

**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 7, after line 21, insert:

4 “(19) ‘Worker leasing company’ means a person licensed under ORS
5 656.850 (2) to perform the service of providing nontemporary workers by
6 contract and for a fee to work for a client.”.

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

8 On page 10, after line 29, insert:

9 “(19) ‘Worker leasing company’ means a person licensed under ORS
10 656.850 (2) to perform the service of providing nontemporary workers by
11 contract and for a fee to work for a client.”.

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

13 On page 12, after line 12, insert:

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

15 “701.035. (1) An applicant must qualify as an independent contractor un-
16 der ORS 670.600 to be eligible for a license with the Construction Contrac-
17 tors Board.

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

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

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

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

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

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

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

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

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

23 “(5) A person that is within the exempt class described in subsection (2)(b)
24 of this section and is licensed as a commercial contractor shall procure and
25 maintain workers’ compensation insurance 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
28 refuse to issue or reissue a license and the board may assess a civil penalty
29 as provided in ORS 701.992 if the board determines after notice and oppor-
30 tunity for hearing:

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

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

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

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

8 “(e) That a lien was filed on a structure under ORS 87.010 to 87.060 and
9 87.075 to 87.093 because the licensee or applicant wrongfully failed to per-
10 form a contractual duty to pay money to the person claiming the lien.

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

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

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

21 “(A) Two sole proprietors;

22 “(B) One partnership;

23 “(C) One corporation; or

24 “(D) One limited liability company.

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

29 “(A) Murder;

30 “(B) Assault in the first degree;

1 “(C) Kidnapping;

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

3 “(E) Sexual abuse;

4 “(F) Arson in the first degree;

5 “(G) Robbery in the first degree;

6 “(H) Theft in the first degree; or

7 “(I) Theft by extortion.

8 “(j) That the licensee or applicant has not, within 90 days after the date
9 when payment was received from the public contracting agency, or contrac-
10 tor in the case of a subcontractor, made payment to any person for supplying
11 labor or materials contracted for with a public contract for a public im-
12 provement plus the amount of interest due.

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

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

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

20 “(n) **That the contractor has utilized one or more workers supplied**
21 **by a worker leasing company while licensed as exempt under ORS**
22 **701.035;**

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

29 “(3) The board may assess a civil penalty as provided in ORS 701.992 if
30 the board determines after notice and opportunity for hearing that any per-

1 son has violated ORS 701.021.

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

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

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

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

10 “**(D) Utilizing one or more workers supplied by a worker leasing**
11 **company while classed as exempt under ORS 701.035;**

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

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

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

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

30 “(b) The board shall mail a copy of an order issued under this subsection

1 to the person by first class mail with certificate of mailing. The board shall
2 include with the order a notice informing the person of the right to request
3 a hearing concerning the order. The notice shall inform the person that any
4 hearing request must be received by the board no later than 21 days after
5 the date the order was mailed by the board.

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

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

14 “(e) The issuance of a board order under this subsection is subject to ORS
15 183.413 to 183.497.

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

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

26 “(8) If the board suspends or revokes the license of an individual con-
27 tractor or contractor business for a violation of subsection (1)(h) of this
28 section, the board may not restore or reissue the license unless the individ-
29 ual contractor or a responsible managing individual for the contractor busi-
30 ness has successfully completed the training and testing described in ORS

1 701.122.”.

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

3 After line 15, insert:

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

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