



Construction Contractors Board (CCB)

Testimony SB 205

Before the 77th Oregon Legislative Assembly

House Business and Labor Committee

Monday, May 6, 2013, at 9:00 a.m.

Hearing Room E

Committee Members:

Representative Margaret Doherty, Chair

Representative Brent Barton, Vice-Chair

Representative Bill Kenemer, Vice-Chair

Representative Shemia Fagan

Representative Tim Freeman

Representative Paul Holvey

Representative Greg Matthews

Representative Kim Thatcher

Representative Jim Thompson

Representative Brad Witt

Committee Administrator

Jan Nordlund

(503) 986-1557

Senate Vote: 28 ayes and 2 excused.

I. INTRODUCTION:

Appearing Before Committee

- Craig P. Smith, Administrator, CCB

II. PURPOSE OF THE BILL:

- Streamline residential contractor requirements.
- The bill maintains legislative mandates for written contract (residential only) over \$2,000 but:
 - a. Removes legislative mandates on what needs to be included in these written contracts.
 - b. Maintains CCB's authority to define mandatory provisions for residential written contracts.
 - c. This allows CCB to set the standards by rule using stakeholder input at CCB Board meetings.

III. ISSUES

A. In 2007, the Legislature passed HB 2654 (2007). Section 7 required residential construction contracts to contain certain terms. These included:

- (1) A statement the contractor is licensed by the board.
- (2) The name, license number, address, and phone number of the contractor.
- (3) An acknowledgment of a written offer of warranty, if the offer is required, and whether the warranty was accepted or rejected.
- (4) A summary of notices required by HB 2654 (2007).
- (5) An acknowledgment of maintenance information required by HB 2654 (2007).
- (6) An explanation of the property owner's contract rights including: (a) the ability to file a claim with CCB; and (b) whether there was a mediation or arbitration provision in the contract.

B. The "notice summary" requirement was redundant. Contractors were providing complete notices. As a practical matter, maintenance information is usually given when a job is complete, not when the contract is signed. CCB sought legislative changes and this was fixed.



C. The 2009 Legislature passed SB 203 (2009). Section 8 removed the requirement that the contract contain a summary of notices and replaced it with a requirement that the contract simply list the notices. The Legislature also passed SB 205 (2009). Section 1 removed the requirement that the contract contain an acknowledgement of maintenance information.

IV. PROPOSED SOLUTION:

CCB is well-positioned to observe difficulties encountered by contractors trying to comply with the laws requiring mandatory terms in contracts. CCB can also identify items that should be included in contracts but are not required by statute. We believe it makes sense for the CCB; working with its stakeholders, to determine what provisions should be required in a residential contract rather than repeatedly seek legislative changes.

CCB designs its rules to strike a balance between maintaining consumer protection and providing business-friendly regulation.

CCB's current rule, OAR 812-012-0110, provides all the protections required by the current law (ORS 701.305). CCB intends to maintain these protections.

V. ATTACHMENTS:

OAR 812-012-0110
Required Residential Consumer Notices
HB 2654 (2007)
SB 203 (2009)
SB 205 (2009)
Agency Program Summary

VI. The agency asks the committee to support SB 205 by voting to move it to the floor of the Senate with a do-pass recommendation.

CCB Administrative Rules OAR 812-012-0110
Current CCB Rule on Residential Contracts

812-012-0110

Terms of Written Contract

(1) If a contractor is required to have a written contract under ORS 701.305, the written contract or attached addendum to the written contract must contain the following:

*~~(a) A statement that the contractor is licensed by the Construction Contractors Board.~~

(b) The contractor's name, address, phone number and license number issued by the board as shown on board records.

(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) A list of the notices required under ORS 87.093 or under rules adopted under ORS 701.330 and 701.335(2);~~

(e) An explanation of the property owner's rights under the contract, including, but not limited to, the ability to file a complaint 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;

(f) Customer's name and address;

(g) Address where the work is to be performed;

(h) A description of the work to be performed; and

(i) Price and payment terms.

(2) The information described in section (1) of this rule must be legible and in dark ink.

Stat. Auth.: ORS 670.310, 701.235, 701.305, 701.315, 701.320, 701.330 & 701.335

Stats. Implemented: ORS 701.305, 701.330 & 701.335

(12/07, 6/08, 12/09 (eff. 1/1/2010), 4/10)

~~* If the bill passes, these items would be removed.~~

Enrolled
House Bill 2654

Sponsored by COMMITTEE ON CONSUMER PROTECTION

CHAPTER

AN ACT

Relating to construction contractors; creating new provisions; amending ORS 87.018, 87.030, 87.093, 701.005, 701.055, 701.075, 701.077, 701.078, 701.085, 701.102, 701.105, 701.135 and 701.605; and repealing ORS 701.590 and sections 5 and 6, chapter 114, Oregon Laws 2007 (Enrolled House Bill 2109).

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

CONTINUING EDUCATION

SECTION 1. Sections 2 and 3 of this 2007 Act are added to and made a part of ORS chapter 701.

SECTION 2. (1) The Construction Contractors Board shall adopt rules establishing a continuing education system for all persons licensed by the board. The rules adopted by the board shall include, but need not be limited to, rules establishing the required number of hours and course content for continuing education. The board may establish reasonable fees for courses and instruction provided by the board, or for approving the course content and instruction for continuing education provided by other sources.

(2) The continuing education required for a contractor may include training in construction means and methods, compliance with the state building code and business practices.

(3) A person may not renew a license issued by the board unless the person certifies to the board at the time of license renewal that the licensee has completed the amount and type of continuing education required by the board.

(4) Subsections (1) to (3) of this section do not apply to a licensed developer.

SECTION 3. (1) The Construction Contractors Board shall adopt rules establishing the date by which a licensee must first complete continuing education under section 2 of this 2007 Act for persons that:

(a) Are licensed by the board prior to the effective date of this 2007 Act; and

(b) Do not complete training described in ORS 701.072 prior to January 1, 2010.

(2) The date established by the board under subsection (1) of this section may not be earlier than January 1, 2010, or later than January 1, 2014.

WRITTEN CONTRACTS

SECTION 4. Section 5 of this 2007 Act is added to and made a part of ORS 87.001 to 87.060.

SECTION 5. An original contractor may not claim a lien arising from the improvement of real property if a written contract for the work is required by section 7 of this 2007 Act and the contractor does not have a written contract.

SECTION 6. Sections 7 and 8 of this 2007 Act are added to and made a part of ORS chapter 701.

