

HOUSE AMENDMENTS TO A-ENGROSSED SENATE BILL 207

By COMMITTEE ON BUSINESS AND LABOR

May 15

1 On page 1 of the printed A-engrossed bill, line 3, after “701.021,” insert “701.035,” and after
2 “701.081” insert “, 701.098”.

3 On page 3, line 37, delete “and 5” and insert “, 5 and 5a”.

4 On page 4, after line 18, insert:

5 **“SECTION 5a. (1) As used in this section, ‘home’ and ‘home service agreement’ have the**
6 **meanings given those terms in ORS 731.164.**

7 **“(2) A home services contractor license authorizes the holder to operate a business pro-**
8 **viding service, repair or replacement for homes through a licensed contractor under a home**
9 **service agreement.**

10 **“(3) Notwithstanding ORS 701.126, the Construction Contractors Board may not impose**
11 **a continuing education requirement for a home services contractor.**

12 **“(4) Notwithstanding ORS 701.122, the board may not require a home services contractor**
13 **to take a test measuring the knowledge of the contractor or responsible managing individual**
14 **regarding business practices and laws affecting construction contractors.”.**

15 On page 6, line 14, delete “or”.

16 In line 15, delete the period and insert “; or

17 “(g) Home services contractor.”.

18 On page 7, after line 21, insert:

19 **“(19) ‘Worker leasing company’ means a person licensed under ORS 656.850 (2) to perform the**
20 **service of providing nontemporary workers by contract and for a fee to work for a client.”.**

21 In line 22, delete “(19)” and insert “(20)”.

22 On page 9, line 22, delete “or”.

23 In line 23, delete the period and insert “; or

24 “(g) Home services contractor.”.

25 On page 10, after line 29, insert:

26 **“(19) ‘Worker leasing company’ means a person licensed under ORS 656.850 (2) to perform the**
27 **service of providing nontemporary workers by contract and for a fee to work for a client.”.**

28 In line 30, delete “(19)” and insert “(20)”.

29 On page 11, after line 5, insert:

30 “(g) Home services contractor.”.

31 On page 12, after line 12, insert:

32 **“(7) A home services contractor shall:**

33 **“(a) Obtain a surety bond under ORS 701.068 in the amount of \$10,000; and**

34 **“(b) Obtain general liability insurance under ORS 701.073 in an amount of not less than \$100,000.**

35 **“SECTION 10. ORS 701.035 is amended to read:**

1 “701.035. (1) An applicant must qualify as an independent contractor under ORS 670.600 to be
2 eligible for a license with the Construction Contractors Board.

3 “(2) The board shall establish two classes of independent contractor:

4 “(a) The nonexempt class is composed of the following entities:

5 “(A) Sole proprietorships, partnerships, corporations[,] **and** limited liability companies:

6 “(i) With one or more employees; [*and*] **or**

7 “(ii) **That utilize one or more workers supplied by a worker leasing company.**

8 “(B) Partnerships, corporations and limited liability companies with more than two partners,
9 corporate officers or members, if any of the partners, corporate officers or members are not part of
10 the same family and related as parents, spouses, sisters, brothers, daughters or sons, daughters-in-
11 law or sons-in-law or grandchildren.

12 “(b) The exempt class is composed of all sole proprietorships, partnerships, corporations and
13 limited liability companies that do not qualify as nonexempt.

14 “(3) If a person who is licensed as exempt under subsection (2)(b) of this section hires one or
15 more employees, **utilizes one or more workers supplied by a worker leasing company** or falls
16 into any of the categories set out in subsection (2)(a)(B) of this section, the person is subject to
17 penalties under ORS 701.992 for improper licensing. If a person who is licensed as exempt under
18 subsection (2)(b) of this section hires one or more employees, **or utilizes one or more workers**
19 **supplied by a worker leasing company**, the person is also subject to licensing sanctions under
20 ORS 701.098. The person must reapply to the board in the correct class.

21 “(4) The decision of the board that a person is an independent contractor applies only when the
22 person is performing work of the nature described in ORS 701.021.

23 “(5) A person that is within the exempt class described in subsection (2)(b) of this section and
24 is licensed as a commercial contractor shall procure and maintain workers’ compensation insurance
25 as authorized by ORS 656.128.

26 “**SECTION 11.** ORS 701.098 is amended to read:

27 “701.098. (1) The Construction Contractors Board may revoke, suspend or refuse to issue or re-
28 issue a license and the board may assess a civil penalty as provided in ORS 701.992 if the board
29 determines after notice and opportunity for hearing:

30 “(a) That the licensee or applicant has violated a provision of this chapter.

31 “(b) That the licensee has violated a rule or order of the board.

32 “(c) That the licensee has knowingly assisted an unlicensed person to act in violation of this
33 chapter.

34 “(d) That the licensee has knowingly assisted a licensed contractor to perform work for which
35 the contractor is not properly endorsed.

36 “(e) That a lien was filed on a structure under ORS 87.010 to 87.060 and 87.075 to 87.093 because
37 the licensee or applicant wrongfully failed to perform a contractual duty to pay money to the person
38 claiming the lien.

39 “(f) That the licensee has knowingly provided false information to the board.

40 “(g) That the licensee has worked without a construction permit where a permit is required and
41 the work resulted in a complaint being filed with the board under ORS 701.139. For purposes of this
42 paragraph, ‘construction permit’ includes a building permit, electrical permit, mechanical permit or
43 plumbing permit.

44 “(h) That the number of licensed contractors working together on the same task on the same job
45 site, where one of the contractors is classed as exempt under ORS 701.035 (2)(b), exceeded the fol-

1 lowing:

2 “(A) Two sole proprietors;

3 “(B) One partnership;

4 “(C) One corporation; or

5 “(D) One limited liability company.

