

Enrolled
House Bill 2157

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber for State Landscape Contractors Board)

CHAPTER

AN ACT

Relating to landscape contracting businesses; creating new provisions; and amending ORS 671.565 and 671.610.

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

SECTION 1. Sections 2 and 3 of this 2011 Act are added to and made a part of ORS 671.510 to 671.760.

SECTION 2. (1) An applicant for a landscape contracting business license that qualifies under ORS 671.525 to be classified as a nonexempt independent contractor must provide workers' compensation insurance coverage for all employees of the landscape contracting business.

(2) An applicant for a landscape contracting business license that qualifies under ORS 671.525 to be classified as an exempt independent contractor, and that has entered into a contract with a worker leasing company or temporary service provider for the supplying of workers to the landscaping business, must verify that all leasing company or service provider employees supplied for use by the business are covered by workers' compensation insurance. As used in this subsection, "worker leasing company" and "temporary service provider" have the meanings given those terms under ORS 656.850.

SECTION 3. (1) A landscape contracting business that qualifies under ORS 671.525 to be classified as a nonexempt independent contractor must maintain workers' compensation insurance coverage in effect for all employees of the landscape contracting business.

(2) A landscape contracting business licensee that qualifies under ORS 671.525 to be classified as an exempt independent contractor, and that has entered into a contract with a worker leasing company or temporary service provider for the supplying of workers to the landscaping business, must verify that workers' compensation insurance coverage is maintained in effect for all leasing company or service provider employees supplied for use by the business. As used in this subsection, "worker leasing company" and "temporary service provider" have the meanings given those terms under ORS 656.850.

SECTION 4. ORS 671.565 is amended to read:

671.565. (1) Each person applying for a landscape contracting business license must:

- (a) Pay to the State Landscape Contractors Board the applicable landscape contracting business license fee established by the board under ORS 671.650.
- (b) Have a landscape construction professional license or employ at least one person with a landscape construction professional license to supervise the landscaping operation of the business.
- (c) Submit the names of all employees who are licensed landscape construction professionals.

(d) File with the board a form of security acceptable under ORS 671.690.

(e) File with the board a certificate of public liability, personal injury and property damage insurance covering the work of the landscape contracting business that is subject to ORS 671.510 to 671.760 for an amount not less than \$100,000.

(f) Indicate, as set forth in ORS 670.600, the basis under which the applicant qualifies as an independent contractor[,] **and the class of independent contractor described in ORS 671.525 for which the applicant qualifies.**

(2)(a) If an applicant for licensing under this section qualifies to be classified as a non-exempt independent contractor, the applicant shall provide the employer identification number of the applicant and evidence satisfactory to the board that the applicant provides workers' compensation insurance coverage for all employees of the landscape contracting business.

(b) If an applicant for licensing under this section qualifies to be classified as an exempt independent contractor and has entered into a contract with a worker leasing company or temporary service provider for the supplying of workers to the landscape contracting business, the applicant shall provide evidence satisfactory to the board that the applicant has verified the maintenance of workers' compensation insurance coverage for all leasing company or service provider employees supplied for use by the business. As used in this paragraph, "worker leasing company" and "temporary service provider" have the meanings given those terms in ORS 656.850.

[2)] **(3) At the time of application for a license, for renewal of a license in active status or for return of a license to active status, the [landscape contracting business] applicant shall provide evidence satisfactory to the board that the public liability, personal injury and property damage insurance required by [subsection (1)(e) of] this section and any workers' compensation required of the applicant under section 2 or 3 of this 2011 Act is in effect. During a license period, the [landscape contracting business] licensee shall provide, to the extent required by the board, satisfactory evidence of continued public liability, personal injury and property damage insurance coverage and, if required under section 3 of this 2011 Act, workers' compensation insurance coverage.**

SECTION 5. ORS 671.610 is amended to read:

671.610. (1) In addition to any civil penalty assessed under ORS 671.997, the State Landscape Contractors Board may suspend, revoke or refuse to issue or renew the license of a landscape construction professional or landscape contracting business that does any of the following:

(a) Obtains or attempts to obtain a license under ORS 671.510 to 671.760 by fraud or material misrepresentation.

(b) Makes a material misrepresentation about the quality of any material or service the person provides.

(c) Performs defective work.

(d) Furnishes defective materials.

(e) Makes misleading statements when advertising services or materials.

(f) Violates a provision of ORS 671.510 to 671.760.

(g) Fails to have a replacement bond, letter of credit or deposit on file at the time of a termination, cancellation, reduction or withdrawal of the bond, letter of credit or deposit required by ORS 671.690.

(h) Fails to maintain public liability, personal injury and property damage insurance as required by ORS 671.565 throughout a licensing period.

(i) Fails to comply with section 2 or 3 of this 2011 Act.