SECTION 7. (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 section 11 of this 2007 Act, and indication of the acceptance or rejection of the offered warranty;
- (d) For a residential structure contract, a summary of the notices required under ORS 87.093 or under rules adopted under sections 13 (2) and 14 of this 2007 Act on the contractor's bid proposal;
- (e) Acknowledgment of the receipt of the maintenance information required by the board under section 13 of this 2007 Act; 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 8. (1) A property owner who enters into an initial written contract for the construction, improvement or repair of a residential structure or zero-lot-line dwelling may cancel the contract by delivery of a written notice of cancellation anytime prior to 12 midnight at the end of the next business day. The notice of cancellation may be delivered in any written form or by any means that can readily be converted to written form, including, but not limited to, facsimile, electronic mail and regular mail. The notice must state the intention of the property owner to cancel the contract.

- (2) Subsection (1) of this section does not allow a property owner to cancel a contract:
- (a) If both parties agree that work is to begin before the cancellation period has expired;
 - (b) After a contractor substantially begins the residential construction, improvement or repair; or
 - (c) When an initial contract is being modified after expiration of the initial cancellation period.

SECTION 9. ORS 87.030 is amended to read:

87.030. (1) Every improvement except an improvement made by a person other than the landowner in drilling or boring for oil or gas, constructed upon lands with the knowledge of the owner shall be deemed constructed at the instance of the owner, and the interest owned shall be subject to any lien perfected pursuant to the provisions of ORS 87.001 to 87.060 and 87.075 to 87.093, unless the owner shall, within three days after the owner obtains knowledge of the construction, give no-

tice that the owner will not be responsible for the same by posting a notice in writing to that effect in some conspicuous place upon the land or the improvement situated thereon.

(2) Subsection (1) of this section does not apply to a lien prohibited under section 5 of this 2007 Act.

WARRANTY

SECTION 10. Section 11 of this 2007 Act is added to and made a part of ORS chapter 701.

SECTION 11. (1) A licensee that enters into a contract to construct a new residential structure or zero-lot-line dwelling shall make a written offer to the first purchaser or owner of the structure or dwelling of a warranty against defects in materials and workmanship for the structure or dwelling. The first purchaser or owner of the structure or dwelling may accept or refuse the offer of a warranty by the contractor. If a contractor makes the written offer of a warranty before the contractor and owner both sign a written construction contract and the owner refuses the offered warranty, the contractor may withdraw the offer to construct the structure or dwelling.

(2) Subsection (1) of this section does not apply to a residential structure that is a manufactured dwelling as defined in ORS 446.003.

REQUIRED DELIVERIES

SECTION 12. Sections 13 and 14 of this 2007 Act are added to and made a part of ORS chapter 701.

SECTION 13. (1) A contractor that constructs a new residential structure or zero-lot-line dwelling shall provide a recommended maintenance schedule to the first purchaser or owner of the structure or dwelling.

(2) The Construction Contractors Board shall adopt rules specifying the minimum information that a contractor shall provide to a first purchaser or owner under subsection (1) of this section. The minimum information shall include, but need not be limited to, the following:

- (a) Definitions and descriptions of moisture intrusion and water damage.
 - (b) An explanation of how moisture intrusion and water damage can occur.
 - (c) A description and recommended schedule for maintenance to prevent moisture intrusion.
 - (d) Advice on how to recognize the signs of water damage.
 - (e) Appropriate steps to take when water damage is discovered.
- (3) The board shall make the information developed under this section available without charge to contractors that construct new residential structures or zero-lot-line dwellings.

SECTION 14. (1) The Construction Contractors Board shall adopt by rule a consumer notice form designed to inform a property owner of the actions the property owner should take to protect the owner in a residential repair, remodel or construction project. The form shall briefly describe and identify additional sources of information regarding:

- (a) Contractor licensing standards;
- (b) Contractor bond and insurance requirements;
- (c) The requirement to offer a warranty under section 11 of this 2007 Act; and
- (d) Other information specified by the board.

(2) The board shall adopt by rule a notice of procedure form that briefly describes and identifies additional sources of information regarding the procedure described under ORS 701.560 to 701.595 and other information specified by the board.

(3) The consumer notice form and notice of procedure form adopted by the board shall include signature lines for the contractor and the property owner.

(4) The board shall adopt rules specifying the time and manner for a contractor to deliver a consumer notice form and notice of procedure form to a property owner.

(5) The board may adopt rules that require a contractor to maintain evidence of delivery of the consumer notice form and notice of procedure form and that specify the retention period for and the form of that evidence.

SECTION 15. ORS 87.018 is amended to read:

87.018. **Except as provided in ORS 87.093**, all notices required under ORS 87.001 to 87.060 and 87.075 to 87.093 shall be in writing and delivered in person or delivered by registered or certified mail. [except for the "Information Notice to Owner" described in ORS 87.093 which may also be proved by a United States Postal Service certificate of mailing.]

SECTION 16. 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 claim against a licensed contractor with the [Construction Contractors] board and, when 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) Each original contractor shall [provide] **deliver** a copy of the "Information Notice to Owner" adopted by the [Construction Contractors] board under this section to:

(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) 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) When 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.

[(3)] (4) This section applies only to a residential construction or improvement contract for which the aggregate contract price exceeds \$1,000. If the price of a home improvement contract was initially less than \$1,000, 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.

[(4)] (5) An "Information Notice to Owner" need not be sent when the owner is a contractor licensed with the [Construction Contractors] board under ORS chapter 701.

[(5)] (6) Notwithstanding ORS 87.010 **and 87.030**, if an original contractor does not [provide] **deliver** an owner or agent with an "Information Notice to Owner" as required under subsections (2) [and (3)] **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" [was not provided].**

[(6)] (7) If an original contractor does not [provide an owner or agent with] **deliver** an "Information Notice to Owner" **to an owner or agent** as required under subsection (2) of this section, the [Construction Contractors] 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.

[(7)] (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.

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

SECTION 17. ORS 701.055 is amended to read:

701.055. (1) A person may not undertake, offer to undertake or submit a bid to do work as a contractor unless that person has a current, valid license issued by the Construction Contractors Board. A partnership, corporation or joint venture may not undertake, offer to undertake or submit a bid to do work as a contractor unless that partnership, corporation or joint venture is licensed under this chapter. A partnership or joint venture is licensed for the purpose of offering to undertake work as a contractor on a structure if any of the partners or joint venturers whose name appears in the business name of the partnership or joint venture is licensed under this chapter.

