

Enrolled Senate Bill 203

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CHAPTER

AN ACT

Relating to construction contractors; creating new provisions; and amending ORS 87.093, 701.035, 701.063, 701.098 and 701.305.

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

SECTION 1. ORS 87.093 is amended to read:

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

- (a) Methods by which an owner may avoid multiple payments for the same materials and labor;
- (b) The right to file a complaint against a licensed contractor with the board and, if appropriate, to be reimbursed from the contractor's bond filed under ORS chapter 701; and
- (c) The right to receive, upon written request therefor, a statement of the reasonable value of materials, equipment, services or labor provided from the persons providing the materials, equipment, services or labor at the request of an original contractor and who have also provided notices of right to a lien.

[2(a)] (2) Each original contractor shall deliver a copy of the "Information Notice to Owner" adopted by the board under this section to:

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

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

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

(3) The contractor shall deliver the "Information Notice to Owner" personally, by registered or certified mail or by first class mail with certificate of mailing.

(4) This section applies only to a residential construction or improvement contract for which the aggregate contract price exceeds [\$1,000] **\$2,000**. If the price of a residential **construction or im-**

provement contract was initially less than [*\$1,000*] **\$2,000**, but during the course of the performance of the contract exceeds that amount, the original contractor shall mail or otherwise deliver the "Information Notice to Owner" not later than five days after the contractor knows or should reasonably know that the contract price will exceed [*\$1,000*] **\$2,000**.

(5) Notwithstanding subsections (2) and (4) of this section, the original contractor need not send the owner an "Information Notice to Owner" if the owner is a contractor licensed with the board under ORS chapter 701.

(6) Notwithstanding ORS 87.010 and 87.030, if an original contractor does not deliver an owner or agent with an "Information Notice to Owner" as required under subsections (2) to (4) of this section, the original contractor may not claim any lien created under ORS 87.010 upon any improvement, lot or parcel of land of the owner for labor, services or materials supplied under the residential construction or improvement contract for which the original contractor failed to deliver the required "Information Notice to Owner".

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

(8) As used in this section:

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

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

(c) "**Residential property**" **includes, but is not limited to, a residential dwelling and the driveways, swimming pools, terraces, patios, fences, porches, garages, basements, other structures and land that are adjacent or appurtenant to a residential dwelling.**

SECTION 2. ORS 701.035 is amended to read:

701.035. (1) An applicant must qualify as an independent contractor under ORS 670.600 to be eligible for a license with the Construction Contractors Board.

(2) The board shall establish two classes of independent contractor licenses:

(a) The nonexempt class is composed of the following entities:

(A) Sole proprietorships, partnerships, corporations, limited liability companies with one or more employees; and

(B) Partnerships, corporations and limited liability companies with more than two partners, corporate officers or members, if any of the partners, corporate officers or members are not part of the same family and related as parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren.

(b) The exempt class is composed of all sole proprietorships, partnerships, corporations and limited liability companies that do not qualify as nonexempt. All partnerships, corporations and limited liability companies must have an identification number issued for federal tax purposes.

(3) If a person who [*qualifies for a license*] **is licensed as exempt** under subsection (2)(b) of this section hires one or more employees or falls into any of the categories set out in subsection (2)(a)(B) of this section, the person is subject to penalties under ORS 701.992 for improper licensing. **If a person who is licensed as exempt under subsection (2)(b) of this section hires one or more employees, the person is also subject to licensing sanctions under ORS 701.098.** The person must reapply to the board in the correct class.

(4) The decision of the board that a person is an independent contractor applies only when the person is performing work of the nature described in ORS 701.026 and 701.060.

SECTION 3. ORS 701.035, as amended by section 15, chapter 836, Oregon Laws 2007, is amended to read:

701.035. (1) An applicant must qualify as an independent contractor under ORS 670.600 to be eligible for a license with the Construction Contractors Board.

(2) The board shall establish two classes of independent contractor:

(a) The nonexempt class is composed of the following entities:

(A) Sole proprietorships, partnerships, corporations, limited liability companies with one or more employees; and

(B) Partnerships, corporations and limited liability companies with more than two partners, corporate officers or members, if any of the partners, corporate officers or members are not part of the same family and related as parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren.

