

Enrolled Senate Bill 147

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CHAPTER

AN ACT

Relating to landscaping; amending ORS 671.321, 671.520, 671.540, 671.571 and 701.010.

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

SECTION 1. ORS 671.520 is amended to read:

671.520. As used in ORS 671.510 to 671.760, unless the context requires otherwise:

(1) "Landscape construction professional" means an individual who for compensation or with the intent to be compensated performs or supervises activities requiring the art, ability, experience, knowledge, science and skill to:

- (a) Plan or install lawns, shrubs, vines, trees or nursery stock;
- (b) Prepare property on which lawns, shrubs, vines, trees or nursery stock is to be installed;
- (c) Construct or repair ornamental water features, drainage systems or irrigation systems; [or]
- (d) Maintain irrigation systems with the use of compressed air; or**

[d)] (e) Plan or install fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls.

(2) "Landscape contracting business" means a business that for compensation or with the intent to be compensated arranges, [for or] submits a bid, or otherwise offers or contracts, [to provide the services of a landscape construction professional] **for the performance of activities described in subsection (1) of this section.**

(3) "Licensee" means a person that is licensed under ORS 671.510 to 671.760 as a landscape construction professional or landscape contracting business.

(4) "Nursery stock" means nursery stock:

(a) As defined by ORS 571.005 other than stock grown for commercial resale or reforestation; or

(b) As defined by the State Landscape Contractors Board by rule.

(5) "Ornamental water features" means fountains, ponds, waterfalls, man-made streams and other decorative water-related constructions as identified by the board by rule.

SECTION 2. ORS 671.540 is amended to read:

671.540. (1) **Except as provided in subsection (2) of this section,** ORS 671.510 to 671.760 and 671.990 (2) do not apply to:

[1)] (a) Any federal or state agency or any political subdivision performing landscaping work on public property.

[(2)] (b) Any landscape architect registered under ORS 671.310 to 671.459 and practicing as provided under ORS 671.310 to 671.459.

[(3)] (c) Landscaping work performed by a landscape maintenance business if:

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

[(b)] (B) The value of all labor, materials or other items supplied for landscaping work at a job site does not exceed \$500 in a calendar year; and

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

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

[(5)] (e) Rough grading of plots and areas of land performed in conjunction with new or remodeling construction if performed by a person or business licensed with the Construction Contractors Board.

[(6)] (f) Any owner of property, **or employee of an owner of property**, who contracts for landscaping work **on the property** to be performed by a person licensed under ORS 671.560. The exception provided by this [subsection] **paragraph** does not apply to a person who, in pursuit of an independent business, performs or contracts for the performance of landscaping work with the intent of offering for sale before, upon or after completion of the landscaping work the property upon which the landscaping work is performed.

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

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

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

[(10)] (j) A person engaged in making plans or drawings for the selection, placement or use of plants or other site features, unless the plans or drawings are for the purpose of providing construction details and specifications.

[(11)] (k) Use by a person other than a landscape construction professional of the title "landscape designer" when engaged in making plans or drawings described in [subsection (10) of this section] **paragraph (j) of this subsection**.

[(12)] (L) A person providing recommendations or written specifications for soil amendments or planting media if the recommendations or specifications are solely for the purpose of plant installation.

[(13)] *A person registered under ORS 447.010 to 447.156 when performing repair and maintenance on piping for irrigation systems.*

(m) A plumbing contractor licensed under ORS 447.010 to 447.156 when engaged in superintending installation work on piping for an irrigation system designed by a landscape contracting business or by a person registered under ORS 671.310 to 671.459.

(n) A plumbing contractor licensed under ORS 447.010 to 447.156 when engaged in superintending repair or maintenance work on piping for an irrigation system.

(o) A journeyman plumber licensed under ORS chapter 693 when performing an installation for a plumbing contractor described in paragraph (m) of this subsection or performing repair or maintenance work on piping for an irrigation system.

[(14)] **(p) An employee, as defined in ORS 657.015, of a general contractor licensed under ORS chapter 701 when performing work that the contractor may perform under [subsection (8) or (9) of this section] paragraph (h) or (i) of this subsection.**

[(15)] **(q) An employee of a licensed landscape contracting business when performing work for the business under the direct supervision of a licensed landscape construction professional.**

[(16)] **(r) An employee of a worker leasing company or temporary service provider, both as defined in ORS 656.850, when performing work for a licensed landscape contracting business under the direct supervision of a licensed landscape construction professional.**

(2) ORS 671.530 (2), (4) and (5) apply to a person described under subsection (1) of this section.

