

Enrolled
House Bill 4121

Sponsored by Representative HOLVEY (at the request of Construction Contractors Board) (Presession filed.)

CHAPTER

AN ACT

Relating to the Construction Contractors Board process for contested cases; amending ORS 701.005, 701.068, 701.088, 701.117, 701.133, 701.139, 701.140, 701.145, 701.146, 701.149, 701.150, 701.153, 701.180 and 701.235; and repealing ORS 87.059 and 701.144 and section 73, chapter 630, Oregon Laws 2011.

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

SECTION 1. ORS 701.005, as amended by section 59, chapter 630, Oregon Laws 2011, section 7, chapter 130, Oregon Laws 2013, section 4, chapter 251, Oregon Laws 2013, section 7, chapter 300, Oregon Laws 2013, section 9, chapter 383, Oregon Laws 2013, and section 4, chapter 498, Oregon Laws 2015, is amended to read:

701.005. As used in this chapter:

- (1) "Board" means the Construction Contractors Board.
- (2) "Commercial contractor" means a licensed contractor that holds an endorsement as a:
 - (a) Commercial general contractor level 1;
 - (b) Commercial specialty contractor level 1;
 - (c) Commercial general contractor level 2;
 - (d) Commercial specialty contractor level 2; or
 - (e) Commercial developer.
- (3) "Commercial developer" means a developer of property that is zoned for or intended for use compatible with a small commercial or large commercial structure.
- (4) "Construction debt" means an amount owed:
 - (a) Under an order or arbitration award issued by the board that has become final by operation of law;
 - (b) Under a judgment, **arbitration award** or civil penalty that has become final by operation of law arising from construction activities within the United States;
 - (c) Under a judgment or civil penalty that has become final by operation of law arising from a failure to comply with ORS 656.017; or
 - (d) To employees of a construction contracting business for unpaid wages.
- (5) "Contractor" means any of the following:
 - (a) A person that, 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, a building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate, or to do any part thereof.

(b) A person that 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.

(c) 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.

(d) 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.

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

(f) A business that supplies the services of a home inspector certified under ORS 701.445 or a cross-connection inspector and backflow assembly tester certified under ORS 448.279.

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

(h) A person that arranges for, undertakes, offers to undertake or submits a bid for the performance of restoration work as defined in ORS 701.540.

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

(7)(a) "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.

(b) "General contractor" does not mean a specialty contractor or a residential limited contractor.

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

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

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

(C) Modular home constructed off-site;

(D) Manufactured dwelling; or

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

(b) "Home improvement" does not include a renovation, remodel, repair or alteration by a residential contractor:

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

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

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

(b) "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.

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

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

(12) "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 the board defines by rule as an officer. The definition of officer adopted by board rule may include persons not listed in this subsection who may exercise substantial control over a business.

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

- (a) Residential general contractor;
- (b) Residential specialty contractor;
- (c) Residential limited contractor;
- (d) Residential developer;
- (e) Residential locksmith services contractor;
- (f) Residential restoration contractor;
- (g) Home inspector services contractor;
- (h) Home services contractor; or
- (i) Home energy performance score contractor.

(14) "Residential developer" means a developer of property that is zoned for or intended for use compatible with a residential or small commercial structure.

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

- (A) A residence that is a site-built home;
- (B) A structure that contains one or more dwelling units and is four stories or less above grade;
- (C) A condominium, rental residential unit or other residential dwelling unit that is part of a larger structure, if the property interest in the unit is separate from the property interest in the larger structure;
- (D) A modular home constructed off-site;
- (E) A manufactured dwelling;
- (F) A floating home as defined in ORS 830.700; or
- (G) An appurtenance to a home, structure, unit or dwelling described in subparagraphs (A) to (F) of this paragraph.