(j) Fails to provide evidence of workers' compensation coverage as described in ORS 671.565.

[i)] **(k) Violates a voluntary compliance agreement entered into under ORS 646.605 to 646.652.**

[j)] **(L) Performs work for which a permit is required under the state building code without obtaining the required permit, if the work results in the filing of a claim with the board.**

[(k)] (m) Violates a rule or order of the board.

[(L)] (n) Refuses to comply with a subpoena issued by the board.

[(m)] (o) Fails to pay in full any amount owed to a claimant under a final order of the board or an arbitration award, or under a judgment rendered in this or any other state.

[(n)] (p) Does not make payment, including any interest due, for labor or materials contracted for by the person pursuant to a contract for a public improvement within 90 days after the date the person receives payment from a public contracting agency or, if the person is a subcontractor, from the contractor.

[(o)] (q) Engages in conduct as a landscape construction professional or landscape contracting business that is dishonest or fraudulent or that the board finds injurious to the welfare of the public.

[(p)] (r) Fails to comply with the requirements of ORS 652.120.

[(q)] (s) Is convicted of a crime under ORS 163.115, 163.185, 163.225, 163.235, 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 164.055, 164.075, 164.325 or 164.415, provided that the facts supporting the conviction and all intervening circumstances make the determination to suspend, revoke or refuse to issue or renew the license consistent with ORS 670.280.

(2) The board may suspend or refuse to renew the license of a landscape construction professional or landscape contracting business without prior hearing if, after investigating and setting forth in writing the facts supporting the action, the board determines that continued activity by the landscape construction professional or landscape contracting business poses an imminent threat of serious harm to the public welfare. Facts sufficient to support a suspension or refusal to renew under this subsection include, but are not limited to:

(a) The lack of a surety bond, letter of credit or deposit required under ORS 671.690;

(b) The lack of public liability, personal injury or property damage insurance required under ORS 671.565;

(c) The lack of workers' compensation insurance that is required of the licensee under section 3 of this 2011 Act;

[(c)] (d) The hiring of employees while licensed as exempt under ORS 671.525;

[(d)] (e) Conduct as a landscape construction professional or a landscape contracting business that is dishonest;

[(e)] (f) Operation of a landscape contracting business that does not employ at least one licensed landscape construction professional; or

[(f)] (g) The failure to notify the board of any unpaid court judgment, arbitration award or administrative agency final order as required by ORS 671.563.

(3) A person whose license is suspended or refused renewal under subsection (2) of this section may request a hearing within 90 days after receiving the notice of the suspension or refusal to renew. Except as provided in this subsection, the board shall give a contested case hearing requested under this subsection priority over other hearings and schedule the hearing for the earliest practicable date. If a citation is issued to the person and the order of suspension or refusal to renew will terminate by its terms if a court renders a final judgment regarding the citation in favor of the person, the person may request that the board hold the requested contested case hearing in abeyance until after the court has rendered a final judgment.

(4) A person whose license is revoked under this section is not eligible to apply for a license under ORS 671.510 to 671.760 until two years after the effective date of the revocation.

(5) The board may suspend, revoke or refuse to reissue the license of a landscape contracting business, and may impose a civil penalty, all as provided under ORS 671.997 (4), if the board determines, after notice and opportunity for a hearing, that the landscape contracting business was working with other landscape contracting businesses on the same task and work site where one of the landscape contracting businesses is licensed as an exempt independent contractor under ORS 671.525 (2)(b) and the total number of landscape contracting businesses working on the task exceeded:

(a) Two sole proprietors;

- (b) One partnership;
 - (c) One corporation; or
 - (d) One limited liability company.
- (6) The board shall provide by rule a process and criteria that must be met for restoration of a license that has not been permanently revoked.

SECTION 6. Section 2 of this 2011 Act applies to license applications filed with the State Landscape Contractors Board on or after the effective date of this 2011 Act. However, section 2 of this 2011 Act does not require a worker leasing company or temporary service provider to alter any rights or duties of the leasing company or service provider under a contract entered into before the effective date of this 2011 Act.

SECTION 7. Section 3 of this 2011 Act applies to a landscape contracting business that uses worker leasing company or temporary service provider employees on or after the effective date of this 2011 Act under a contract entered into before, on or after the effective date of this 2011 Act. However, section 3 of this 2011 Act does not require a worker leasing company or temporary service provider to alter any rights or duties of the leasing company or service provider under a contract entered into before the effective date of this 2011 Act.

Passed by House March 7, 2011

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 Ramona Kenady Line, Chief Clerk of House

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 Bruce Hanna, Speaker of House

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 Arnie Roblan, Speaker of House

Passed by Senate May 24, 2011

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 Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

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 John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

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 Kate Brown, Secretary of State