

**A-Engrossed**  
**House Bill 2540**

Ordered by the House April 23  
Including House Amendments dated April 23

Sponsored by Representative HOLVEY (Pre-session filed.)

**SUMMARY**

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

Allows Construction Contractors Board to revoke, suspend or refuse to issue license if board finds person has engaged in dishonesty by enabling evasion of certain obligations. Adds unpaid wages to definition of "construction debt." **Harmonizes terminology.**

**A BILL FOR AN ACT**

1  
2 Relating to construction contractors; creating new provisions; and amending ORS 701.005 and  
3 701.131.

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

5 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS chapter 701.**

6 **SECTION 2. In addition to any other authority granted to the Construction Contractors**  
7 **Board, the board may revoke, suspend or refuse to issue a license to a person if the board**  
8 **finds that the person has engaged in dishonesty by supplying any governmental entity or**  
9 **person with false information regarding the activities of a construction contracting business,**  
10 **knowing, or having reason to know, that the false information will result in any person**  
11 **evading all or part of an obligation with regard to:**

- 12 (1) **Any federal, state or local income tax laws;**  
13 (2) **Social security contributions;**  
14 (3) **Unemployment taxes;**  
15 (4) **Workers' compensation premiums;**  
16 (5) **Wage and hour laws;**  
17 (6) **Federal or state occupational safety and health laws;**  
18 (7) **Child support;**  
19 (8) **Alimony;**  
20 (9) **A judgment;**  
21 (10) **A garnishment; or**  
22 (11) **Other laws or debts identified by the board by rule.**

23 **SECTION 3. ORS 701.005 is amended to read:**

24 701.005. As used in this chapter:

- 25 (1) "Board" means the Construction Contractors Board.  
26 (2) "Commercial contractor" means a licensed contractor that holds an endorsement as a:  
27 (a) Commercial general contractor level 1;  
28 (b) Commercial specialty contractor level 1;

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

1 (c) Commercial general contractor level 2;

2 (d) Commercial specialty contractor level 2; or

3 (e) Commercial developer.

4 (3) "Commercial developer" means a developer of property that is zoned for or intended for use  
5 compatible with a small commercial or large commercial structure.

6 (4) "Construction debt" means an amount owed [*under*]:

7 (a) **Under** an order or arbitration award issued by the board that has become final by operation  
8 of law;

9 (b) **Under** a judgment, arbitration award or civil penalty that has become final by operation of  
10 law arising from construction activities within the United States; [*or*]

11 (c) **Under** a judgment or civil penalty that has become final by operation of law arising from a  
12 failure to comply with ORS 656.017[.]; **or**

13 **(d) To employees of a construction contracting business for unpaid wages.**

14 (5) "Contractor" means any of the following:

15 (a) A person that, for compensation or with the intent to sell, arranges or undertakes or offers  
16 to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect,  
17 move, wreck or demolish, for another, a building, highway, road, railroad, excavation or other  
18 structure, project, development or improvement attached to real estate, or to do any part thereof.

19 (b) A person that purchases or owns property and constructs or for compensation arranges for  
20 the construction of one or more residential structures or small commercial structures with the in-  
21 tent of selling the structures.

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

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

28 (e) A person except a landscape contracting business, nurseryman, gardener or person engaged  
29 in the commercial harvest of forest products, that is engaged as an independent contractor to re-  
30 move trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying.

31 (f) A business that supplies the services of a home inspector certified under ORS 701.350 or a  
32 cross-connection inspector and backflow assembly tester certified under ORS 448.279.

33 (g) A person that for compensation arranges, undertakes, offers to undertake or submits a bid  
34 to clean or service chimneys.

35 (6) "Developer" means a contractor that owns property or an interest in property and engages  
36 in the business of arranging for construction work or performing other activities associated with the  
37 improvement of real property, with the intent to sell the property.

38 (7)(a) "General contractor" means a contractor whose business operations require the use of  
39 more than two unrelated building trades or crafts that the contractor supervises or performs in  
40 whole or part, whenever the sum of all contracts on any single property, including materials and  
41 labor, exceeds an amount established by rule by the board.