(b) "Residential structure" does not mean:

- (A) Subject to paragraph (a)(C) of this subsection, a structure that contains both residential and nonresidential units;
- (B) Transient lodging;
- (C) A residential school or residence hall;
- (D) A state or local correctional facility;
- (E) A youth correction facility as defined in ORS 420.005;
- (F) A youth care center operated by a county juvenile department under administrative control of a juvenile court pursuant to ORS 420.855 to 420.885;
- (G) A detention facility as defined in ORS 419A.004;
- (H) A nursing home;
- (I) A hospital; or
- (J) A place constructed primarily for recreational activities.

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

- (a) Is an owner described in ORS 701.094 or an employee of the business;
- (b) Exercises management or supervisory authority, as defined by the board by rule, over the construction activities of the business; and
- (c)(A) Successfully completed the training and testing required for licensing under ORS 701.122 within a period the board identifies by rule;
- (B) Demonstrated experience the board requires by rule; or
- (C) Complied with the licensing requirements of ORS 446.395.

(17) "Small commercial structure" means:

(a) A nonresidential structure that has a ground area of 10,000 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;

(b) A nonresidential leasehold, rental unit or other unit that is part of a larger structure, if the unit has a ground area of 12,000 square feet or less, excluding 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 unit;

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

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

(18) "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 446.395.

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

(20) "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 2. ORS 701.068, as amended by section 60, chapter 630, Oregon Laws 2011, is amended to read:

701.068. (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 ORS 701.081 or 701.084.

(2) If an applicant for issuance, renewal or an additional endorsement of a license will hold endorsements as both a residential contractor and a commercial contractor, the applicant shall file with the board a surety bond for each endorsement in the amount set forth in ORS 701.081 or 701.084.

(3) The surety bond for a residential contractor must provide that the applicant, with regard to work subject to this chapter, will pay amounts [*ordered paid*] **determined** by the board **as provided** under ORS 701.145. The surety bond for a commercial contractor must provide that the applicant, with regard to work subject to this chapter, will pay amounts [*ordered paid*] **determined** by the board **as provided** under ORS 701.146. Bonds filed under this section shall remain in effect for at least one year or until depleted by payments under ORS 701.150, 701.153 and 701.157, 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 (4) of this section, the aggregate liability of the surety under the bond for complaints against the contractor may not exceed the penal sum of the bond no matter how many years the bond is in force. Except as provided in subsection (4) of this section, an extension by continuation certificate, reinstatement, reissue or renewal of the bond may not increase the liability of the surety.

(4) The board, by rule, may require a licensee to obtain a new surety bond if, pursuant to a board [*order for payment of a complaint described in ORS 701.140*] **determination issued under ORS 701.145 or 701.146**, the surety pays an amount out of the bond of the licensee. The new surety bond must be in the applicable amount set forth in ORS 701.081 or 701.084 unless a higher amount is required by a board condition or rule described in subsection (5) or (6) 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 complaint.

(5) If the amount the licensee must pay against the bond under subsection (3) of 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 ORS 701.081 or 701.084.

(6) 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 ORS 701.081 or 701.084. 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.

[(7) 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.]

[(8) Upon determination under ORS 701.145 or 701.146 of a complaint 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 complaints upon which a final order has been issued.]

(7) The bond required under this section is for the exclusive purpose of payment of amounts for which the board has determined the surety to have responsibility.

(8) Upon issuance of a determination under ORS 701.145 or 701.146 for a complaint against a contractor who holds a bond required under this section, the board shall notify the surety on the bond of the determination in a manner determined by the board by rule. The notification shall include a list of all board determinations for payment by the surety from the bond.

(9) A court 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 *[final order]* **determination**.

(10) In any action against a surety on a bond under this section that is based on the failure of the surety to pay *[a final order]* **an amount determined by the board**, 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 complaint, if the surety arbitrarily and capriciously refused to pay upon order of the board.]

(c) Twice the amount that the board determined the surety must pay on the complaint, if the surety arbitrarily and capriciously refused to pay.

SECTION 3. ORS 701.088, as amended by section 61, chapter 630, Oregon Laws 2011, is amended to read:

701.088. (1) As used in this section:

(a) "Illegal drug manufacturing site" has the meaning given that term in ORS 453.858.

