

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 207**

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

3 On page 12, after line 12, insert:

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

5 “701.035. (1) An applicant must qualify as an independent contractor un-
6 der ORS 670.600 to be eligible for a license with the Construction Contrac-
7 tors Board.

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

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

10 “(A) Sole proprietorships, partnerships, corporations[,] **and** limited liabil-
11 ity companies:

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

13 **“(ii) That utilize one or more workers supplied by a worker leasing**
14 **company as defined in ORS 656.850.**

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

20 “(b) The exempt class is composed of all sole proprietorships, partner-
21 ships, corporations and limited liability companies that do not qualify as
22 nonexempt.

1 “(3) If a person who is licensed as exempt under subsection (2)(b) of this
2 section hires one or more employees, **utilizes one or more workers sup-**
3 **plied by a worker leasing company** or falls into any of the categories set
4 out in subsection (2)(a)(B) of this section, the person is subject to penalties
5 under ORS 701.992 for improper licensing. If a person who is licensed as ex-
6 empt under subsection (2)(b) of this section hires one or more employees, **or**
7 **utilizes one or more workers supplied by a worker leasing company**, the
8 person is also subject to licensing sanctions under ORS 701.098. The person
9 must reapply to the board in the correct class.

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

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

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

17 “701.098. (1) The Construction Contractors Board may revoke, suspend or
18 refuse to issue or reissue a license and the board may assess a civil penalty
19 as provided in ORS 701.992 if the board determines after notice and oppor-
20 tunity for hearing:

21 “(a) That the licensee or applicant has violated a provision of this chap-
22 ter.

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

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

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

28 “(e) That a lien was filed on a structure under ORS 87.010 to 87.060 and
29 87.075 to 87.093 because the licensee or applicant wrongfully failed to per-
30 form a contractual duty to pay money to the person claiming the lien.

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

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

8 “(h) That the number of licensed contractors working together on the
9 same task on the same job site, where one of the contractors is classed as
10 exempt under ORS 701.035 (2)(b), exceeded the following:

11 “(A) Two sole proprietors;

12 “(B) One partnership;

13 “(C) One corporation; or

14 “(D) One limited liability company.

15 “(i) Consistent with the provisions of ORS 670.280, that the licensee or
16 applicant, or an owner or officer of the licensee or applicant has been con-
17 victed of one of the following crimes in this state or an equivalent crime in
18 another state:

19 “(A) Murder;

20 “(B) Assault in the first degree;

21 “(C) Kidnapping;

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

23 “(E) Sexual abuse;

24 “(F) Arson in the first degree;

25 “(G) Robbery in the first degree;

26 “(H) Theft in the first degree; or

27 “(I) Theft by extortion.

28 “(j) That the licensee or applicant has not, within 90 days after the date
29 when payment was received from the public contracting agency, or contrac-
30 tor in the case of a subcontractor, made payment to any person for supplying

1 labor or materials contracted for with a public contract for a public im-
2 provement plus the amount of interest due.

3 “(k) That the licensee or applicant has repeatedly reported bad faith or
4 false complaints of nonpayment against contractors or subcontractors.

5 “(L) That the licensee or applicant has engaged in conduct as a contractor
6 that is dishonest or fraudulent and that the board finds injurious to the
7 welfare of the public.

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

10 “(n) **That the contractor has utilized one or more workers supplied**
11 **by a worker leasing company, as defined in ORS 656.850, while licensed**
12 **as exempt under ORS 701.035;**

13 “(2) The board may revoke, suspend or refuse to issue or reissue a license
14 if the board determines after notice and opportunity for hearing that an ap-
15 plicant or licensee is unfit for licensure based upon information submitted
16 to the board under ORS 701.046, submitted in a registration of securities
17 described in ORS 701.046 (2) or discovered by a board investigation under
18 ORS 701.225.

19 “(3) The board may assess a civil penalty as provided in ORS 701.992 if
20 the board determines after notice and opportunity for hearing that any per-
21 son has violated ORS 701.021.

22 “(4)(a) The administrator of the board, in accordance with administrative
23 rules adopted by the board and after setting forth specific reasons for the
24 findings, may suspend or refuse to renew a license without hearing in any
25 case where the administrator finds a serious danger to the public welfare,
26 including but not limited to:

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

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

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

30 “(D) **Utilizing one or more workers supplied by a worker leasing**

1 **company while classed as exempt under ORS 701.035;**

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

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

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

16 “(5)(a) In addition to all other remedies, if the board has reason to believe
17 that a person is engaging in an act, practice or transaction that violates this
18 chapter or a board rule, the board may issue an order directing the person
19 to cease the act or to take corrective action.

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

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

1 “(d) An order described in this subsection becomes final if the person does
2 not file a timely request for a hearing concerning the order or fails to appear
3 at the requested hearing as scheduled.

4 “(e) The issuance of a board order under this subsection is subject to ORS
5 183.413 to 183.497.

6 “(6) In addition to all other remedies, if it appears to the board that a
7 person has engaged in, or is engaging in, any act, practice or transaction
8 that violates the provisions of this chapter, the board may direct the Attor-
9 ney General or the district attorney of the county in which the act, practice
10 or transaction occurs, to apply to the court for an injunction restraining the
11 person from violating the provisions of this chapter. An injunction may not
12 issue for failure to maintain the list provided for in ORS 701.345, unless the
13 court determines that the failure is intentional.

14 “(7) A certified copy of the record of conviction shall be conclusive evi-
15 dence of a conviction under subsection (1)(i) of this section.

16 “(8) If the board suspends or revokes the license of an individual con-
17 tractor or contractor business for a violation of subsection (1)(h) of this
18 section, the board may not restore or reissue the license unless the individ-
19 ual contractor or a responsible managing individual for the contractor busi-
20 ness has successfully completed the training and testing described in ORS
21 701.122.”.

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

23 After line 15, insert:

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

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