42 (b) "General contractor" does not mean a specialty contractor or a residential limited contrac-  
43 tor.

44 (8)(a) "Home improvement" means a renovation, remodel, repair or alteration by a residential  
45 contractor to an existing owner-occupied:

- 1 (A) Residence that is a site-built home;
- 2 (B) Condominium, rental residential unit or other residential dwelling unit that is part of a  
3 larger structure, if the property interest in the unit is separate from the property interest in the  
4 larger structure;
- 5 (C) Modular home constructed off-site;
- 6 (D) Manufactured dwelling; or
- 7 (E) Floating home, as defined in ORS 830.700.
- 8 (b) "Home improvement" does not include a renovation, remodel, repair or alteration by a resi-  
9 dential contractor:
- 10 (A) To a structure that contains one or more dwelling units and is four stories or less above  
11 grade; or
- 12 (B) That the residential contractor performed in the course of constructing a new residential  
13 structure.
- 14 (9)(a) "Home inspector" means a person who, for a fee, inspects and provides written reports  
15 on the overall physical condition of a residential structure.
- 16 (b) "Home inspector" does not include persons certified under ORS chapter 455 to inspect new,  
17 repaired or altered structures for compliance with the state building code.
- 18 (10) "Key employee" means an employee or owner of a contractor who is a corporate officer,  
19 manager, superintendent, foreperson or lead person or any other employee the board identifies by  
20 rule.
- 21 (11) "Large commercial structure" means a structure that is not a residential structure or small  
22 commercial structure.
- 23 (12) "Officer" means any of the following persons:
- 24 (a) A president, vice president, secretary, treasurer or director of a corporation.
- 25 (b) A general partner in a limited partnership.
- 26 (c) A manager in a manager-managed limited liability company.
- 27 (d) A member of a member-managed limited liability company.
- 28 (e) A trustee.
- 29 (f) A person the board defines by rule as an officer. The definition of officer adopted by board  
30 rule may include persons not listed in this subsection who may exercise substantial control over a  
31 business.
- 32 (13) "Residential contractor" means a licensed contractor that holds an endorsement as a:
- 33 (a) Residential general contractor;
- 34 (b) Residential specialty contractor;
- 35 (c) Residential limited contractor; or
- 36 (d) Residential developer.
- 37 (14) "Residential developer" means a developer of property that is zoned for or intended for use  
38 compatible with a residential or small commercial structure.
- 39 (15)(a) "Residential structure" means:
- 40 (A) A residence that is a site-built home;
- 41 (B) A structure that contains one or more dwelling units and is four stories or less above grade;
- 42 (C) A condominium, rental residential unit or other residential dwelling unit that is part of a  
43 larger structure, if the property interest in the unit is separate from the property interest in the  
44 larger structure;
- 45 (D) A modular home constructed off-site;