(2) A licensed partnership or corporation shall notify the board immediately upon any change in licensed partners or corporate officers. If a partnership no longer has a licensed partner, the partnership may not conduct activities that require a license under this chapter.

(3) A city, county or the State of Oregon may not issue a building permit to any person required to be licensed under this chapter that does not have a current, valid license. A county, city or state agency that requires the issuance of a permit as a condition precedent to construction, alteration, improvement, demolition, movement or repair of any building or structure or the appurtenances to the structure shall, as a condition for issuing the permit, require that the applicant for a permit file a written statement, subscribed by the applicant. The statement must affirm that the applicant is licensed under this chapter, give the license number and state that the license is in full force and effect, or, if the applicant is exempt from licensing under this chapter, list the basis for the exemption. The city, county or state agency shall list the contractor's license number on the permit obtained by that contractor.

(4) If the applicant for a building permit is exempt from licensure under ORS 701.010 (6), the city, county or state shall supply the applicant with an Information Notice to Property Owners About Construction Responsibilities. The city, county or state may not issue a building permit for a residential structure to the applicant until the applicant signs a statement in substantially the following form:

(a) I have read and understand the Information Notice to Property Owners About Construction Responsibilities; and

(b) I own, reside in or will reside in the completed dwelling. My general contractor is _____, Construction Contractors Board license no. _____, license expiration date _____, I will instruct my general contractor that all subcontractors who work on this dwelling must be licensed with the Construction Contractors Board; or

(c) I am performing work on property I own, a residence that I reside in or a residence that I will reside in.

(d) I will be my own general contractor and, if I hire subcontractors, I will hire only subcontractors licensed with the Construction Contractors Board.

(e) If I change my mind and do hire a general contractor, I will contract with a general contractor who is licensed with the Construction Contractors Board and I will immediately notify the office issuing this building permit of the name of the general contractor _____

(5) The board shall adopt by rule a form entitled "Information Notice to Property Owners About Construction Responsibilities" that shall describe, in nontechnical language and in a clear and coherent manner using words in their common and everyday meaning, the responsibilities property owners are undertaking by acting as their own general contractor and the problems that could develop. The responsibilities described in the form shall include, but not be limited to:

(a) Compliance with state and federal laws regarding Social Security tax, income tax and unemployment tax.

(b) Workers' compensation insurance on workers.

(c) Liability and property damage insurance.

(6) The board shall develop and furnish to city, county and state building permit offices, at no cost to the offices, the Information Notice to Property Owners About Construction Responsibilities and the statement to be signed by the permit applicant.

(7) A city or county that requires a business license for engaging in a business subject to regulation under this chapter shall require that the licensee or applicant for issuance or renewal of the business license file, or have on file, with the city or county, a signed statement that the licensee or applicant is licensed under this chapter.

(8) It is prima facie evidence of doing business as a contractor if a person for that person's own use performs, employs others to perform, or for compensation and with the intent to sell the structure, arranges to have performed any work described in ORS 701.005 (3) if within any 36-month period that person offers for sale two or more newly built structures on which that work was performed.

(9) Licensure under this chapter is prima facie evidence that the licensee conducts a separate, independent business.

(10) The provisions of this chapter are exclusive and a city, county or other political subdivision may not require or issue any registrations, licenses or surety bonds, nor charge any fee for the regulatory or surety registration of any contractor licensed with the board. This subsection does not limit or abridge the authority of any city or county to:

(a) License and levy and collect a general and nondiscriminatory license fee levied upon all businesses or upon business conducted by any firm within the city or county;

(b) Require a contractor to pay a fee, post a bond or require insurance when the city, county or political subdivision is contracting for the service of the contractor; or

(c) Regulate a contractor that is not required to be licensed under this chapter.

(11)(a) A contractor shall maintain a list that includes the following information about all subcontractors or other contractors performing work on a project for that contractor:

(A) Names and addresses.

(B) License numbers.

(b) The contractor must deliver the list referred to in paragraph (a) of this subsection to the board within 72 hours after a board request made during reasonable working hours.

(12) A contractor may not hire any subcontractor or other contractor to perform work unless the subcontractor or contractor is licensed under this chapter or exempt from licensure under ORS 701.010.

[(13) A consumer notification form designed to specifically inform a property owner what the property owner should do to protect themselves in a residential repair, remodel or construction project shall be prepared by the board and provided at no cost to all licensed contractors. The contractor shall deliver the form to the property owner when the contractor submits a bid or proposal for work on a residential structure. The form shall include an explanation of the meaning of licensure, including a statement that licensure is not an endorsement of a contractor's work, and an explanation of the bond

and insurance levels required of contractors for the benefit of property owners. The form must not be larger than one side of a sheet of paper that is 8-1/2 inches by 11 inches. The contractor may reproduce the form on the contractor's bid proposal.]

[(14) A contractor may not perform work subject to this section for an owner of a residential structure 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.]

[(15)] (13) Except as provided in ORS 671.540, a contractor that is not licensed under ORS 671.560 shall hire a person licensed under ORS 671.560 to perform landscaping work.

SECTION 18. ORS 701.590 is repealed.

INSURANCE

SECTION 19. ORS 701.105 is amended to read:

701.105. (1) Except as provided in subsection (2) of this section, a contractor who possesses a license as required under this chapter shall have in effect public liability, personal injury and property damage insurance covering the work of the contractor that is subject to this chapter, **including the covering of liability for products and completed operations according to the terms of the policy and subject to applicable policy exclusions**, for an amount not less than:

- (a) \$500,000 for a general contractor or licensed developer.
- (b) \$300,000 for a residential-only specialty contractor.
- (c) \$500,000 for all other specialty contractors.
- (d) \$100,000 for a limited contractor.
- (e) \$300,000 for an inspector.

(2) The Construction Contractors Board by rule, in consultation with the Department of Consumer and Business Services, may allow a general or specialty contractor that is a residential-only contractor to provide an alternative form of security approved by the board instead of procuring a public liability, personal injury and property damage insurance policy. The board may approve an alternative form of security if the board determines that the alternative form of security provides protection to the public equivalent to the protection provided by an insurance policy in the amounts otherwise applicable to the residential-only contractor under subsection (1) of this section. A board-approved alternative form of security may consist of a combination of financial resources.

(3) A residential-only contractor who provides a board-approved alternative form of security under subsection (2) of this section is considered for purposes of this chapter to have obtained insurance described in subsection (1) of this section. This subsection does not subject to regulation as an insurer a person who issues all or part of an alternative form of security, unless the alternative form of security otherwise qualifies as an insurance product.