(b) The exempt class is composed of all sole proprietorships, partnerships, corporations and limited liability companies that do not qualify as nonexempt.

(3) If a person who [*qualifies for a license*] **is licensed as exempt** under subsection (2)(b) of this section hires one or more employees or falls into any of the categories set out in subsection (2)(a)(B) of this section, the person is subject to penalties under ORS 701.992 for improper licensing. **If a person who is licensed as exempt under subsection (2)(b) of this section hires one or more employees, the person is also subject to licensing sanctions under ORS 701.098.** The person must reapply to the board in the correct class.

(4) The decision of the board that a person is an independent contractor applies only when the person is performing work of the nature described in ORS 701.021.

(5) A person that is within the exempt class described in subsection (2)(b) of this section and is licensed as a commercial contractor shall procure and maintain workers' compensation insurance as authorized by ORS 656.128.

SECTION 4. ORS 701.063 is amended to read:

701.063. (1) A license is valid for two years from the date of issuance unless the license is revoked or suspended as set forth in ORS 701.098.

(2) A license may be renewed by submitting an application for renewal on the prescribed form, providing any additional information required, including evidence of completion of any required education, and submitting the appropriate application fee, as provided by Construction Contractors Board rule.

(3) The board may vary the dates of license renewal by giving to the licensee written notice of the renewal date assigned and by making appropriate adjustments in the fee for the license renewal application.

(4) If a contractor applies for renewal not more than [*one year*] **two years** after the contractor's license lapses, upon the contractor's compliance with the requirements of subsection (2) of this section, the board may renew the lapsed license. The board may designate the effective date of renewal as the last date on which the contractor was licensed.

(5) A contractor may convert a license to inactive status if the contractor is not engaged in work as a contractor. A contractor having an inactive license is subject to board licensing requirements and application fees, but is not subject to the bonding requirement of ORS 701.068 or the insurance requirement of ORS 701.073. An inactive license is not considered a valid license for purposes of offering to undertake construction work, submitting a bid for construction work, obtaining a building permit or performing construction work. A license may not be placed or maintained in inactive status more than once during any two-year licensing term.

(6) The board shall issue a pocket-card certificate of licensure to a contractor licensed under this chapter indicating the type of license issued.

SECTION 5. ORS 701.063, as amended by section 25, chapter 836, Oregon Laws 2007, is amended to read:

701.063. (1) A license is valid for two years from the date of issuance unless the license is revoked or suspended as set forth in ORS 701.098.

(2) A license may be renewed by submitting an application for renewal on the prescribed form, providing any additional information required, including evidence of completion of any required education, and submitting the appropriate application fee, as provided by Construction Contractors Board rule.

(3) The board may vary the dates of license renewal by giving to the licensee written notice of the renewal date assigned and by making appropriate adjustments in the fee for the license renewal application.

(4) If a contractor applies for renewal not more than [*one year*] **two years** after the contractor's license lapses, upon the contractor's compliance with the requirements of subsection (2) of this section, the board may renew the lapsed license. The board may designate the effective date of renewal as the last date on which the contractor was licensed.

(5) A contractor may convert a license to inactive status if the contractor is not engaged in work as a contractor. A contractor having an inactive license is subject to board licensing requirements and application fees, but is not subject to the bonding requirement of ORS 701.068 or the insurance requirement of ORS 701.073. A commercial general or commercial specialty contractor having an inactive license is not subject to the key employee continuing education requirements of ORS 701.124. An inactive license is not considered a valid license for purposes of offering to undertake construction work, submitting a bid for construction work, obtaining a building permit or performing construction work. A license may not be placed or maintained in inactive status more than once during any two-year licensing term.

(6) The board shall issue a pocket-card certificate of licensure to a contractor licensed under this chapter indicating the type of license issued.

SECTION 6. ORS 701.098 is amended to read:

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

(a) That the licensee or applicant has violated a provision of ORS 701.026, 701.091, 701.114, 701.305, 701.320, 701.325 (1), 701.335 or 701.345 or a rule adopted under ORS 701.330 (4).

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

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

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

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

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

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

(A) Two sole proprietors;

(B) One partnership;

(C) One corporation; or

(D) One limited liability company.