- 1 (E) A manufactured dwelling;
- 2 (F) A floating home as defined in ORS 830.700; or
- 3 (G) An appurtenance to a home, structure, unit or dwelling described in subparagraphs (A) to
- 4 (F) of this paragraph.
- 5 (b) "Residential structure" does not mean:
- 6 (A) Subject to paragraph (a)(C) of this subsection, a structure that contains both residential and
- 7 nonresidential units;
- 8 (B) Transient lodging;
- 9 (C) A residential school or residence hall;
- 10 (D) A state or local correctional facility other than a local facility for persons enrolled in work
- 11 release programs maintained under ORS 144.460;
- 12 (E) A youth correction facility as defined in ORS 420.005;
- 13 (F) A youth care center operated by a county juvenile department under administrative control
- 14 of a juvenile court pursuant to ORS 420.855 to 420.885;
- 15 (G) A detention facility as defined in ORS 419A.004;
- 16 (H) A nursing home;
- 17 (I) A hospital; or
- 18 (J) A place constructed primarily for recreational activities.
- 19 (16) "Responsible managing individual" means an individual who:
- 20 (a) Is an owner described in ORS 701.094 or an employee of the business;
- 21 (b) Exercises management or supervisory authority, as defined by the board by rule, over the
- 22 construction activities of the business; and
- 23 (c)(A) Successfully completed the training and testing required for licensing under ORS 701.122
- 24 within a period the board identifies by rule;
- 25 (B) Demonstrated experience the board requires by rule; or
- 26 (C) Complied with the licensing requirements of ORS 446.395.
- 27 (17) "Small commercial structure" means:
- 28 (a) A nonresidential structure that has a ground area of 10,000 square feet or less, including
- 29 exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to
- 30 the highest interior overhead finish of the structure;
- 31 (b) A nonresidential leasehold, rental unit or other unit that is part of a larger structure, if the
- 32 unit has a ground area of 12,000 square feet or less, excluding exterior walls, and a height of not
- 33 more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish
- 34 of the unit;
- 35 (c) A nonresidential structure of any size for which the contract price of all construction con-
- 36 tractor work to be performed on the structure as part of a construction project does not total more
- 37 than \$250,000; or
- 38 (d) An appurtenance to a structure or unit described in paragraphs (a) to (c) of this subsection.
- 39 (18) "Specialty contractor" means a contractor who performs work on a structure, project, de-
- 40 velopment or improvement and whose operations as such do not fall within the definition of "general
- 41 contractor." "Specialty contractor" includes a person who performs work regulated under ORS
- 42 446.395.
- 43 (19) "Zero-lot-line dwelling" means a single-family dwelling unit constructed in a group of at-
- 44 tached units in which:
- 45 (a) Each attached unit extends from foundation to roof with open space on two sides; and

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

2 **SECTION 4.** ORS 701.005, as amended by section 59, chapter 630, Oregon Laws 2011, is  
3 amended to read:

4 701.005. As used in this chapter:

5 (1) "Board" means the Construction Contractors Board.

6 (2) "Commercial contractor" means a licensed contractor that holds an endorsement as a:

7 (a) Commercial general contractor level 1;

8 (b) Commercial specialty contractor level 1;

9 (c) Commercial general contractor level 2;

10 (d) Commercial specialty contractor level 2; or

11 (e) Commercial developer.

12 (3) "Commercial developer" means a developer of property that is zoned for or intended for use  
13 compatible with a small commercial or large commercial structure.

14 (4) "Construction debt" means an amount owed [*under*]:

15 (a) **Under** an order or arbitration award issued by the board that has become final by operation  
16 of law;

17 (b) **Under** a judgment or civil penalty that has become final by operation of law arising from  
18 construction activities within the United States; [*or*]

19 (c) **Under** a judgment or civil penalty that has become final by operation of law arising from a  
20 failure to comply with ORS 656.017[.]; **or**

21 **(d) To employees of a construction contracting business for unpaid wages.**

22 (5) "Contractor" means any of the following:

23 (a) A person that, for compensation or with the intent to sell, arranges or undertakes or offers  
24 to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect,  
25 move, wreck or demolish, for another, a building, highway, road, railroad, excavation or other  
26 structure, project, development or improvement attached to real estate, or to do any part thereof.

27 (b) A person that purchases or owns property and constructs or for compensation arranges for  
28 the construction of one or more residential structures or small commercial structures with the in-  
29 tent of selling the structures.

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

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

36 (e) A person except a landscape contracting business, nurseryman, gardener or person engaged  
37 in the commercial harvest of forest products, that is engaged as an independent contractor to re-  
38 move trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying.

39 (f) A business that supplies the services of a home inspector certified under ORS 701.350 or a  
40 cross-connection inspector and backflow assembly tester certified under ORS 448.279.

41 (g) A person that for compensation arranges, undertakes, offers to undertake or submits a bid  
42 to clean or service chimneys.

43 (6) "Developer" means a contractor that owns property or an interest in property and engages  
44 in the business of arranging for construction work or performing other activities associated with the  
45 improvement of real property, with the intent to sell the property.

1 (7)(a) "General contractor" means a contractor whose business operations require the use of  
2 more than two unrelated building trades or crafts that the contractor supervises or performs in  
3 whole or part, whenever the sum of all contracts on any single property, including materials and  
4 labor, exceeds an amount established by rule by the board.

5 (b) "General contractor" does not mean a specialty contractor or a residential limited contrac-  
6 tor.