(4) The contractor shall provide satisfactory evidence to the board at the time of licensure and renewal that the insurance policy or board-approved alternative form of security required by this section has been procured and is in effect.

SECTION 20. ORS 701.105, as amended by section 2, chapter 766, Oregon Laws 2003, is amended to read:

701.105. (1) A contractor who possesses a license as required under this chapter shall have in effect public liability, personal injury and property damage insurance covering the work of the contractor that is subject to this chapter, **including the covering of liability for products and completed operations according to the terms of the policy and subject to applicable policy exclusions**, for an amount not less than:

- (a) \$500,000 for a general contractor or licensed developer.
- (b) \$300,000 for a residential-only specialty contractor.
- (c) \$500,000 for all other specialty contractors.

(d) \$100,000 for a limited contractor.

(e) \$300,000 for an inspector.

(2) The contractor shall provide satisfactory evidence to the Construction Contractors Board at the time of licensure and renewal that the insurance required by subsection (1) of this section has been procured and is in effect.

SECTION 21. The amendments to ORS 701.105 by sections 19 and 20 of this 2007 Act apply to coverage provided under insurance policies issued or renewed on or after the effective date of this 2007 Act.

BONDING

SECTION 22. ORS 701.085 is amended to read:

701.085. (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 subsections (2) to (5) of this section. The surety bond must provide that the applicant, with regard to work subject to this chapter, will pay claims ordered paid by the board under ORS 701.145 or 701.146. Bonds filed under this subsection shall remain in effect for at least one year or until depleted by claims paid under ORS 701.150, 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 (6) of this section, the aggregate liability of the surety under the bond for claims against the bond may not exceed the penal sum of the bond no matter how many years the bond is in force. Except as provided in subsection (6) of this section, an extension by continuation certificate, reinstatement, reissue or renewal of the bond may not increase the liability of the surety.

(2) A general contractor or licensed developer shall obtain a surety bond in the amount of [~~\$15,000~~] **\$20,000**.

(3) A specialty contractor shall obtain a surety bond in the amount of [~~\$10,000~~] **\$15,000**.

(4) An inspector shall obtain a surety bond in the amount of [~~\$10,000~~] **\$15,000**.

(5) The board may reduce the amount of the surety bond required by this section to [~~\$5,000~~] **\$10,000** for a contractor upon a showing that the contractor does not perform work as a contractor exceeding \$40,000 in gross annual volume and does not enter into contracts that exceed \$5,000. The board shall designate the contractor as a limited contractor.

(6) The board, by rule, may require a licensee to obtain a new surety bond if, pursuant to a board order for payment of a claim described in ORS 701.140, the surety pays a claim out of the bond of the licensee. The new surety bond must be in the amount set forth in subsections (2) to (5) of this section unless a higher amount is required by a board condition or rule described in subsection (7) or (8) 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 claim.

(7) If the amount the licensee must pay against the bond under 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 this section.

(8) 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 this section. 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.

(9) 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.

(10) Upon determination under ORS 701.145 or 701.146 of a claim 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 claims upon which a final order has been issued.

(11) A suit or 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 claim.

(12) In any action against a surety on a bond under this section that is based on the failure of the surety to pay a claim or on the denial of a claim by the surety, 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 claim, if the surety arbitrarily and capriciously refused to pay upon order of the board.

OWNERSHIP/MANAGEMENT

SECTION 23. ORS 701.005 is amended to read:

701.005. As used in this chapter:

- (1) "Board" means the Construction Contractors Board.
- (2) "Construction debt" means an amount owed under:
 - (a) [A *final*] **An order or arbitration award issued by the board that has become final by operation of law; [or]**
 - (b) A judgment or civil penalty **that has become final by operation of law** arising from construction activities within the United States; **or**
 - (c) **A judgment or civil penalty that has become final by operation of law arising from a failure to comply with ORS 656.017.**
- (3) "Contractor" means a person who, for compensation or with the intent to sell, arranges or undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect, move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate or to do any part thereof. "Contractor" includes general contractors, residential-only contractors and specialty contractors as defined in this section.
- (4) "General contractor" means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor supervises or performs in whole or part, whenever the sum of all contracts on any single property, including materials and labor, exceeds an amount established by rule by the board. "General contractor" does not include specialty contractors or limited contractors, as described in ORS 701.085.
- (5) "Home inspector" means a person who, for a fee, inspects and provides written reports on the overall physical condition of a residential structure and the appurtenances thereto. "Home inspector" does not include persons certified under ORS chapter 455 to inspect new, repaired or altered structures for compliance with the state building code.
- (6) "Inspector" means a contractor registered with the board who inspects or otherwise provides services to a property owner or other contractor but does not substantively add to or subtract from a structure. "Inspector" includes but is not limited to a home inspector certified under ORS 701.350, a lead-based paint inspector licensed under ORS 701.515 and a cross connection inspector and backflow assembly tester certified under ORS 448.279. "Inspector" does not include city or county inspectors acting under ORS 701.225 or an inspector as defined in ORS 455.715.
- (7) "Large commercial structure" means a structure that is not a residential structure or small commercial structure.
- (8) "Licensed developer" means a contractor who owns property or an interest in property and arranges for construction work, if the contractor:

(a) Engages in the business of arranging for construction work and performing other activities associated with the improvement of real property, with the intent to sell the property;

(b) Acts in association with one or more licensed general contractors and the general contractor or combination of general contractors have sole responsibility for overseeing all phases of construction activity on the property; and

(c) Does not perform any construction work on the property.

(9) "Officer" means any of the following persons:

(a) A president, vice president, secretary, treasurer or director of a corporation.

(b) A general partner in a limited partnership.

(c) A manager in a manager-managed limited liability company.

(d) A member of a member-managed limited liability company.

(e) A trustee.

(f) A person defined as an officer under board rules. The definition of officer adopted by board rule may include persons not listed in this subsection who may exercise substantial control over a business.

(10) "Residential-only contractor" means a general contractor or specialty contractor who performs work exclusively in connection with residential structures and small commercial structures, and the appurtenances thereto. "Residential-only contractor" includes, but is not limited to:

(a) A person who purchases or owns property and constructs or for compensation arranges for the construction of one or more residential structures or small commercial structures with the intent of selling the structures;

(b) A school district, as defined in ORS 332.002, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure;

(c) A community college district, as defined in ORS 341.005, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure; or

(d) Any person except a landscape contractor, nurseryman, gardener or person engaged in the commercial harvest of forest products who is engaged as an independent contractor to remove trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying.

