SUPPLIER FOR CONSTRUCTION DEFECTS. BEFORE YOU COMMENCE ARBITRATION OR A COURT ACTION YOU MUST DELIVER A WRITTEN NOTICE OF ANY CONDITIONS YOU ALLEGE ARE DEFECTIVE TO THE CONTRACTOR, SUBCONTRACTOR OR SUPPLIER YOU BELIEVE IS RESPONSIBLE FOR THE ALLEGED DEFECT AND PROVIDE THE CONTRACTOR, SUBCONTRACTOR OR SUPPLIER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE CONTRACTOR, SUBCONTRACTOR OR SUPPLIER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW. FAILURE TO MEET THOSE DEADLINES OR FOLLOW THOSE PROCEDURES WILL AFFECT YOUR ABILITY TO COMMENCE ARBITRATION OR A COURT ACTION.

SECTION 6. Section 2 of this 2007 Act applies to bids and proposals that a contractor submits to a property owner on or after the effective date of this 2007 Act. The amendments to ORS 701.055 by section 3 of this 2007 Act do not relieve any person from civil penalty or other sanction for a violation prior to the effective date of this 2007 Act of ORS 701.055 (13) as set forth in the 2005 Edition of Oregon Revised Statutes.