(h) Consistent with the provisions of ORS 670.280, that the licensee or applicant, or an owner or officer of the licensee or applicant has been convicted of one of the following crimes in this state or an equivalent crime in another state:

(A) Murder;

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

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

(j) That the licensee or applicant has repeatedly reported bad faith or false complaints of non-payment against contractors or subcontractors.

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

(L) That the contractor has hired employees while licensed as exempt under ORS 701.035.

(2) The board may revoke, suspend or refuse to issue or reissue a license if the board determines after notice and opportunity for hearing that an applicant or licensee is unfit for licensure based upon information submitted under ORS 701.046 or discovered by a board investigation under ORS 701.225.

(3) The board may assess a civil penalty as provided in ORS 701.992 if the board determines after notice and opportunity for hearing that any person has violated ORS 701.026 (1).

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

- (A) Lack of a surety bond required by ORS 701.068;
- (B) Lack of liability insurance required by ORS 701.073;
- (C) Hiring employees while licensed as exempt under ORS 701.035;
- (D) Conduct as a construction contractor that is dishonest or fraudulent; or
- (E) Failure to pay a construction debt.

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

(5)(a) In addition to all other remedies, if the board has reason to believe that a person is engaging in an act, practice or transaction that violates this chapter or a board rule, the board may issue an order directing the person to cease the act or to take corrective action.

(b) The board shall mail a copy of an order issued under this subsection to the person by first class mail with certificate of mailing. The board shall include with the order a notice informing the person of the right to request a hearing concerning the order. The notice shall inform the person that any hearing request must be received by the board no later than 21 days after the date the order was mailed by the board.

(c) If the board receives a timely request for a hearing concerning an order issued under this subsection, the board shall schedule the hearing no later than 30 days after receiving the request. The board shall mail written notice of the hearing to the person by first class mail with certificate of mailing no later than seven days before the scheduled hearing date.

(d) An order described in this subsection becomes final if the person does not file a timely request for a hearing concerning the order or fails to appear at the requested hearing as scheduled.

(e) The issuance of a board order under this subsection is subject to ORS 183.413 to 183.497.

(6) In addition to all other remedies, if it appears to the board that a person has engaged in, or is engaging in, any act, practice or transaction that violates the provisions of this chapter, the board may direct the Attorney General or the district attorney of the county in which the act, practice or transaction occurs, to apply to the court for an injunction restraining the person from violating the provisions of this chapter. An injunction may not issue for failure to maintain the list provided for in ORS 701.345, unless the court determines that the failure is intentional.

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

(8) If the board suspends or revokes the license of an individual contractor or contractor business for a violation of subsection (1)(g) of this section, the board may not restore or reissue the license unless the individual contractor or a responsible managing individual for the contractor business has successfully completed the training and testing described in ORS 701.122.

SECTION 7. ORS 701.098, as amended by section 63, chapter 836, Oregon Laws 2007, is amended to read:

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

(a) That the licensee or applicant has violated a provision of this chapter.

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

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

(d) That the licensee has knowingly assisted a licensed contractor to perform work for which the contractor is not properly endorsed.

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

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

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

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

(A) Two sole proprietors;

(B) One partnership;

(C) One corporation; or

(D) One limited liability company.

(i) Consistent with the provisions of ORS 670.280, that the licensee or applicant, or an owner or officer of the licensee or applicant has been convicted of one of the following crimes in this state or an equivalent crime in another state:

(A) Murder;

(B) Assault in the first degree;

(C) Kidnapping;

(D) Rape, sodomy or unlawful sexual penetration;

(E) Sexual abuse;

(F) Arson in the first degree;

(G) Robbery in the first degree;

(H) Theft in the first degree; or

(I) Theft by extortion.

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

(k) That the licensee or applicant has repeatedly reported bad faith or false complaints of non-payment against contractors or subcontractors.

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

(m) That the contractor has hired employees while licensed as exempt under ORS 701.035.

(2) The board may revoke, suspend or refuse to issue or reissue a license if the board determines after notice and opportunity for hearing that an applicant or licensee is unfit for licensure based upon information submitted under ORS 701.046 or discovered by a board investigation under ORS 701.225.