(11) "Residential structure" means a residence, including a site-built home, modular home constructed off-site, floating home as defined in ORS 830.700, condominium unit, manufactured dwelling or duplex, or a multiunit residential building consisting of four units or less that is not part of a multistructure complex of buildings.

(12) "Responsible managing individual" means an individual who:

(a)(A) Is an owner described in ORS 701.077; or

(B) Is an employee of a business, designated by the owner, who exercises management or supervisory authority over the construction activities of the business; and

(b)(A) Has successfully completed the training and testing required for licensing under ORS 701.072 within a period identified by the board by rule;

(B) Has demonstrated experience required by the board by rule; or

(C) Has complied with the licensing requirements of ORS 446.395.

[(12)] (13) "Small commercial structure" means a nonresidential structure that has a ground area of 4,000 square feet or less, including exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish of the structure.

[(13)] (14) "Specialty contractor" means a contractor who performs work on a structure, project, development or improvement and whose operations as such do not fall within the definition of "general contractor." "Specialty contractor" includes a person who performs work regulated under ORS chapter 446.

(15) "Zero-lot-line dwelling" means a single-family dwelling unit constructed in a group of attached units in which:

(a) Each attached unit extends from foundation to roof with open space on two sides; and

(b) Each dwelling unit is separated by a property line.

SECTION 23a. If House Bill 2111 becomes law, ORS 701.005, as amended by section 23 of this 2007 Act, is amended to read:

701.005. As used in this chapter:

- (1) "Board" means the Construction Contractors Board.
- (2) "Construction debt" means an amount owed under:
 - (a) An order or arbitration award issued by the board that has become final by operation of law;
 - (b) A judgment or civil penalty that has become final by operation of law arising from construction activities within the United States; or
 - (c) A judgment or civil penalty that has become final by operation of law arising from a failure to comply with ORS 656.017.
- (3) "Contractor" means a person who, for compensation or with the intent to sell, arranges or undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect, move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate or to do any part thereof. "Contractor" includes general contractors, residential-only contractors and specialty contractors as defined in this section.
- (4) "General contractor" means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor supervises or performs in whole or part, whenever the sum of all contracts on any single property, including materials and labor, exceeds an amount established by rule by the board. "General contractor" does not include specialty contractors or limited contractors, as described in ORS 701.085.
- (5) "Home inspector" means a person who, for a fee, inspects and provides written reports on the overall physical condition of a residential structure and the appurtenances thereto. "Home inspector" does not include persons certified under ORS chapter 455 to inspect new, repaired or altered structures for compliance with the state building code.
- (6) "Inspector" means a contractor registered with the board who inspects or otherwise provides services to a property owner or other contractor but does not substantively add to or subtract from a structure. "Inspector" includes but is not limited to a home inspector certified under ORS 701.350, a lead-based paint inspector licensed under ORS 701.515 and a cross connection inspector and backflow assembly tester certified under ORS 448.279. "Inspector" does not include city or county inspectors acting under ORS 701.225 or an inspector as defined in ORS 455.715.
- (7) "Large commercial structure" means a structure that is not a residential structure or small commercial structure.
- (8) "Licensed developer" means a contractor who owns property or an interest in property and arranges for construction work, if the contractor:
 - (a) Engages in the business of arranging for construction work and performing other activities associated with the improvement of real property, with the intent to sell the property;
 - (b) Acts in association with one or more licensed general contractors and the general contractor or combination of general contractors have sole responsibility for overseeing all phases of construction activity on the property; and
 - (c) Does not perform any construction work on the property.
- (9) "Officer" means any of the following persons:
 - (a) A president, vice president, secretary, treasurer or director of a corporation.
 - (b) A general partner in a limited partnership.
 - (c) A manager in a manager-managed limited liability company.
 - (d) A member of a member-managed limited liability company.
 - (e) A trustee.
 - (f) A person defined as an officer under board rules. The definition of officer adopted by board rule may include persons not listed in this subsection who may exercise substantial control over a business.

(10) "Residential-only contractor" means a general contractor or specialty contractor who performs work exclusively in connection with residential structures and small commercial structures, and the appurtenances thereto. "Residential-only contractor" includes, but is not limited to:

(a) A person who purchases or owns property and constructs or for compensation arranges for the construction of one or more residential structures or small commercial structures with the intent of selling the structures;

(b) A school district, as defined in ORS 332.002, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure;

(c) A community college district, as defined in ORS 341.005, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure; or

(d) Any person except a landscape contractor, nurseryman, gardener or person engaged in the commercial harvest of forest products who is engaged as an independent contractor to remove trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying.

(11) "Residential structure" means a residence, including a site-built home, modular home constructed off-site, floating home as defined in ORS 830.700, condominium unit, manufactured dwelling or duplex, or a multiunit residential building consisting of four units or less that is not part of a multistructure complex of buildings.

(12) "Responsible managing individual" means an individual who:

(a)[(A)] Is an owner described in ORS 701.077 **or an employee of the business**; [or]

[(B)] (b) [*Is an employee of a business, designated by the owner, who*] Exercises management or supervisory authority, **as defined by the board by rule**, over the construction activities of the business; and

[(b)] (c)(A) Has successfully completed the training and testing required for licensing under ORS 701.072 within a period identified by the board by rule;

(B) Has demonstrated experience required by the board by rule; or

(C) Has complied with the licensing requirements of ORS 446.395.

(13) "Small commercial structure" means a nonresidential structure that has a ground area of 4,000 square feet or less, including exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish of the structure.

(14) "Specialty contractor" means a contractor who performs work on a structure, project, development or improvement and whose operations as such do not fall within the definition of "general contractor." "Specialty contractor" includes a person who performs work regulated under ORS chapter 446.

(15) "Zero-lot-line dwelling" means a single-family dwelling unit constructed in a group of attached units in which:

(a) Each attached unit extends from foundation to roof with open space on two sides; and

(b) Each dwelling unit is separated by a property line.

SECTION 24. ORS 701.075 is amended to read:

701.075. (1) An applicant for a construction contractor license must submit the application on a form prescribed by the Construction Contractors Board. The application shall include, but not be limited to, the following information [*regarding the applicant*]:

(a) Classification of the license being sought.

(b) A list of construction debts involving the applicant, or an owner or officer of the applicant, if the order, award, penalty or judgment that establishes the debt was issued within the preceding five years.

(c) **For each person described in paragraphs (h) and (i) of this subsection, a Social Security number.**

(d) Workers' compensation insurance account number, if the applicant is required to have workers' compensation insurance.