(b) "Nonprofit organization" means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(2) The Construction Contractors Board shall adopt rules prescribing terms and conditions under which a general or specialty contractor that is a nonprofit organization engaged in rehabilitating an illegal drug manufacturing site may substitute a letter of credit from a bank authorized to do business in this state, or substitute a cash deposit, for a bond required under ORS 701.068. A letter of credit or cash deposit described in this section substitutes for a bond only for purposes of work the contractor performs on an illegal drug manufacturing site. The letter of credit or cash deposit must be equivalent in amount to the bond that would otherwise be required of the contractor under ORS 701.068.

(3) The board may charge a contractor a fee to cover any expense incurred by the board in allowing the contractor to substitute a letter of credit or cash deposit under this section.

(4) A contractor that supplies a letter of credit or cash deposit under this section is considered to be bonded under ORS 701.068 for purposes of performing rehabilitation work on illegal drug

manufacturing sites. A letter of credit or cash deposit that a contractor supplies under this section is considered to be a surety bond issued under ORS 701.068 for purposes of claims involving the contractor's rehabilitation work on illegal drug manufacturing sites. The issuer of a letter of credit described in this section is considered to be a surety for a bond only for purposes of receiving [notice] **notification of a determination** under ORS 701.068 or 701.146.

SECTION 4. ORS 701.117, as amended by section 62, chapter 630, Oregon Laws 2011, is amended to read:

701.117. A contractor shall notify the Construction Contractors Board of any change of address while licensed and for one year following the date the contractor's license expires or otherwise becomes inactive. The contractor shall so notify the board within 10 days of the date upon which the change of address occurs. Initial notice of a contested case [or arbitration] directed by the board to the last-known address of record shall be considered delivered when deposited in the United States mail and sent registered or certified or post office receipt secured. Any other communication directed by the board to the last-known address of record shall be considered delivered when deposited in the United States mail, regular mail.

SECTION 5. ORS 701.133, as amended by section 63, chapter 630, Oregon Laws 2011, is amended to read:

701.133. (1) Unless otherwise provided by the Construction Contractors Board by rule, before filing a complaint under ORS 701.139, a person must send notice to the contractor that the person intends to file the complaint. The person must send the notice at least 30 days before filing the complaint. The notice must be mailed by certified mail to the last known address of the contractor as shown in board records. The board by rule may:

(a) Specify the manner in which the person may show compliance with this subsection at the time of filing the complaint.

(b) Provide that all or part of the requirements for sending a notice under this subsection may be waived if the contractor, by other means, has actual notice of the dispute with the person filing the complaint.

(2) If the notice described in subsection (1) of this section is mailed to the contractor fewer than 45 days before expiration of the time limitation under ORS 701.143 for the board to receive the complaint, the time limitation for the board to receive the complaint does not expire until 60 days after the notice is mailed.

(3) The board by rule may impose a processing fee for complaints filed under ORS 701.139. The fee amount may not exceed \$100. The board may impose different processing fees for complaints processed under ORS 701.145 than for complaints processed under ORS 701.146.

(4) If the board adopts rules under subsection (3) of this section, the rules:

(a) Except as provided in paragraphs (b) and (c) of this subsection, must provide that a prevailing complainant recover processing fees [as damages in the final order of the board].

(b) Must provide that the board may waive or defer all or part of the processing fee upon application by the person filing the complaint that shows the person is unable to pay all or part of the fee. The application must be made under oath and notarized. The application must show the average monthly income and expenses of the complainant, assets and liabilities of the complainant and any other information required by board rule.

(c) May provide for the processing fee to be waived for all complaints that are based on the furnishing of labor by a complainant to a contractor. The board may provide for processing fee waiver under this paragraph only if, in the opinion of the board, a majority of complainants who file complaints based on the furnishing of labor to contractors are eligible for fee waivers as described in paragraph (b) of this subsection.