6 “(i) Consistent with the provisions of ORS 670.280, that the licensee or applicant, or an owner

7 or officer of the licensee or applicant has been convicted of one of the following crimes in this state

8 or an equivalent crime in another state:

9 “(A) Murder;

10 “(B) Assault in the first degree;

11 “(C) Kidnapping;

12 “(D) Rape, sodomy or unlawful sexual penetration;

13 “(E) Sexual abuse;

14 “(F) Arson in the first degree;

15 “(G) Robbery in the first degree;

16 “(H) Theft in the first degree; or

17 “(I) Theft by extortion.

18 “(j) That the licensee or applicant has not, within 90 days after the date when payment was

19 received from the public contracting agency, or contractor in the case of a subcontractor, made

20 payment to any person for supplying labor or materials contracted for with a public contract for a

21 public improvement plus the amount of interest due.

22 “(k) That the licensee or applicant has repeatedly reported bad faith or false complaints of

23 nonpayment against contractors or subcontractors.

24 “(L) That the licensee or applicant has engaged in conduct as a contractor that is dishonest or

25 fraudulent and that the board finds injurious to the welfare of the public.

26 “(m) That the contractor has hired employees while licensed as exempt under ORS 701.035.

27 “(n) **That the contractor has utilized one or more workers supplied by a worker leasing**

28 **company while licensed as exempt under ORS 701.035;**

29 “(2) The board may revoke, suspend or refuse to issue or reissue a license if the board deter-

30 mines after notice and opportunity for hearing that an applicant or licensee is unfit for licensure

31 based upon information submitted to the board under ORS 701.046, submitted in a registration of

32 securities described in ORS 701.046 (2) or discovered by a board investigation under ORS 701.225.

33 “(3) The board may assess a civil penalty as provided in ORS 701.992 if the board determines

34 after notice and opportunity for hearing that any person has violated ORS 701.021.

35 “(4)(a) The administrator of the board, in accordance with administrative rules adopted by the

36 board and after setting forth specific reasons for the findings, may suspend or refuse to renew a li-

37 cense without hearing in any case where the administrator finds a serious danger to the public

38 welfare, including but not limited to:

39 “(A) Lack of a surety bond required by ORS 701.068;

40 “(B) Lack of liability insurance required by ORS 701.073;

41 “(C) Hiring employees while classed as exempt under ORS 701.035;

42 “(D) **Utilizing one or more workers supplied by a worker leasing company while classed**

43 **as exempt under ORS 701.035;**

44 “[(D)] (E) Conduct as a construction contractor that is dishonest or fraudulent; or

45 “[(E)] (F) Failure to pay a construction debt.

1 “(b) If the licensee or applicant demands a hearing within 90 days after the date of notice to the
2 licensee or applicant of the suspension or refusal to renew, then a hearing must be granted to the
3 licensee or applicant as soon as practicable after the demand, and the administrator shall issue,
4 pursuant to the hearing as required by ORS chapter 183, an order confirming, altering or revoking
5 the administrator’s earlier order. Notwithstanding ORS 670.325, a hearing need not be held where
6 the order of suspension or refusal to renew is accompanied by or is pursuant to a citation for vio-
7 lation that is subject to judicial determination in any court of this state, and the order by its terms
8 will terminate in case of final judgment in favor of the licensee or applicant.

9 “(5)(a) In addition to all other remedies, if the board has reason to believe that a person is en-
10 gaging in an act, practice or transaction that violates this chapter or a board rule, the board may
11 issue an order directing the person to cease the act or to take corrective action.

12 “(b) The board shall mail a copy of an order issued under this subsection to the person by first
13 class mail with certificate of mailing. The board shall include with the order a notice informing the
14 person of the right to request a hearing concerning the order. The notice shall inform the person
15 that any hearing request must be received by the board no later than 21 days after the date the
16 order was mailed by the board.

17 “(c) If the board receives a timely request for a hearing concerning an order issued under this
18 subsection, the board shall schedule the hearing no later than 30 days after receiving the request.
19 The board shall mail written notice of the hearing to the person by first class mail with certificate
20 of mailing no later than seven days before the scheduled hearing date.

21 “(d) An order described in this subsection becomes final if the person does not file a timely re-
22 quest for a hearing concerning the order or fails to appear at the requested hearing as scheduled.

23 “(e) The issuance of a board order under this subsection is subject to ORS 183.413 to 183.497.

24 “(6) In addition to all other remedies, if it appears to the board that a person has engaged in,
25 or is engaging in, any act, practice or transaction that violates the provisions of this chapter, the
26 board may direct the Attorney General or the district attorney of the county in which the act,
27 practice or transaction occurs, to apply to the court for an injunction restraining the person from
28 violating the provisions of this chapter. An injunction may not issue for failure to maintain the list
29 provided for in ORS 701.345, unless the court determines that the failure is intentional.

30 “(7) A certified copy of the record of conviction shall be conclusive evidence of a conviction
31 under subsection (1)(i) of this section.

32 “(8) If the board suspends or revokes the license of an individual contractor or contractor
33 business for a violation of subsection (1)(h) of this section, the board may not restore or reissue the
34 license unless the individual contractor or a responsible managing individual for the contractor
35 business has successfully completed the training and testing described in ORS 701.122.”.

36 In line 13, delete “10” and insert “12”.

37 After line 15, insert:

38 “**SECTION 13. The amendments to ORS 701.035 and 701.098 by sections 10 and 11 of this**
39 **2013 Act apply to the utilization of workers that are supplied by a worker leasing company**
40 **90 or more days after the effective date of this 2013 Act.”.**