(e) Unemployment insurance account number, if the applicant is required to have unemployment insurance.

(f) State withholding tax account number, if the applicant is required to withhold state income tax.

(g) Federal employer identification number, if the applicant is required to have a federal employer identification number.

(h) The name and address of:

(A) Each partner, if the applicant is a partnership, limited liability partnership or foreign limited liability partnership.

(B) The general partner, if the applicant is a limited partnership.

(C) Each joint venturer, if the applicant is a joint venture.

(D) The owner, if the applicant is a sole proprietorship.

(E) The officers, if the applicant is a corporation.

(F) The manager and each member, if the applicant is a manager-managed limited liability company.

(G) Each member, if the applicant is a member-managed limited liability company.

(H) The responsible managing individual designated by the applicant.

(i) The name and address of the following if the applicant is a partnership, limited liability partnership, foreign limited liability partnership, joint venture, manager-managed limited liability company or member-managed limited liability company:

(A) Each partner in a partnership, limited liability partnership or foreign limited liability partnership that is a partner, joint venturer or member of the applicant.

(B) Each general partner in a limited partnership that is a partner, joint venturer or member of the applicant.

(C) Each joint venturer in a joint venture that is a partner, joint venturer or member of the applicant.

(D) The manager and each member of a manager-managed limited liability company that is a partner, joint venturer or member of the applicant.

(E) Each member of a member-managed limited liability company that is a partner, joint venturer or member of the applicant.

(F) Each officer of a corporation that is a partner, joint venturer or member of the applicant.

(G) The general partner in a limited partnership that is a partner, joint venturer or member of the applicant.

(H) Each individual who has a controlling ownership interest in, or management authority over, the applicant and who meets criteria adopted by the board by rule.

(j) For each person described in paragraphs (h) and (i) of this subsection, information as required by board rule regarding the following if related to construction activities:

(A) A final judgment against the person by a court in any state entered within five years preceding the application date that requires the person to pay money to another person or to a public body if the judgment remains unsatisfied on the application date.

(B) A final order against the person by an administrative agency in any state issued within five years preceding the application date that requires the person to pay money to another person or to a public body if the order remains unsatisfied on the application date.

(C) A court action against the person in any state pending on the application date that alleges the person owes money to another person or to a public body.

(D) An action by an administrative agency in any state pending on the application date that seeks an order that the person pay money to another person or to a public body.

(E) A conviction for a crime listed in ORS 701.135 (1)(h) entered within five years preceding the application date.

(F) An indictment for a crime listed in ORS 701.135 (1)(h) filed within five years preceding the application date.

[(j)] (k) The basis on which the applicant meets the standards for independent contractor status under ORS 670.600.

(2) The application described in subsection (1) of this section must be accompanied by proof satisfactory to the board that the applicant:

(a) Is in compliance with ORS 701.078.

(b) Has the legal capacity to enter into contracts.

(3) Subsection (2)(a) of this section does not apply to a licensed developer.

(4) An applicant shall conform to the information provided by the applicant on the application and to the terms of the application.

SECTION 25. ORS 701.077 is amended to read:

701.077. (1) As used in ORS [701.078 and] 701.102 **and 701.135**, "owner" means:

(a) A sole proprietor of, partner in or holder of a controlling interest in a business; or

(b) A person defined as an owner by Construction Contractors Board rule.

(2) The board shall adopt rules defining an owner for purposes of subsection (1) of this section.

The rules may not define an owner in a manner that includes an investor who has no right to manage a business, including but not limited to:

(a) A person who is solely a minority shareholder in a corporation;

(b) A member of a manager-managed limited liability company; or

(c) A limited partner in a limited partnership who does not participate in the control of the business of the limited partnership.

SECTION 26. ORS 701.078 is amended to read:

701.078. [(1) As used in this section, "responsible managing individual" means an individual who:]

[(a)(A) Is an owner; or]

[(B) Is an employee of a business, designated by the owner, who exercises management or supervisory authority over the construction activities of the business; and]

[(b)(A) Has successfully completed the training and testing required for licensing under ORS 701.072 within a period identified by the Construction Contractors Board by rule;]

[(B) Has demonstrated experience required by the board by rule; or]

[(C) Has complied with the licensing requirements of ORS 446.395.]

[(2)] (1) A business licensed under this chapter must at all times have at least one responsible managing individual.

[(3)] (2) Subsection [(2)] (1) of this section does not apply to a licensed developer.

SECTION 27. ORS 701.102 is amended to read:

701.102. (1) As used in this section, "construction contractor license" means a license issued within the United States to engage in the business of construction contracting.

(2) The Construction Contractors Board may **revoke**, suspend or refuse to issue a license required under this chapter to a business if:

(a) The business owes a construction debt or has had a construction contractor license revoked or suspended;

(b) An owner, [or] officer **or responsible managing individual** of the business owes a construction debt or has had a construction contractor license revoked or suspended; [or]

(c) An owner, [or] officer **or responsible managing individual** of the business was an owner, [or] officer **or responsible managing individual** of another business at the time the other business incurred a construction debt that is owing or at the time of an event that resulted in the revocation or suspension of the other business's construction contractor license[.]; **or**

(d) The board determines that an owner, officer or responsible managing individual of the business is not fit for licensure, based upon information submitted under ORS 701.075 or discovered by a board investigation under ORS 701.225.

(3) The board may place a contractor on probation if a total of three or more claims are filed with the board within a 12-month period against the contractor or a former licensed construction contracting business in which the contractor held at least a 10 percent ownership interest, measured

as determined by board rule. A contractor may not be placed on probation unless the board determines after investigation that it is likely that the contractor has caused harm to the claimants. The board may require a contractor that is placed on probation to develop a corrective action plan, to attend specific classes and to resolve outstanding claims. The board may require a contractor that is placed on probation to take training and pass a test, both as described in ORS 701.072. The board shall take action to terminate the contractor's license if the contractor is unwilling or unable to comply with the conditions of probation.

SANCTIONS

SECTION 28. ORS 701.135 is amended to read:

701.135. (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 701.055 (1) to (3) or (11) to (13) or 701.078 or section 7, 11 or 13 of this 2007 Act or a rule adopted under section 14 (4) of this 2007 Act.**

(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 claim being filed with the board. 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 claims of nonpayment 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.

(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 701.075 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 701.055 (1).

[(2)(a)] (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 701.085;

(B) Lack of liability insurance required by ORS 701.105;

(C) Hiring employees while licensed as exempt under ORS 701.035; [or]

(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, [an order] 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.