SECTION 6. ORS 701.139, as amended by section 64, chapter 630, Oregon Laws 2011, is amended to read:

701.139. The Construction Contractors Board may determine the validity of a complaint described in ORS 701.140 filed against a licensed contractor. A person must file the complaint within

the applicable time limitation described in ORS 701.143. The complaint must be filed and resolved as follows:

(1) A complaint against a residential contractor that is not also endorsed as a commercial contractor involving work on a residential or small commercial structure must be resolved as provided in ORS 701.145.

(2) A complaint against a commercial contractor that is not also endorsed as a residential contractor involving work on a small commercial or large commercial structure or an appurtenance to a large commercial structure must be resolved as provided in ORS 701.146.

(3) A complaint against a contractor that is endorsed as both a residential contractor and a commercial contractor:

(a) Involving work on a residential structure must be resolved as provided under ORS 701.145.

(b) Involving work on a small commercial structure may be resolved as provided in ORS 701.145 or 701.146, at the complainant's election.

(c) Involving work on a large commercial structure or an appurtenance to a large commercial structure must be resolved as provided in ORS 701.146.

[(4) Notwithstanding subsections (1) to (3) of this section and except as provided in ORS 701.144, with prior agreement of the complainant and the licensed contractor, a complaint may be resolved by the board through binding arbitration under ORS 701.144.]

SECTION 7. ORS 701.140, as amended by section 65, chapter 630, Oregon Laws 2011, is amended to read:

701.140. A complaint under ORS 701.139 must arise from the performance, or a contract for the performance, of work that requires a contractor license issued by the Construction Contractors Board. The complaint must be of one or more of the following types:

(1) A complaint against a contractor by the owner of a structure or other real property for the following:

(a) Negligent work.

(b) Improper work.

(c) Breach of contract.

(2) A complaint against a contractor by the owner of a structure or other real property to discharge, or to recoup funds expended in discharging, a lien established under ORS 87.010 to 87.060 and 87.075 to 87.093 under circumstances described under this subsection. *[If the complaint is processed under ORS 701.145, the Construction Contractors Board may reduce the amount of the complaint by any amount the complainant owes the contractor.]* The board shall process complaints described in this subsection under ORS 701.145 only if:

(a) The owner paid the contractor for that contractor's work subject to this chapter;

(b) A lien is filed against the property of the owner under ORS 87.010 to 87.060 and 87.075 to 87.093 because the contractor failed to pay the person claiming the lien for that person's contribution toward completion of the improvement; and

(c) The complaint is described in ORS 701.139 (1) or (3)(a) or (b).

(3) A complaint against a licensed subcontractor by a licensed contractor for the following:

(a) Negligent work;

(b) Improper work; or

(c) Breach of contract.

(4) A complaint by a person furnishing labor to a contractor or owed employee benefits by a contractor.

(5) A complaint, as limited by rule of the board, by a person furnishing material or renting or supplying equipment to a contractor. The minimum limit set by the board may not exceed \$150.

(6) A complaint by a subcontractor against a contractor for unpaid labor or materials arising out of a contract.

SECTION 8. ORS 701.145, as amended by section 66, chapter 630, Oregon Laws 2011, is amended to read:

701.145. For a complaint described in ORS 701.139 (1) or (3)(a) or a complaint under ORS 701.139 (3)(b) that a complainant elects to have resolved under this section:

(1) The complainant must file the complaint with the Construction Contractors Board in a form prescribed by the board.

(2) The board may suspend processing of the complaint if:

(a) The same facts and issues involved in the complaint have been submitted to a court of competent jurisdiction for determination or have been submitted to any other entity authorized by law or the parties to effect a resolution or settlement; or

(b) The board determines that the nature or complexity of the dispute described in the complaint is such that a court is the appropriate forum for the adjudication of the dispute.

(3) The board may dismiss or close the complaint as established by rule of the board if any of the following conditions apply:

(a) The complainant does not respond to a board request and the request is necessary to the board's investigation of the complaint.

(b) The complainant does not allow the board to conduct one or more on-site meetings to mediate or investigate the complaint.

(c) The complainant does not permit the contractor against whom the complaint is filed to be present at an on-site investigation made by the board.

