

# Senate Bill 893

Sponsored by COMMITTEE ON GENERAL GOVERNMENT, CONSUMER AND SMALL BUSINESS PROTECTION

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits construction contractor from performing work to construct, improve or repair large commercial structure, small commercial structure, residential structure or zero-lot-line dwelling for property owner unless contractor provides property owner with written statement that contractor has contractual obligation to ensure that work performed meets state building code requirements. Requires contractor to obtain written statement from subcontractors that subcontractor has contractual obligation to ensure all work performed by subcontractor will meet state building code requirements. Makes property owner beneficiary of obligation stated by subcontractor.

Makes violations subject to civil penalty, not to exceed \$5,000.

## A BILL FOR AN ACT

1  
2 Relating to construction contracts; creating new provisions; and amending ORS 701.305.

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

4 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS chapter 701.**

5 **SECTION 2. (1) A contractor may not perform work to construct, improve or repair a**  
6 **large commercial structure, small commercial structure, residential structure or zero-lot-**  
7 **line dwelling for a property owner unless the contractor provides the property owner with a**  
8 **written statement that the contractor has a contractual obligation to the property owner to:**

9 (a) **Ensure that all work performed by the contractor or any subcontractor of the con-**  
10 **tractor meets state building code requirements; and**

11 (b) **Obtain from any subcontractor, and provide to the property owner, a written state-**  
12 **ment that the subcontractor has a contractual obligation to ensure that all work performed**  
13 **by the subcontractor meets state building code requirements.**

14 (2) **If the price for the performance of work to construct, improve or repair a residential**  
15 **structure or zero-lot-line dwelling exceeds \$2,000, the statement required under subsection**  
16 **(1) of this section must be included in the written contract required under ORS 701.305.**

17 (3) **If a contract for the construction, improvement or repair of a large commercial**  
18 **structure, small commercial structure, residential structure or zero-lot-line dwelling is be-**  
19 **tween a contractor and the property owner, a subcontractor that performs work on the**  
20 **structure or dwelling must provide the contractor with a written statement that the sub-**  
21 **contractor has a contractual obligation to ensure that all work performed by the subcon-**  
22 **tractor meets state building code requirements. The contractor shall provide the written**  
23 **statement of the subcontractor to the property owner. There is a conclusive presumption**  
24 **that a property owner is an intended third-party beneficiary of the contractual obligation**  
25 **stated by the subcontractor.**

26 **SECTION 3. ORS 701.305 is amended to read:**

27 701.305. (1) A contractor may not perform work to construct, improve or repair a residential  
28 structure or zero-lot-line dwelling for a property owner without a written contract if the aggregate

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 contract price exceeds \$2,000. If the price of a contract was initially less than \$2,000, but during the  
 2 course of performance the contract exceeds that amount, the contractor shall mail or otherwise  
 3 deliver a written contract to the property owner not later than five days after the contractor knows  
 4 or should reasonably know that the contract price will exceed \$2,000. Failure to have a written  
 5 contract will not void the contract.

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

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

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

13 (c) **A statement complying with section 2 of this 2011 Act that the contractor shall:**

14 **(A) Ensure that all work performed under the contract meets state building code re-**  
 15 **quirements; and**

16 **(B) Obtain a written statement from any subcontractor that the subcontractor shall en-**  
 17 **sure that work performed under the subcontract meets state building code requirements;**

18 [(c)] (d) An acknowledgment of a written offer of a warranty, if an offer is required by ORS  
 19 701.320, and indication of the acceptance or rejection of the offered warranty;

20 [(d)] (e) A list of the notices required under ORS 87.093 or under rules adopted under ORS  
 21 701.330 and 701.335 (2) on the contractor's bid proposal; and

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

25 **SECTION 4. Section 2 of this 2011 Act and the amendments to ORS 701.305 by section 3**  
 26 **of this 2011 Act apply to work that a construction contractor or a subcontractor performs**  
 27 **pursuant to a contract between a property owner and a construction contractor entered into**  
 28 **on or after the effective date of this 2011 Act.**

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