[(3)] **(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 701.055 (1) unless the court determines that the failure is intentional.**

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

[(5)] (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[, *as defined in ORS 701.078,*] for the contractor business has successfully completed the training and testing described in ORS 701.072.

SECTION 28a. If House Bill 2109 becomes law, sections 5 and 6, chapter 114, Oregon Laws 2007 (Enrolled House Bill 2109), are repealed.

SECTION 28b. If House Bill 2109 becomes law, section 28 of this 2007 Act (amending ORS 701.135) is repealed and ORS 701.135, as amended by section 10, chapter 114, Oregon Laws 2007 (Enrolled House Bill 2109), is amended to read:

701.135. (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 701.055 or 701.078 or section 2 (1), 4[, 5, 6] or 7 [of this 2007 Act], chapter 114, Oregon Laws 2007 (Enrolled House Bill 2109), or section 7, 11 or 13 of this 2007 Act or a rule adopted under section 14 (4) of this 2007 Act.**

(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 claim being filed with the board. 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 claims of nonpayment 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.

(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 701.075 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 701.055 (1).

[2)(a)] **(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 701.085;

(B) Lack of liability insurance required by ORS 701.105;

(C) Hiring employees while licensed as exempt under ORS 701.035; [or]

(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, [an order] 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.

[3)] **(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 section 4 [of this 2007 Act], **chapter 114, Oregon Laws 2007 (Enrolled House Bill 2109)**, unless the court determines that the failure is intentional.

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

[(5)] (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, *as defined in ORS 701.078,* for the contractor business has successfully completed the training and testing described in ORS 701.072.

SECTION 29. ORS 701.605 is amended to read:

701.605. (1) To facilitate the handling of warranty work or remediation of defects to a new commercial or residential structure **or a zero-lot-line dwelling**, a contractor who builds the structure may present for recording in the deed records of the county in which the new structure is built a written warranty agreement that:

- (a) Is signed by the contractor and the original owner of the new structure;
 - (b) Sets forth any express warranties furnished by the contractor; and
 - (c) Contains the names of the contractor and the original property owner, the title of the document, a legal description of the property and acknowledgment of the signatures of the parties in the same manner as the parties to a deed are acknowledged.
- (2) The warranties set forth in the recorded warranty agreement:
- (a) Benefit and burden subsequent owners of the structure.
 - (b) Cease to affect title to the property 10 years after the date the instrument is recorded.

APPLICABILITY

SECTION 30. (1) Section 11 of this 2007 Act and the amendments to ORS 701.605 by section 29 of this 2007 Act apply to new residential structures and zero-lot-line dwellings for which the contractor enters into a written construction contract on or after July 1, 2008.

(2) Section 13 of this 2007 Act applies to new residential structures and zero-lot-line dwellings for which the contractor completes construction on or after July 1, 2008.

(3) The amendments to ORS 87.018 and 87.093 by sections 15 and 16 of this 2007 Act apply to notices that a contractor delivers on or after the effective date of this 2007 Act.

(4) The amendments to ORS 701.085 by section 22 of this 2007 Act apply:

- (a) To applicants whose properly completed application for the issuance of an initial license is received by the Construction Contractors Board on or after January 1, 2008.
- (b) To applicants whose properly completed application for the renewal of a license is received by the board on or after July 1, 2009.

(5) The amendments to ORS 87.018, 87.093 and 701.055 by sections 15 to 17 of this 2007 Act and the repeal of ORS 701.590 by section 18 of this 2007 Act do not relieve any person from a civil penalty or other sanction for a violation of ORS 87.018, 87.093, 701.055 or 701.590 as set forth in the 2005 Edition of Oregon Revised Statutes committed prior to the effective date of this 2007 Act.

CAPTIONS

SECTION 31. The unit captions used in this 2007 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2007 Act.

Passed by House April 25, 2007

Repassed by House June 14, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate June 12, 2007

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President of Senate

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

.....
Secretary of State

**Enrolled
Senate Bill 203**

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Construction Contractors Board)

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-**

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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.

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(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 reissue 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

.....
Governor

Filed in Office of Secretary of State:

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

.....
Secretary of State

Enrolled
Senate Bill 205

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Construction Contractors Board)

CHAPTER

AN ACT

Relating to construction contractors; creating new provisions; and amending ORS 701.305, 701.310, 701.320, 701.330 and 701.335.

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

SECTION 1. ORS 701.305 is amended to read:

701.305. (1) A contractor may not perform work [subject to this section for an owner of] to **construct, improve or repair** a residential structure or zero-lot-line dwelling **for a property owner** 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 **property** 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 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; **and**

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

[(f)] (e) 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 2. ORS 701.310 is amended to read:

701.310. (1) A property owner who enters into an initial written contract for the construction, improvement or repair of a residential structure or zero-lot-line dwelling **on real property owned by the property owner** may cancel the contract by delivery of a written notice of cancellation

anytime prior to 12 midnight at the end of the next business day. The notice of cancellation may be delivered in any written form or by any means that can readily be converted to written form, including, but not limited to, facsimile, electronic mail and regular mail. The notice must state the intention of the property owner to cancel the contract.

(2) Subsection (1) of this section does not allow a property owner to cancel a contract:

- (a) If both parties agree that work is to begin before the cancellation period has expired;
- (b) After a contractor substantially begins the residential construction, improvement or repair;

or

(c) When an initial contract is being modified after expiration of the initial cancellation period.

SECTION 3. ORS 701.320 is amended to read:

701.320. (1) A [licensee] **contractor** that enters into a contract to construct a new residential structure or zero-lot-line dwelling, **or to sell a new residential structure or zero-lot-line dwelling constructed by the contractor**, shall make a written offer to the [first purchaser or owner] **property owner or original purchaser** of the structure or dwelling of a warranty against defects in materials and workmanship for the structure or dwelling. The [first purchaser or owner] **property owner or original purchaser** of the structure or dwelling may accept or refuse the offer of a warranty by the contractor. If a contractor makes the written offer of a warranty before the contractor and **the property owner** both sign a written construction contract and the **property owner** refuses the offered warranty, the contractor may withdraw the offer to construct the structure or dwelling.

(2) Subsection (1) of this section does not apply to a residential structure that is a manufactured dwelling as defined in ORS 446.003.