[(d) The board determines that the contractor against whom the complaint is filed is capable of complying with recommendations made by the board relative to the complaint, but the complainant does not permit the contractor to comply with the recommendations. The board may refuse to accept or further process a complaint under this paragraph only if the contractor was licensed at the time the work was first performed and is licensed at the time the board makes its recommendations.]

[(e)] (d) The amount in controversy is less than an amount adopted by the board and not more than \$250.

[(4) Upon acceptance of the complaint, the board shall give notice to the contractor against whom the complaint is made and shall initiate proceedings to determine the validity of the complaint. If, after investigation, the board determines that a violation of this chapter or of any rule adopted thereunder has occurred, or damage has been caused by the contractor, the board may recommend to the contractor such action as the board considers appropriate to compensate the complainant. If the contractor performs accordingly, the board shall give that fact due consideration in any subsequent disciplinary proceeding brought by the board. The board may conduct one or more on-site meetings to mediate or investigate the complaint.]

[(5) Subject to ORS 701.144, if the board is unable to resolve the complaint under subsection (4) of this section, the board may issue a contested case notice under ORS 183.415 and:]

[(a) Issue a proposed default order under ORS 183.417 to become effective only if a party does not request a contested case hearing; or]

[(b) Refer the matter for hearing.]

[(6) The board shall send a copy of the notice and any proposed order described in subsection (5) of this section to the surety on the contractor bond required by ORS 701.068.]

(4) Upon acceptance of the complaint, the board shall give notice to the contractor against whom the complaint is made and shall initiate proceedings to determine board jurisdiction over the complaint. The board shall attempt to conduct one or more meetings on-site or by telephone to mediate a dispute. During mediation of a dispute, the board may recommend to the contractor such action as the board considers appropriate to compensate the complainant. If the contractor performs accordingly, the board shall give that fact due consideration in any subsequent disciplinary proceeding brought by the board.

(5) If the parties do not resolve or settle the complaint, except as provided in subsection (6) of this section, the complainant may recover payment from the bond of the contractor only by obtaining:

(a) A final judgment against the contractor issued by a court of competent jurisdiction; or

(b) An arbitration award against the contractor that a court has reduced to a final judgment.

(6) If the complaint is filed under ORS 701.140 (4), the complainant may recover payment from the bond of the contractor as provided in subsection (5)(a) of this section or by obtaining a final order issued by the Bureau of Labor and Industries that states an amount of unpaid wages that the licensed contractor owes under ORS 652.140 or 653.010 to 653.261.

(7) For purposes of subsections (5) and (6) of this section, “final” means that the judgment or order has become final by operation or law or on appeal.

(8) The board shall send the surety on the contractor bond required under ORS 701.068 a copy of the final judgment or bureau final order, and a copy of a determination issued by the board that the surety must pay the amount stated by the board. A determination issued by the board may not include payment of any attorney fees awarded in the final judgment or bureau final order. The determination issued by the board is an order in other than a contested case proceeding. The determination order is not recordable under ORS 701.153 (1) and (2) to create a lien.

SECTION 9. ORS 701.146, as amended by section 67, chapter 630, Oregon Laws 2011, is amended to read:

701.146. For a complaint described in ORS 701.139 (2) or (3)(c) or a complaint under ORS 701.139 (3)(b) that a complainant elects to have resolved under this section:

(1) The person seeking to file the complaint with the Construction Contractors Board must:

(a) Bring an action on the dispute against the licensed contractor in a court of competent jurisdiction; or

(b) Initiate a proceeding to resolve the dispute through binding arbitration substantially in conformance with ORS 36.600 to 36.740.