SECTION 3. ORS 671.540, as amended by section 50, chapter 836, Oregon Laws 2007, is amended to read:

671.540. **(1) Except as provided in subsection (2) of this section,** ORS 671.510 to 671.760 and 671.990 (2) do not apply to:

[(1)] **(a) Any federal or state agency or any political subdivision performing landscaping work on public property.**

[(2)] **(b) Any landscape architect registered under ORS 671.310 to 671.459 and practicing as provided under ORS 671.310 to 671.459.**

[(3)] **(c) Landscaping work performed by a landscape maintenance business if:**

[(a)] **(A) The landscaping work is performed for a customer that in a calendar year receives primarily landscape maintenance services from the business;**

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

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

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

[(5)] **(e) Rough grading of plots and areas of land performed in conjunction with new or remodeling construction if performed by a person or business licensed with the Construction Contractors Board.**

[(6)] **(f) Any owner of property, or employee of an owner of property, who contracts for landscaping work on the property to be performed by a person licensed under ORS 671.560. The exception provided by this [subsection] paragraph does not apply to a person who, in pursuit of an independent business, performs or contracts for the performance of landscaping work with the intent of offering for sale before, upon or after completion of the landscaping work the property upon which the landscaping work is performed.**

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

[(8)] **(h) A residential general contractor licensed under ORS chapter 701 who performs landscaping work if the total value of the landscaping is less than \$2,500 per residential dwelling and the landscaping work is performed on residential property for which the contractor is under con-**

tract for the construction of a new dwelling. The exception provided by this [subsection] **paragraph** does not apply to the performance of irrigation work by a residential general contractor. The State Landscape Contractors Board shall revise the amount specified in this [subsection] **paragraph** every five years, beginning in 2003, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor.

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

[10] (j) A person engaged in making plans or drawings for the selection, placement or use of plants or other site features, unless the plans or drawings are for the purpose of providing construction details and specifications.

[11] (k) Use by a person other than a landscape construction professional of the title "landscape designer" when engaged in making plans or drawings described in [subsection (10) of this section] **paragraph (j) of this subsection.**

[12] (L) A person providing recommendations or written specifications for soil amendments or planting media if the recommendations or specifications are solely for the purpose of plant installation.

[13] *A person registered under ORS 447.010 to 447.156 when performing repair and maintenance on piping for irrigation systems.*

(m) **A plumbing contractor licensed under ORS 447.010 to 447.156 when engaged in superintending installation work on piping for an irrigation system designed by a landscape contracting business or by a person registered under ORS 671.310 to 671.459.**

(n) **A plumbing contractor licensed under ORS 447.010 to 447.156 when engaged in superintending repair or maintenance work on piping for an irrigation system.**

(o) **A journeyman plumber licensed under ORS chapter 693 when performing an installation for a plumbing contractor described in paragraph (m) of this subsection or performing repair or maintenance work on piping for an irrigation system.**

[14] (p) An employee, as defined in ORS 657.015, of a residential general contractor licensed under ORS chapter 701 when performing work that the contractor may perform under [subsection (8) or (9) of this section] **paragraph (h) or (i) of this subsection.**

[15] (q) An employee of a licensed landscape contracting business when performing work for the business under the direct supervision of a licensed landscape construction professional.

[16] (r) An employee of a worker leasing company or temporary service provider, both as defined in ORS 656.850, when performing work for a licensed landscape contracting business under the direct supervision of a licensed landscape construction professional.

(2) ORS 671.530 (2), (4) and (5) apply to a person described under subsection (1) of this section.

SECTION 4. ORS 671.571 is amended to read:

671.571. (1) Notwithstanding ORS 671.570, the State Landscape Contractors Board may issue a probationary landscape construction professional license to a person who does not meet the training and experience qualifications set forth in ORS 671.570. To obtain a probationary landscape construction professional license, the person must:

- (a) Pay a nonrefundable application fee;
- (b) Pay an examination fee;
- (c) Pay to the board the landscape construction professional license fee required by ORS 671.650; and

(d) Pass all sections of the examination described in ORS 671.570 within 12 months after first taking the examination.

(2) Two or more years after receiving a probationary landscape construction professional license, a probationary landscape construction professional may obtain removal from probationary status and issuance of a landscape construction professional license if the probationary landscape construction professional presents the board with proof that the probationary landscape construction professional has done any of the following:

(a) Completed at least 24 months of employment with a licensed landscape contracting business under the direct supervision of a landscape construction professional.

(b) Provided supervision described in ORS 671.540 [(15)] (1)(q) or 671.565 (1)(b) for at least 24 months as the owner or employee of a licensed landscape contracting business that, during that period:

(A) Filed and maintained with the board a bond, letter of credit or deposit in the amount of \$15,000; and

(B) Performed landscaping work only on landscaping projects where the amount charged by the landscape contracting business for work on the project during any 12-month period did not exceed \$15,000.

(c) Actively operated for at least 24 months as a construction contractor licensed under ORS chapter 701.

(3) Except as provided in this section and ORS 671.560 and as the board may provide by rule, a probationary landscape construction professional licensed under this section is for all purposes a landscape construction professional licensed under ORS 671.560.

SECTION 5. ORS 701.010 is amended to read:

701.010. The Construction Contractors Board may adopt rules to make licensure optional for persons who offer, bid or undertake to perform work peripheral to construction, as defined by administrative rule of the board. The following persons are exempt from licensure under this chapter:

(1) A person who is constructing, altering, improving or repairing personal property.

(2) A person who is constructing, altering, improving or repairing a structure located within the boundaries of any site or reservation under the jurisdiction of the federal government.

