

SENATE AMENDMENTS TO SENATE BILL 203

By COMMITTEE ON BUSINESS AND TRANSPORTATION

March 10

1 On page 1 of the printed bill, line 2, after “87.093” insert “, 701.035, 701.063, 701.098 and
2 701.305”.

3 On page 2, delete lines 33 through 35 and insert:

4 “**SECTION 2.** ORS 701.035 is amended to read:

5 “701.035. (1) An applicant must qualify as an independent contractor under ORS 670.600 to be
6 eligible for a license with the Construction Contractors Board.

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

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

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

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

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

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

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

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

28 “701.035. (1) An applicant must qualify as an independent contractor under ORS 670.600 to be
29 eligible for a license with the Construction Contractors Board.

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

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

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

34 “(B) Partnerships, corporations and limited liability companies with more than two partners,
35 corporate officers or members, if any of the partners, corporate officers or members are not part of

1 the same family and related as parents, spouses, sisters, brothers, daughters or sons, daughters-in-
2 law or sons-in-law or grandchildren.

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

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

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

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

16 “**SECTION 4.** ORS 701.063 is amended to read:

17 “701.063. (1) A license is valid for two years from the date of issuance unless the license is re-
18 voked or suspended as set forth in ORS 701.098.

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

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

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

30 “(5) A contractor may convert a license to inactive status if the contractor is not engaged in
31 work as a contractor. A contractor having an inactive license is subject to board licensing re-
32 quirements and application fees, but is not subject to the bonding requirement of ORS 701.068 or the
33 insurance requirement of ORS 701.073. An inactive license is not considered a valid license for
34 purposes of offering to undertake construction work, submitting a bid for construction work, ob-
35 taining a building permit or performing construction work. A license may not be placed or main-
36 tained in inactive status more than once during any two-year licensing term.

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

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

41 “701.063. (1) A license is valid for two years from the date of issuance unless the license is re-
42 voked or suspended as set forth in ORS 701.098.

43 “(2) A license may be renewed by submitting an application for renewal on the prescribed form,
44 providing any additional information required, including evidence of completion of any required ed-
45 ucation, and submitting the appropriate application fee, as provided by Construction Contractors

1 Board rule.

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

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

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

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

20 “**SECTION 6.** ORS 701.098 is amended to read:

21 “701.098. (1) The Construction Contractors Board may revoke, suspend or refuse to issue or re-
22 issue a license and the board may assess a civil penalty as provided in ORS 701.992 if the board
23 determines after notice and opportunity for hearing:

24 “(a) That the licensee or applicant has violated a provision of ORS 701.026, 701.091, 701.114,
25 701.305, 701.320, 701.325 (1), 701.335 or 701.345 or a rule adopted under ORS 701.330 (4).

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

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

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

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

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

37 “(g) That the number of licensed contractors working together on the same task on the same job
38 site, where one of the contractors is licensed as exempt under ORS 701.035 (2)(b), exceeded the fol-
39 lowing:

40 “(A) Two sole proprietors;

41 “(B) One partnership;

42 “(C) One corporation; or

43 “(D) One limited liability company.

44 “(h) Consistent with the provisions of ORS 670.280, that the licensee or applicant, or an owner
45 or officer of the licensee or applicant has been convicted of one of the following crimes in this state

1 or an equivalent crime in another state:

2 “(A) Murder;

3 “(B) Assault in the first degree;

4 “(C) Kidnapping;

5 “(D) Rape, sodomy or unlawful sexual penetration;

6 “(E) Sexual abuse;

7 “(F) Arson in the first degree;

8 “(G) Robbery in the first degree;

9 “(H) Theft in the first degree; or

10 “(I) Theft by extortion.

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

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

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

19 “**(L) That the contractor has hired employees while licensed as exempt under ORS**
20 **701.035.**

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

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

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

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

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

33 “(C) Hiring employees while licensed as exempt under ORS 701.035;

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

35 “(E) Failure to pay a construction debt.

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

44 “(5)(a) In addition to all other remedies, if the board has reason to believe that a person is en-
45 gaging in an act, practice or transaction that violates this chapter or a board rule, the board may

1 issue an order directing the person to cease the act or to take corrective action.