(2) The complainant must file the complaint with the Construction Contractors Board by delivering to the board a copy of the complainant’s court pleading or the demand for arbitration or other document necessary to initiate arbitration. The pleading, demand or other document must be accompanied by a completed board complaint form. The complainant must also give notice to the surety on the bond by delivering to the surety a copy of the complainant’s court pleading or the demand for arbitration or other document necessary to initiate arbitration and a copy of the completed board complaint form. Delivery to the board and the surety must be accomplished by certified mail, return receipt requested, no later than the earlier of:

(a) The 90th day after filing the court action or after filing or making the arbitration demand or other initiation of arbitration;

(b) The 14th day before the first day of trial or arbitration; or

(c) The 30th day before:

(A) The court issues a judgment in the action; or

(B) The arbitrator issues an award on the arbitration.

(3) Filing the complaint with the board under subsection (2) of this section constitutes filing the complaint for purposes of establishing timeliness of the complaint under ORS 701.143 and priority of the complaint for possible payment from the bond under ORS 701.157.

(4) Except as provided in this subsection and subsection (7) of this section, if the complainant properly gives notice to the surety under subsection (2) of this section, a judgment or award against the contractor entered in the action or arbitration is binding on the surety. If the complainant delivers the notice required under subsection (2) of this section to the wrong surety, the surety receiving the notice may avoid being bound by a judgment or award by delivering notice of the mistake to the complainant or the complainant’s attorney of record, and to the board, on or before the 30th day after the surety receives notice under subsection (2) of this section. Delivery of the notice of mistake must be by certified mail, return receipt requested, or by facsimile machine or other form of transmission with an acknowledgment of receipt.

(5) A surety under subsection (2) of this section has an absolute right to intervene in an action or arbitration brought or initiated under subsection (1) of this section. A complainant may not join

a surety as a party to an action or arbitration unless the complainant disputes the validity or timeliness of the surety's notice of mistake or the surety disputes the validity or timeliness of the delivery to the surety of the notice required by subsection (2) of this section. If the surety elects to intervene or is joined as a party, the surety is bound by all issues of fact and law determined by the court or arbitrator and may not seek board review of those determinations.

(6) If a court issues a judgment on an action, or reduces an arbitration award to judgment, against a contractor on a complaint described in subsection (1) of this section, the complainant must deliver a certified copy of the judgment to the board and to the surety no later than the 30th day after entry of the judgment in order to maintain the complaint and possibly receive payment from the bond. The entry of a final judgment against the contractor concludes the contractor's involvement in any proceedings to determine whether the complaint is subject to payment from the bond. The complainant and the surety are the only parties to the administrative process set forth in subsection (7) of this section.

(7) Upon receipt of a timely delivered certified copy of the judgment as described in subsection (6) of this section, the board shall issue a [*proposed order in*] **determination that the surety must pay the amount stated by the board. The determination issued by the board is an order in other than a contested case proceeding. The determination shall include** the amount of the judgment together with any costs, interest and attorney fees awarded under the judgment, to the extent that the judgment, costs, interest and fees are within the jurisdiction of the board. The board's determination of the complaint is limited to whether the complaint comes within the jurisdiction of the board and is subject to payment by the surety. [*The board shall issue the proposed order in a form that indicates the surety's maximum liability to the complainant. If a hearing is not requested within the time set forth in the proposed order, the proposed order becomes final without any further action by the board. If a hearing is requested, unless review of an issue is precluded under subsection (5) of this section, the board may determine:*]

[(a) *Whether the complaint was timely filed with the board as provided in ORS 701.143.*]

[(b) *Whether the surety received timely notice as provided in subsections (2) and (6) of this section.*]

[(c) *Whether the complaint is for work subject to this chapter.*]

[(d) *The extent of the surety's liability to the complainant.*]

SECTION 10. ORS 701.149, as amended by section 68, chapter 630, Oregon Laws 2011, is amended to read:

701.149. [(1) *An arbitration conducted under ORS 701.144 must be held before an administrative law judge assigned under ORS 183.605 to 183.690 to act as arbitrator on behalf of the Construction Contractors Board. The assignment of an administrative law judge to act as arbitrator is subject to a request for a different arbitrator under ORS 183.645 or a rule adopted pursuant to ORS 183.645.*]

[(2) *If a party to a complaint under ORS 701.145 requests a contested case hearing, the board shall schedule the hearing.*]