SECTION 4. ORS 701.330 is amended to read:

701.330. (1) The Construction Contractors Board shall adopt by rule a consumer notice form designed to inform a property owner **or original purchaser** of the actions the property owner **or original purchaser** should take to protect the **property owner in a residential structure or zero-lot-line dwelling** repair, remodel or construction project **or to protect the original purchaser in a residential structure or zero-lot-line dwelling construction project**. The form shall briefly describe and identify additional sources of information regarding:

- (a) Contractor licensing standards;
- (b) Contractor bond and insurance requirements;
- (c) The requirement to offer a warranty under ORS 701.320; and
- (d) Other information specified by the board.

(2) The board shall adopt by rule a notice of procedure form that briefly describes and identifies additional sources of information regarding the procedure described under ORS 701.560 to 701.595 and other information specified by the board.

(3) The consumer notice form and notice of procedure form adopted by the board shall include signature lines for the contractor and **for the property owner or original purchaser**.

(4) The board shall adopt rules specifying the time and manner for a contractor to deliver a consumer notice form and notice of procedure form [to a property owner].

(5) The board may adopt rules that require a contractor to maintain evidence of delivery of the consumer notice form and notice of procedure form and that specify the retention period for and the form of that evidence.

SECTION 5. ORS 701.335 is amended to read:

701.335. (1) A contractor that [constructs] **enters into a contract to construct** a new residential structure or zero-lot-line dwelling shall provide a recommended maintenance schedule to the [first purchaser or owner] **property owner or original purchaser** of the **proposed** structure or dwelling **at the time that the contractor makes a written offer of warranty under ORS 701.320**.

(2) The Construction Contractors Board shall adopt rules [specifying] **describing** the minimum information that a contractor shall provide to a [first purchaser or owner] **property owner or ori-**

ginal purchaser under subsection (1) of this section. The minimum information shall include, but need not be limited to, the following:

- (a) Definitions and descriptions of moisture intrusion and water damage.
- (b) An explanation of how moisture intrusion and water damage can occur.
- (c) A description and recommended schedule for maintenance to prevent moisture intrusion.
- (d) Advice on how to recognize the signs of water damage.
- (e) Appropriate steps to take when water damage is discovered.

[(3) *The board shall make the information developed under this section available without charge to contractors that construct new residential structures or zero-lot-line dwellings.*]

SECTION 6. The amendments to ORS 701.305, 701.320 and 701.335 by sections 1, 3 and 5 of this 2009 Act apply to written contracts that a contractor enters into on or after the effective date of this 2009 Act.

Passed by Senate March 2, 2009

Received by Governor:

Repassed by Senate June 5, 2009

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

Approved:

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Secretary of Senate

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

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President of Senate

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Governor

Passed by House June 2, 2009

Filed in Office of Secretary of State:

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Speaker of House

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

.....
Secretary of State

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Agency Program Summary

A. Agency Overview:

1. Regulation:

The Construction Contractors Board (CCB) is the state agency that regulates construction contractors in Oregon through its licensing requirements.

2. Financial Accountability:

The agency holds contractors financially accountable for their business practices through its licensing, enforcement, and dispute resolution programs.

3. Mission Statement:

The Construction Contractors Board protects the public's interest relating to improvements to real property. The Board regulates construction contractors and promotes a competitive business environment through education, contractor licensing, dispute resolution, and law enforcement.

B. Agency Programs and Services Summary

1. Consumer Education: To educate consumers about their rights and responsibilities when engaging in construction transactions.

- Home shows, business fairs and other events
- Web page license records inquiry
- FAQ and consumer information
- News releases
- Printed materials
- Phone calls
- Online newsletters
- Speeches to consumer groups

2. CCB Contractor Education: To ensure new contractors have business skills necessary to operate an Oregon construction business.

- Business education for new contractors
- Test for new contractors (2,676 for FY ending 6/30/12/businesses—education and testing are outsourced)
- Newsletters (on-line)
- Home shows and speeches to contractor associations
- Education testing and continuing education for home inspectors

3. Licensing/Customer Service Unit: To efficiently process contractor license information and ensure all contractor records are accurate.

- 34,126 licensed contractors as of 6/30/12
 - Certified Home Inspectors approximately 431
 - Lead-Based Paint Renovation (4,964 as of 6/30/12)
 - Certified Locksmiths (432 as of 6/30/12)
- Class of independent contractor:
 - Non-exempt (15,846 as of 6/30/12) (employers)
 - Exempt (18,260 as of 6/30/12)

- Endorsements:
 - Residential General Contractor (RGC)
 - Residential Specialty Contractor (RSC)
 - Residential Limited Contractor (RLC)
 - Residential Developer (RD)
 - Commercial General Contractor level 1 (CGC1)
 - Commercial Specialty Contractor level 1 (CSC1)
 - Commercial General Contractor level 2 (CGC2)
 - Commercial Specialty Contractor level 2 (CSC2)
 - Commercial Developer (CD)
 - Application and renewals
 - Surety bonds
 - Liability insurance
 - Tax ID numbers
 - Suspend contractors that lose bond or insurance coverage (3,293 for FY ending 6/30/12)
4. **Enforcement/Field Investigations:** To provide an effective deterrent to illegal (unlicensed) construction activity.
- Investigation of license law violations. Special Investigations of contractor fraud and dishonest activity (administrative, civil and criminal).
 - Investigations (4,797 for FY ending 6/30/12)
 - Administrative warnings (832 for FY ending 6/30/12)
 - Craigslist warnings (860 for FY ending 6/30/12)
 - Civil penalties \$1,452,800 for FY ending 6/30/12)
 - Suspensions/revocations (389 for FY ending 6/30/12)
 - Random job site license inspections (4,693 for FY ending 6/30/12)
 - Lead-based paint enforcement partnership with Oregon Department of Human Services
 - **Special Investigations Unit (SIU):** Works with Department of Justice (DOJ) and local law enforcement to combat construction fraud; puts worst offenders into the criminal justice system.
5. **Dispute Resolution:** To provide contractor accountability by providing an alternative dispute resolution system as an alternative to the Oregon court system.
- Complaints (claims) resolved through negotiation and mediation
 - Complaints (claims) received (1,018 for FY ending 6/30/12)
 - Homeowners
 - Material suppliers
 - Generals/subcontractors
 - Employees
 - Alternative Dispute Resolution Program:
 - Notification
 - On-site investigation/settlement
 - Arbitrations/contested case hearings (for complaints filed prior to 7/1/11)
 - Final adjudication:
 - Licensee ordered to pay
 - Bond company payment
 - Failure to pay results in license suspension
 - \$2,997,929 awarded to complainants for FY ending 6/30/12