

Enrolled
Senate Bill 204

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CHAPTER

AN ACT

Relating to construction contractor bonding; amending ORS 701.068 and 701.139.

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

SECTION 1. ORS 701.068 is amended to read:

701.068. (1) An applicant for issuance or renewal of a contractor license shall file with the Construction Contractors Board a surety bond with one or more corporate sureties authorized to do business in this state in the amount set forth in ORS 701.081 or 701.084.

(2) If an applicant for issuance, renewal or an additional endorsement of a license will hold endorsements as both a residential contractor and a commercial contractor, the applicant shall file with the board a surety bond for each endorsement in the amount set forth in ORS 701.081 or 701.084.

(3) The surety bond **for a residential contractor** must provide that the applicant, with regard to work subject to this chapter, will pay amounts ordered paid by the board under ORS 701.145 [*or 701.146*]. **The surety bond for a commercial contractor must provide that the applicant, with regard to work subject to this chapter, will pay amounts ordered paid by the board under ORS 701.146.** Bonds filed under this section shall remain in effect for at least one year or until depleted by payments under ORS 701.150, 701.153 and 701.157, unless the surety sooner cancels the bond. At the discretion of the surety the bond may be continued for an additional period by continuation certificate. Except as provided in subsection (4) of this section, the aggregate liability of the surety under the bond for complaints against the contractor may not exceed the penal sum of the bond no matter how many years the bond is in force. Except as provided in subsection (4) of this section, an extension by continuation certificate, reinstatement, reissue or renewal of the bond may not increase the liability of the surety.

(4) The board, by rule, may require a licensee to obtain a new surety bond if, pursuant to a board order for payment of a complaint described in ORS 701.140, the surety pays an amount out of the bond of the licensee. The new surety bond must be in the applicable amount set forth in ORS 701.081 or 701.084 unless a higher amount is required by a board condition or rule described in subsection (5) or (6) of this section. The board may allow a licensee to obtain, instead of a new bond, a certification that the surety remains liable for the full penal sum of the bond, notwithstanding payment by the surety on the complaint.

(5) If the amount the licensee must pay against the bond under subsection (3) of this section exceeds the amount of the bond, the board shall suspend the contractor's license until the amount

owed is paid. The board, as a condition of ending the suspension, may require a contractor requesting reinstatement of a license to file a bond of an amount up to five times as much as the amount required ordinarily of a licensee under ORS 701.081 or 701.084.

(6) The board by rule may establish conditions for applicants or persons licensed under this chapter under which the applicant or licensee must file a bond of an amount up to five times as much as the amount required ordinarily of an applicant or licensee under ORS 701.081 or 701.084. The board may reduce the amount of bond it would otherwise require if the contractor demonstrates satisfactory completion of approved elective classes on dispute resolution and prevention, basic accounting and record keeping or such other classes as the board may prescribe.

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

(8) Upon determination under ORS 701.145 or 701.146 of a complaint against a contractor who holds a bond required under this section, the board shall notify the surety on the bond of the final order in a manner determined by the board by rule. The notification shall include a list of all complaints upon which a final order has been issued.

(9) A court action may not be commenced against a surety on a bond required under this section until 30 days after the date that the surety is notified by the board under ORS 701.150 that payment is due on the final order.

(10) In any action against a surety on a bond under this section that is based on the failure of the surety to pay a final order, the court may award:

- (a) Costs;
- (b) Reasonable attorney fees to the prevailing party as part of the costs; and
- (c) Twice the amount of any damages that the board ordered the surety to pay on the complaint, if the surety arbitrarily and capriciously refused to pay upon order of the board.

SECTION 2. ORS 701.139 is amended to read:

701.139. The Construction Contractors Board may determine the validity of a complaint described in ORS 701.140 filed against a licensed contractor. A person must file the complaint within the applicable time limitation described in ORS 701.143. The complaint must be filed and resolved as follows:

(1) A complaint against a residential contractor that is not also endorsed as a commercial contractor **involving work on a residential or small commercial structure or an appurtenance to a residential or small commercial structure** must be resolved as provided in ORS 701.145.

(2) A complaint against a commercial contractor that is not also endorsed as a residential contractor **involving work on a small commercial or large commercial structure or an appurtenance to a small commercial or large commercial structure** must be resolved as provided in ORS 701.146.

(3) A complaint against a contractor that is endorsed as both a residential contractor and a commercial contractor:

(a) *[That involves]* **Involving** work on a residential structure or an appurtenance to a residential structure must be resolved as provided under ORS 701.145.

(b) *[That involves]* **Involving** work on a small commercial structure or an appurtenance to a small commercial structure may be resolved as provided in ORS 701.145 or 701.146, at the complainant's election.

(c) *[That involves]* **Involving** work on a large commercial structure or an appurtenance to a large commercial structure must be resolved as provided in ORS 701.146.

(4) Notwithstanding subsections (1) to (3) of this section and except as provided in ORS 701.148, with prior agreement of the complainant and the licensed contractor, a complaint may be resolved by the board through binding arbitration under ORS 701.148.

Passed by Senate February 16, 2009

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Secretary of Senate

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President of Senate

Passed by House May 22, 2009

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Speaker of House

Received by Governor:

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

Approved:

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Governor

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

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Secretary of State