[(3) *The board may adopt rules governing the avoidance of a contested case hearing. The rules may include, but need not be limited to, a limit on the time period during which a party to a complaint may avoid a contested case hearing by filing a court action.*]

[(4) *Contested case hearings before the board must be conducted by an administrative law judge assigned under ORS 183.605 to 183.690. Notwithstanding ORS 670.325, the board may delegate authority to the administrative law judge to issue a final order in any matter.*]

[(5) *In assigning administrative law judges for arbitration and contested case hearings conducted under this section, the chief administrative law judge of the Office of Administrative Hearings established under ORS 183.605 shall defer to board requests.*]

[(6) (1) [*If a complainant to the board files a court action,*] **If the Construction Contractors Board suspends the processing of a complaint because of the complaint having been submitted to a court or arbitrator or because of a court having stayed action on the complaint,** the board may require that the complainant provide status reports on the pending court action **or ar-**

bitration. The board may dismiss or close a complaint filed under ORS 701.139 if the complainant fails to submit status reports on a pending court action **or arbitration.**

[(7)] **(2)** ORS 183.605 to 183.690 do not limit in any way the ability of the board to make full use of alternative dispute resolution, including mediation or **referral for arbitration**, to resolve complaints against contractors filed under ORS 701.139.

SECTION 11. ORS 701.150, as amended by section 69, chapter 630, Oregon Laws 2011, is amended to read:

701.150. [(1) A Construction Contractors Board final order that is not paid by the contractor and that:]

[(a) Arises out of a complaint filed under ORS 701.145 must be satisfied from a bond required for a residential contractor.]

[(b) Arises out of a complaint filed under ORS 701.146 must be satisfied from a bond required for a commercial contractor.]

(1) If a licensed contractor fails to pay a complainant amounts due under a court judgment or under a final order of the Bureau of Labor and Industries, the Construction Contractors Board shall issue a determination stating the amount that a surety must pay the complainant. The surety shall pay the amount required under the determination as follows:

(a) If the complaint was filed under ORS 701.145, the surety shall pay the amount from a bond required for a residential contractor.

(b) If the complaint was filed under ORS 701.146, the surety shall pay the amount from a bond required for a commercial contractor.

[(2) If a board final order is not paid by the contractor, the board shall notify the surety on the bond.] The surety may not pay on a complaint until the surety receives notice from the board that the complaint is ready for payment.

(3) Notwithstanding ORS 701.153 and 701.157, a bond is not subject to payment for a complaint that is filed more than 14 months after the earlier of:

(a) The expiration or cancellation date of the license that was in force when the work that is the subject of the complaint was completed or abandoned; or

(b) The date that the surety canceled the bond.

SECTION 12. ORS 701.153, as amended by section 70, chapter 630, Oregon Laws 2011, is amended to read:

701.153. (1) If an order of the Construction Contractors Board [*that*] determines a complaint [*under ORS 701.145*] **against a residential contractor that was filed with the board prior to July 1, 2011, and the order** becomes final by operation of law or on appeal and remains unpaid 10 days after the date the order becomes final, the complainant may file the order with the county clerk in any county of this state.

(2) Upon receipt **of an order described in subsection (1) of this section**, the clerk shall record the order in the County Clerk Lien Record. In addition to any other remedy provided by law, recording an order **described in subsection (1) of this section** in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

(3)(a) Payments from the surety bond of a residential contractor pursuant to [*board order and notice*] **a board determination under ORS 701.145** are satisfied in the following priority in any 90-day period:

(A) Board [*orders*] **determinations** as a result of complaints against a residential contractor by the owner of a residential or small commercial structure have payment priority to the full extent of the bond over all other types of complaints.

[(B) If the complaints described in subparagraph (A) of this paragraph do not exhaust the bond, then amounts due as a result of all other types of residential or small commercial structure complaints filed within that 90-day period may be satisfied from the bond, except that the total amount paid from any one bond to nonowner complainants may not exceed \$3,000.]