(3) The board may assess a civil penalty as provided in ORS 701.992 if the board determines after notice and opportunity for hearing that any person has violated ORS 701.021.

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

(A) Lack of a surety bond required by ORS 701.068;

(B) Lack of liability insurance required by ORS 701.073;

(C) Hiring employees while classed as exempt under ORS 701.035;

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

(E) Failure to pay a construction debt.

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

(5)(a) In addition to all other remedies, if the board has reason to believe that a person is engaging in an act, practice or transaction that violates this chapter or a board rule, the board may issue an order directing the person to cease the act or to take corrective action.

(b) The board shall mail a copy of an order issued under this subsection to the person by first class mail with certificate of mailing. The board shall include with the order a notice informing the person of the right to request a hearing concerning the order. The notice shall inform the person that any hearing request must be received by the board no later than 21 days after the date the order was mailed by the board.

(c) If the board receives a timely request for a hearing concerning an order issued under this subsection, the board shall schedule the hearing no later than 30 days after receiving the request. The board shall mail written notice of the hearing to the person by first class mail with certificate of mailing no later than seven days before the scheduled hearing date.

(d) An order described in this subsection becomes final if the person does not file a timely request for a hearing concerning the order or fails to appear at the requested hearing as scheduled.

(e) The issuance of a board order under this subsection is subject to ORS 183.413 to 183.497.

(6) In addition to all other remedies, if it appears to the board that a person has engaged in, or is engaging in, any act, practice or transaction that violates the provisions of this chapter, the board may direct the Attorney General or the district attorney of the county in which the act, practice or transaction occurs, to apply to the court for an injunction restraining the person from

violating the provisions of this chapter. An injunction may not issue for failure to maintain the list provided for in ORS 701.345, unless the court determines that the failure is intentional.

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

(8) If the board suspends or revokes the license of an individual contractor or contractor business for a violation of subsection (1)(h) of this section, the board may not restore or reissue the license unless the individual contractor or a responsible managing individual for the contractor business has successfully completed the training and testing described in ORS 701.122.

SECTION 8. ORS 701.305 is amended to read:

701.305. (1) A contractor may not perform work subject to this section for an owner of a residential structure or zero-lot-line dwelling without a written contract if the aggregate contract price exceeds \$2,000. If the price of a contract was initially less than \$2,000, but during the course of performance the contract exceeds that amount, the contractor shall mail or otherwise deliver a written contract to the owner not later than five days after the contractor knows or should reasonably know that the contract price will exceed \$2,000. Failure to have a written contract will not void the contract.

(2) The Construction Contractors Board shall adopt rules that require a contractor to use standard contractual terms in a construction contract for which subsection (1) of this section requires a written contract. The standard contractual terms shall be clear, use words of common understanding and shall include but need not be limited to:

(a) A statement that the contractor is licensed by the board;

(b) The name, license number, address and telephone number of the contractor as shown on board records on the date the contract is entered into;

(c) An acknowledgment of a written offer of a warranty, if an offer is required by ORS 701.320, and indication of the acceptance or rejection of the offered warranty;

(d) For a residential structure contract, a [summary] list of the notices required under ORS 87.093 or under rules adopted under ORS 701.330 and 701.335 (2) on the contractor's bid proposal;

(e) Acknowledgment of the receipt of the maintenance information required by the board under ORS 701.335; and

(f) An explanation of the property owner's rights under the contract, including, but not limited to, the ability to file a claim with the board and the existence of any mediation or arbitration provision in the contract, set forth in a conspicuous manner as defined by the board by rule.

SECTION 9. (1) **The amendments to ORS 87.093 by section 1 of this 2009 Act apply to residential construction or improvement contracts that a contractor enters into on or after the effective date of this 2009 Act.**

(2) **The amendments to ORS 701.063 by sections 4 and 5 of this 2009 Act apply to applications that the Construction Contractors Board receives on or after the effective date of this 2009 Act for renewal of a lapsed license.**

(3) **The amendments to ORS 701.305 by section 8 of this 2009 Act apply to written contracts delivered to an owner on or after the effective date of this 2009 Act.**

Passed by Senate March 12, 2009

Repassed by Senate June 5, 2009

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Secretary of Senate

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President of Senate

Passed by House June 2, 2009

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Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State