(3) A person who furnishes materials, supplies, equipment or finished product and does not fabricate them into, or consume them, in the performance of the work of a contractor.

(4) A person working on one structure or project, under one or more contracts, when the aggregate price of all of that person's contracts for labor, materials and all other items is less than \$500 and such work is of a casual, minor or inconsequential nature. This subsection does not apply to a person who advertises or puts out any sign or card or other device that might indicate to the public that the person is a contractor.

(5) An owner who contracts for work to be performed by a licensed contractor. This subsection does not apply to a person who, in the pursuit of an independent business, constructs, remodels, repairs or for compensation and with the intent to sell the structure, arranges to have constructed, remodeled or repaired a structure with the intent of offering the structure for sale before, upon or after completion. It is prima facie evidence that there was an intent of offering the structure for sale if the person who constructed, remodeled or repaired the structure or arranged to have the structure constructed, remodeled or repaired does not occupy the structure after its completion.

(6) An owner who contracts for one or more licensed contractors to perform work wholly or partially within the same calendar year on not more than three existing residential structures of the owner. This subsection does not apply to an owner contracting for work that requires a building permit unless the work that requires a permit is performed by, or under the direction of, a residential general contractor.

(7) A person performing work on a property that person owns or performing work as the owner's employee, whether the property is occupied by the owner or not, or a person performing work on that person's residence, whether or not that person owns the residence. This subsection does not apply to a person performing work on a structure owned by that person or the owner's employee, if the work is performed in the pursuit of an independent business with the intent of offering the structure for sale before, upon or after completion.

(8) A person licensed in one of the following trades or professions when operating within the scope of that license:

- (a) An architect licensed by the State Board of Architect Examiners.
- (b) A registered professional engineer licensed by the State Board of Examiners for Engineering and Land Surveying.
- (c) A water well contractor licensed by the Water Resources Department.
- (d) A sewage disposal system installer licensed by the Department of Environmental Quality.
- (e) A landscape contracting business licensed under ORS 671.510 to 671.760 [*that constructs fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls and that meets the applicable bonding requirements under ORS 671.690*].
- (f) A pesticide operator licensed under ORS 634.116 who does not conduct inspections for wood destroying organisms for the transfer of real estate.
- (g) An appraiser certified or licensed under ORS chapter 674 or an appraiser assistant registered under ORS chapter 674 by the Appraiser Certification and Licensure Board.

(9) A landscape contracting business operating within the scope of a license issued under ORS 671.510 to 671.760 that:

- (a) Constructs fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls and meets the applicable bonding requirements under ORS 671.690; or**
- (b) Subcontracts to a licensed plumbing contractor, or otherwise arranges for a licensed plumbing contractor to perform, the installation of an irrigation system described in ORS 671.540 (1)(m) or the repair or maintenance of an irrigation system.**

[(9)] (10) A person who performs work subject to this chapter as an employee of a contractor.

[(10)] (11) A manufacturer of a manufactured home constructed under standards established by the federal government.

[(11)] (12) A person involved in the movement of:

(a) Modular buildings or structures other than manufactured structures not in excess of 14 feet in width.

(b) Structures not in excess of 16 feet in width when the structures are being moved by their owner if the owner is not a contractor required to be licensed under this chapter.

[(12)] (13) A commercial lending institution or surety company that arranges for the completion, repair or remodeling of a structure. As used in this subsection, "commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association, insurance company or federal credit union maintaining an office in this state.

[(13)] (14) A real estate licensee as defined in ORS 696.010 or the employee of that licensee when performing work on a structure that the real estate licensee manages under a contract.

[(14)] (15) Units of government other than those specified in ORS 701.005 (5)(c) and (d).

[(15)] (16) A qualified intermediary in a property exchange that qualifies under section 1031 of the Internal Revenue Code as amended and in effect on January 1, 2004, if the qualified intermediary is not performing construction activities.

[(16)] (17) A business that supplies personnel to a licensed contractor for the performance of work under the direction and supervision of the contractor.

[(17)] (18) City or county inspectors acting under ORS 701.225 or inspectors described in ORS 455.715.

SECTION 6. ORS 671.321 is amended to read:

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

- (a) Practice architecture under ORS 671.010 to 671.220;
- (b) Practice engineering under ORS 672.002 to 672.325;
- (c) Engage in the occupation of growing and marketing nursery stock, or use the title "nurseryman" or "landscape nurseryman";

(d) Operate as a landscape construction professional or landscape contracting business under ORS 671.510 to 671.760 or use the title "landscape construction professional" or "landscape contractor";

[(e) Perform work described under ORS 671.540;]

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

[(g) (f) Use the title "landscape designer" in connection with activities described under paragraph [(f) (e) of this subsection;

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

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

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

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

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

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

(a) The preparation of detailed or shop drawings that a construction contractor is required to furnish or the administration of construction contracts by a person customarily engaged in contracting work.

(b) The preparation of technical submissions or the administration of construction contracts by employees of a landscape architect or a landscape architecture business when acting under the direct supervision of a registered landscape architect.

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

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