(B) If the determinations described in subparagraph (A) of this paragraph do not exhaust the bond, then amounts due under board determinations for all other types of residential or small commercial structure complaints filed with the board within that 90-day period may be paid from the bond, except that the total amount paid from any one bond to nonowner complainants may not exceed \$3,000.

(b) A 90-day period begins on the date the first complaint is filed with the board. Subsequent 90-day periods begin on the date the first complaint is filed with the board after the close of the preceding 90-day period.

[(4) If the total complaints filed with the board against a residential contractor within 90 days after the board receives notice of the first complaint against the contractor exceed the amount of the bond available for those complaints, the bond shall be apportioned as the board determines, subject to the priorities established under this section.]

[(5) If the total amounts due as a result of complaints filed with the board within 90 days after the first complaint is filed do not exceed the amount of the bond available for those complaints, all amounts due as a result of complaints filed within the 90-day period shall have priority over all complaints subsequently filed until the amount of the bond available for the payment of complaints is exhausted.]

[(6) The total amount paid from a residential contractor bond for costs, interest and attorney fees may not exceed \$3,000.]

(4) If the total amount payable under determinations issued by the board for complaints against a residential contractor filed with the board within 90 days after the board receives notice of the first complaint against the contractor exceed the amount of the bond available for payment, subject to the priorities under this section, the board shall decide how payment of the determined amounts from the bond is to be apportioned.

(5) If the total amount payable under determinations issued by the board as a result of complaints that were filed with the board within 90 days after the board receives notice of the first complaint do not exceed the amount of the bond available for payment, those determinations have payment priority over amounts due under determinations resulting from subsequently filed complaints.

(6) The total amount paid from a residential contractor bond for costs and interest under all determinations issued by the board under ORS 701.145 may not exceed \$3,000.

SECTION 13. ORS 701.180, as amended by section 71, chapter 630, Oregon Laws 2011, is amended to read:

701.180. Notwithstanding the provisions of ORS 36.600 to 36.740, any other provision of law or any contractual provision, failure of a contractor to initiate mediation or arbitration proceedings within 30 days after notification by the Construction Contractors Board of a complaint under ORS 701.145 is a waiver by the contractor of any contractual right to a mediation or arbitration **process in lieu of mediation by the board under ORS 701.145. If the parties do not resolve or settle the dispute pursuant to board mediation under ORS 701.145, unless otherwise provided by law regarding a dispute described under ORS 652.140 or 653.010 to 653.261, the complainant must comply with any contractual provision for mediation or arbitration of the dispute as a condition for obtaining the judgment required under ORS 701.145 (5).**

SECTION 14. ORS 701.235, as amended by section 72, chapter 630, Oregon Laws 2011, is amended to read:

701.235. (1) The Construction Contractors Board shall adopt rules to carry out the provisions of this chapter including, but not limited to, rules that:

- (a) Establish language for surety bonds;
- (b) Establish processing requirements for different types of complaints described in this chapter;
- (c) Limit whether a complaint may be processed by the board if there is no direct contractual relationship between the complainant and the contractor;
- (d) Subject to ORS **701.145**, 701.153 and 701.157, exclude or limit recovery from the contractor's bond required by ORS 701.068 of amounts awarded by a court or arbitrator for interest, service

charges, costs and attorney fees arising from commencing the arbitration or court action and proving damages; and

(e) Designate a form to be used by an owner of residential property under ORS 87.007 for the purpose of indicating the method the owner has selected to comply with the requirements of ORS 87.007 (2) or to indicate that ORS 87.007 (2) does not apply.

(2) The board may adopt rules prescribing terms and conditions under which a contractor may substitute a letter of credit from a bank authorized to do business in this state instead of the bond requirements prescribed in ORS 701.068.

SECTION 15. ORS 87.059 and 701.144 and section 73, chapter 630, Oregon Laws 2011, are repealed.

Passed by House February 9, 2016

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate February 24, 2016

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2016

Approved:

.....M,....., 2016

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2016

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Jeanne P. Atkins, Secretary of State