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

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

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

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

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

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

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

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

28 “701.098. (1) The Construction Contractors Board may revoke, suspend or refuse to issue or re-
29 issue a license and the board may assess a civil penalty as provided in ORS 701.992 if the board
30 determines after notice and opportunity for hearing:

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

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

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

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

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

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

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

45 “(h) That the number of licensed contractors working together on the same task on the same job

1 site, where one of the contractors is classed as exempt under ORS 701.035 (2)(b), exceeded the fol-
2 lowing:

3 “(A) Two sole proprietors;

4 “(B) One partnership;

5 “(C) One corporation; or

6 “(D) One limited liability company.

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

10 “(A) Murder;

11 “(B) Assault in the first degree;

12 “(C) Kidnapping;

13 “(D) Rape, sodomy or unlawful sexual penetration;

14 “(E) Sexual abuse;

15 “(F) Arson in the first degree;

16 “(G) Robbery in the first degree;

17 “(H) Theft in the first degree; or

18 “(I) Theft by extortion.

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

23 “(k) That the licensee or applicant has repeatedly reported bad faith or false complaints of
24 nonpayment against contractors or subcontractors.

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

27 “(m) **That the contractor has hired employees while licensed as exempt under ORS**
28 **701.035.**

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

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

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

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

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

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

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

43 “(E) Failure to pay a construction debt.

44 “(b) If the licensee or applicant demands a hearing within 90 days after the date of notice to the
45 licensee or applicant of the suspension or refusal to renew, then a hearing must be granted to the

1 licensee or applicant as soon as practicable after the demand, and the administrator shall issue,
2 pursuant to the hearing as required by ORS chapter 183, an order confirming, altering or revoking
3 the administrator's earlier order. Notwithstanding ORS 670.325, a hearing need not be held where
4 the order of suspension or refusal to renew is accompanied by or is pursuant to a citation for vio-
5 lation that is subject to judicial determination in any court of this state, and the order by its terms
6 will terminate in case of final judgment in favor of the licensee or applicant.

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

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

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

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

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

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

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

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

34 “**SECTION 8.** ORS 701.305 is amended to read:

35 “701.305. (1) A contractor may not perform work subject to this section for an owner of a resi-
36 dential structure or zero-lot-line dwelling without a written contract if the aggregate contract price
37 exceeds \$2,000. If the price of a contract was initially less than \$2,000, but during the course of
38 performance the contract exceeds that amount, the contractor shall mail or otherwise deliver a
39 written contract to the owner not later than five days after the contractor knows or should rea-
40 sonably know that the contract price will exceed \$2,000. Failure to have a written contract will not
41 void the contract.

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

1 “(a) A statement that the contractor is licensed by the board;
2 “(b) The name, license number, address and telephone number of the contractor as shown on
3 board records on the date the contract is entered into;
4 “(c) An acknowledgment of a written offer of a warranty, if an offer is required by ORS 701.320,
5 and indication of the acceptance or rejection of the offered warranty;
6 “[(d) *For a residential structure contract, a summary of the notices required under ORS 87.093 or*
7 *under rules adopted under ORS 701.330 and 701.335 (2) on the contractor’s bid proposal;*]
8 “[(e)] (d) Acknowledgment of the receipt of the maintenance information required by the board
9 under ORS 701.335; and
10 “[(f)] (e) An explanation of the property owner’s rights under the contract, including, but not
11 limited to, the ability to file a claim with the board and the existence of any mediation or arbitration
12 provision in the contract, set forth in a conspicuous manner as defined by the board by rule.
13 “**SECTION 9. (1) The amendments to ORS 87.093 by section 1 of this 2009 Act apply to**
14 **residential construction or improvement contracts that a contractor enters into on or after**
15 **the effective date of this 2009 Act.**
16 “(2) The amendments to ORS 701.063 by sections 4 and 5 of this 2009 Act apply to appli-
17 cations that the Construction Contractors Board receives on or after the effective date of
18 this 2009 Act for renewal of a lapsed license.
19 “(3) The amendments to ORS 701.305 by section 8 of this 2009 Act apply to written con-
20 tracts delivered to an owner on or after the effective date of this 2009 Act.”.
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