7 (8)(a) "Home improvement" means a renovation, remodel, repair or alteration by a residential  
8 contractor to an existing owner-occupied:

9 (A) Residence that is a site-built home;

10 (B) Condominium, rental residential unit or other residential dwelling unit that is part of a  
11 larger structure, if the property interest in the unit is separate from the property interest in the  
12 larger structure;

13 (C) Modular home constructed off-site;

14 (D) Manufactured dwelling; or

15 (E) Floating home, as defined in ORS 830.700.

16 (b) "Home improvement" does not include a renovation, remodel, repair or alteration by a resi-  
17 dential contractor:

18 (A) To a structure that contains one or more dwelling units and is four stories or less above  
19 grade; or

20 (B) That the residential contractor performed in the course of constructing a new residential  
21 structure.

22 (9)(a) "Home inspector" means a person who, for a fee, inspects and provides written reports  
23 on the overall physical condition of a residential structure.

24 (b) "Home inspector" does not include persons certified under ORS chapter 455 to inspect new,  
25 repaired or altered structures for compliance with the state building code.

26 (10) "Key employee" means an employee or owner of a contractor who is a corporate officer,  
27 manager, superintendent, foreperson or lead person or any other employee the board identifies by  
28 rule.

29 (11) "Large commercial structure" means a structure that is not a residential structure or small  
30 commercial structure.

31 (12) "Officer" means any of the following persons:

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

33 (b) A general partner in a limited partnership.

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

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

36 (e) A trustee.

37 (f) A person the board defines by rule as an officer. The definition of officer adopted by board  
38 rule may include persons not listed in this subsection who may exercise substantial control over a  
39 business.

40 (13) "Residential contractor" means a licensed contractor that holds an endorsement as a:

41 (a) Residential general contractor;

42 (b) Residential specialty contractor;

43 (c) Residential limited contractor; or

44 (d) Residential developer.

45 (14) "Residential developer" means a developer of property that is zoned for or intended for use

1 compatible with a residential or small commercial structure.

2 (15)(a) "Residential structure" means:

3 (A) A residence that is a site-built home;

4 (B) A structure that contains one or more dwelling units and is four stories or less above grade;

5 (C) A condominium, rental residential unit or other residential dwelling unit that is part of a  
6 larger structure, if the property interest in the unit is separate from the property interest in the  
7 larger structure;

8 (D) A modular home constructed off-site;

9 (E) A manufactured dwelling;

10 (F) A floating home as defined in ORS 830.700; or

11 (G) An appurtenance to a home, structure, unit or dwelling described in subparagraphs (A) to  
12 (F) of this paragraph.

13 (b) "Residential structure" does not mean:

14 (A) Subject to paragraph (a)(C) of this subsection, a structure that contains both residential and  
15 nonresidential units;

16 (B) Transient lodging;

17 (C) A residential school or residence hall;

18 (D) A state or local correctional facility other than a local facility for persons enrolled in work  
19 release programs maintained under ORS 144.460;

20 (E) A youth correction facility as defined in ORS 420.005;

21 (F) A youth care center operated by a county juvenile department under administrative control  
22 of a juvenile court pursuant to ORS 420.855 to 420.885;

23 (G) A detention facility as defined in ORS 419A.004;

24 (H) A nursing home;

25 (I) A hospital; or

26 (J) A place constructed primarily for recreational activities.

27 (16) "Responsible managing individual" means an individual who:

28 (a) Is an owner described in ORS 701.094 or an employee of the business;

29 (b) Exercises management or supervisory authority, as defined by the board by rule, over the  
30 construction activities of the business; and

31 (c)(A) Successfully completed the training and testing required for licensing under ORS 701.122  
32 within a period the board identifies by rule;

33 (B) Demonstrated experience the board requires by rule; or

34 (C) Complied with the licensing requirements of ORS 446.395.

35 (17) "Small commercial structure" means:

36 (a) A nonresidential structure that has a ground area of 10,000 square feet or less, including  
37 exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to  
38 the highest interior overhead finish of the structure;

39 (b) A nonresidential leasehold, rental unit or other unit that is part of a larger structure, if the  
40 unit has a ground area of 12,000 square feet or less, excluding exterior walls, and a height of not  
41 more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish  
42 of the unit;

43 (c) A nonresidential structure of any size for which the contract price of all construction con-  
44 tractor work to be performed on the structure as part of a construction project does not total more  
45 than \$250,000; or

1 (d) An appurtenance to a structure or unit described in paragraphs (a) to (c) of this subsection.

2 (18) "Specialty contractor" means a contractor who performs work on a structure, project, de-  
3 velopment or improvement and whose operations as such do not fall within the definition of "general  
4 contractor." "Specialty contractor" includes a person who performs work regulated under ORS  
5 446.395.

6 (19) "Zero-lot-line dwelling" means a single-family dwelling unit constructed in a group of at-  
7 tached units in which:

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

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

10 **SECTION 5.** ORS 701.131 is amended to read:

11 701.131. (1) Except as provided in subsection (2) of this section, a contractor may not perfect a  
12 construction lien, file a complaint with the Construction Contractors Board or commence an arbi-  
13 tration or a [*court action*] **claim in a court of this state** for compensation for the performance of  
14 any work or for the breach of any contract for work that is subject to this chapter, unless the  
15 contractor had a valid license issued by the board and properly endorsed for the work performed:

16 (a) At the time the contractor bid or entered into the contract for performance of the work; and

17 (b) Continuously while performing the work for which compensation is sought.

18 (2) The board, arbitrator or court may not apply the provisions of subsection (1) of this section  
19 to a contractor if the board, arbitrator or court determines that:

20 (a) The contractor either did not have a valid license with a proper endorsement at any time  
21 required under subsection (1) of this section, or had an initial issuance of a valid license, and:

22 (A) The contractor was not aware of the requirement that the contractor be licensed or properly  
23 endorsed for the work performed, and the contractor submitted a completed application for a license  
24 within a number of days established by the board, but not more than 90 days, of the date the con-  
25 tractor became aware of the requirement;

26 (B) At the time the contractor perfected a construction lien or commenced any [*proceeding*]  
27 **claim** subject to the provisions of subsection (1) of this section, the contractor was licensed by the  
28 board and properly endorsed for the work performed; and

29 (C) Enforcement of the provisions of subsection (1) of this section would result in substantial  
30 injustice to the contractor;

31 (b) The contractor was licensed by the board for some but not all of the times required under  
32 subsection (1) of this section and had a lapse in the license and:

33 (A) The contractor was not aware of the lapse in the license for more than a number of days  
34 established by the board, but not to exceed 90 days, before submitting a completed application for  
35 license renewal with the board;

36 (B) Except for perfection of a construction lien and a court action to foreclose the lien, at the  
37 time the contractor commenced any [*proceeding*] **claim** subject to the provisions of subsection (1)  
38 of this section the contractor's license was renewed under ORS 701.063 to include the entire time  
39 period for which a license was required under subsection (1) of this section; and

40 (C) For perfection of a construction lien and a court action to foreclose the lien, the contractor's  
41 license was renewed under ORS 701.063 for the entire time period for which a license was required  
42 under subsection (1) of this section, but not later than 90 days following perfection of the lien; or

43 (c) The proceeding:

44 (A) Is directed against a person or entity that:

45 (i) Is subject to this chapter or ORS chapter 671 or 672;



- 1 (ii) Provides construction or design labor or services of any kind; or  
2 (iii) Manufactures, distributes, rents or otherwise provides materials, supplies, equipment, sys-  
3 tems or products; and  
4 (B) Arises out of defects, deficiencies or inadequate performance in the construction, design,  
5 labor, services, materials, supplies, equipment, systems or products provided.  
6 (3) A contractor that falsely swears to information submitted to the board under ORS 701.046  
7 or submitted in a registration of securities described in ORS 701.046 (2), or that knowingly violates  
8 the provisions of ORS 656.029, 670.600 or 701.046, may not perfect a construction lien, file a com-  
9 plaint with the board or commence an arbitration or a [*court action*] **claim in a court of this state**  
10 for compensation for the performance of any work on a residential structure or for the breach of  
11 any contract for work on a residential structure that is subject to this chapter.

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