

D R A F T

SUMMARY

Removes exemption of sole proprietor licensed as construction contractor from requirement to have workers' compensation insurance.

Provides that license to perform work other than work as contractor is not license to undertake or submit bid for work as contractor.

Permits Construction Contractors Board to revoke, suspend or refuse to issue or reissue contractor's license to person that assisted or contracted with unlicensed contractor to perform work in this state or in case in which number of licensed contractors exceeded specific number when working together on same scope of work on same project.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to requirements for licensing construction contractors; creating new provisions; amending ORS 656.027, 701.021 and 701.098; and prescribing an effective date.

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

SECTION 1. ORS 656.027 is amended to read:

656.027. All workers are subject to this chapter except those nonsubject workers described in the following subsections:

(1) A worker employed as a domestic servant in or about a private home. For the purposes of this subsection "domestic servant" means any worker engaged in household domestic service by private employment contract, including, but not limited to, home health workers.

(2) A worker employed to do gardening, maintenance, repair, remodeling or similar work in or about the private home of the person employing the worker.

(3)(a) A worker whose employment is casual and either:

(A) The employment is not in the course of the trade, business or profession of the employer; or

(B) The employment is in the course of the trade, business or profession of a nonsubject employer.

(b) For the purpose of this subsection, “casual” refers only to employments where the work in any 30-day period, without regard to the number of workers employed, involves a total labor cost of less than \$500.

(4) A person for whom a rule of liability for injury or death arising out of and in the course of employment is provided by the laws of the United States.

(5) A worker engaged in the transportation in interstate commerce of goods, persons or property for hire by rail, water, aircraft or motor vehicle, and whose employer has no fixed place of business in this state.

(6) Firefighter and police employees of any city having a population of more than 200,000 that provides a disability and retirement system by ordinance or charter.

(7)(a) Sole proprietors, except *[those described]* **as provided** in paragraph (b) of this subsection. When **performing** labor or services *[are performed]* under contract, the sole proprietor must qualify as an independent contractor.

(b) Sole proprietors actively licensed under ORS 671.525 *[or 701.021]*. When **performing** labor or services *[are performed]* under contract for remuneration, notwithstanding ORS 656.005 (30), the sole proprietor must qualify as an independent contractor. Any sole proprietor licensed under ORS 671.525 *[or 701.021]* and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(8) Except as provided in subsection (23) of this section, partners who are not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement on real property or appurtenances thereto. When **performing** labor or services

[are performed] under contract, the partnership must qualify as an independent contractor.

(9) Except as provided in subsection (25) of this section, members, including members who are managers, of limited liability companies, regardless of the nature of the work performed. However, members, including members who are managers, of limited liability companies with more than one member, while engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement on real property or appurtenances thereto, are subject workers. When **performing** labor or services [are performed] under contract, the limited liability company must qualify as an independent contractor.

(10) Except as provided in subsection (24) of this section, corporate officers who are directors of the corporation and who have a substantial ownership interest in the corporation, regardless of the nature of the work performed by such officers, subject to the following limitations:

(a) If the activities of the corporation are conducted on land that receives farm use tax assessment pursuant to ORS chapter 308A, corporate officer includes all individuals identified as directors in the corporate bylaws, regardless of ownership interest, and who are members of the same family, whether related by blood, marriage or adoption.

(b) If the activities of the corporation involve the commercial harvest of timber and all officers of the corporation are members of the same family and are parents, daughters or sons, daughters-in-law or sons-in-law or grandchildren, then all such officers may elect to be nonsubject workers. For all other corporations involving the commercial harvest of timber, the maximum number of exempt corporate officers for the corporation shall be whichever is the greater of the following:

(A) Two corporate officers; or

(B) One corporate officer for each 10 corporate employees.

(c) When **performing** labor or services [are performed] under contract, the corporation must qualify as an independent contractor.

1 (11) A person performing services primarily for board and lodging re-
2 ceived from any religious, charitable or relief organization.

3 (12) A newspaper carrier utilized in compliance with the provisions of
4 ORS 656.070 and 656.075.

5 (13) A person who has been declared an amateur athlete under the rules
6 of the United States Olympic Committee or the Canadian Olympic Committee
7 and who receives no remuneration for performance of services as an athlete
8 other than board, room, rent, housing, lodging or other reasonable incidental
9 subsistence allowance, or any amateur sports official who is certified by a
10 recognized Oregon or national certifying authority, which requires or pro-
11 vides liability and accident insurance for such officials. A roster of recog-
12 nized Oregon and national certifying authorities will be maintained by the
13 Department of Consumer and Business Services, from lists of certifying or-
14 ganizations submitted by the Oregon School Activities Association and the
15 Oregon Park and Recreation Society.

16 (14) Volunteer personnel participating in the ACTION programs, organ-
17 ized under the Domestic Volunteer Service Act of 1973, P.L. 93-113, known
18 as the Foster Grandparent Program and the Senior Companion Program,
19 whether or not the volunteers receive a stipend or nominal reimbursement
20 for time and travel expenses.

21 (15) A person who has an ownership or leasehold interest in equipment
22 and who furnishes, maintains and operates the equipment. As used in this
23 subsection "equipment" means:

24 (a) A motor vehicle used in the transportation of logs, poles or piling.

25 (b) A motor vehicle used in the transportation of rocks, gravel, sand, dirt
26 or asphalt concrete.

27 (c) A motor vehicle used in the transportation of property by a for-hire
28 motor carrier that is required under ORS 825.100 or 825.104 to possess a
29 certificate or permit or to be registered.

30 (16) A person engaged in the transportation of the public for recreational
31 down-river boating activities on the waters of this state pursuant to a federal

1 permit when the person furnishes the equipment necessary for the activity.
 2 As used in this subsection, “recreational down-river boating activities”
 3 means those boating activities for the purpose of recreational fishing, swim-
 4 ming or sightseeing utilizing a float craft with oars or paddles as the pri-
 5 mary source of power.

6 (17) A person who receives no wage other than ski passes or other non-
 7 cash remuneration for performing volunteer:

8 (a) Ski patrol activities; or

9 (b) Ski area program activities sponsored by a ski area operator, as de-
 10 fined in ORS 30.970, or by a nonprofit corporation or organization.

11 (18) A person 19 years of age or older who contracts with a newspaper
 12 publishing company or independent newspaper dealer or contractor to dis-
 13 tribute newspapers to the general public and perform or undertake any nec-
 14 essary or attendant functions related thereto.

15 (19) A person performing foster parent or adult foster care duties pursu-
 16 ant to ORS 412.001 to 412.161 and 412.991 or ORS chapter 411, 418, 430 or 443.

17 (20) A person performing services on a volunteer basis for a nonprofit,
 18 religious, charitable or relief organization, whether or not such person re-
 19 ceives meals or lodging or nominal reimbursements or vouchers for meals,
 20 lodging or expenses.

21 (21) A person performing services under a property tax work-off program
 22 established under ORS 310.800.

23 (22) A person who performs service as a caddy at a golf course in an es-
 24 tablished program for the training and supervision of caddies under the di-
 25 rection of a person who is an employee of the golf course.

26 (23)(a) Partners who are actively licensed under ORS 671.525 [or 701.021]
 27 and who have a substantial ownership interest in a partnership. If all part-
 28 ners are members of the same family and are parents, spouses, sisters,
 29 brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren,
 30 all such partners may elect to be nonsubject workers. For all other partner-
 31 ships licensed under ORS 671.510 to 671.760 [or 701.021], the maximum num-

ber of exempt partners [*shall be whichever*] is the greater of the following:

(A) Two partners; or

(B) One partner for each 10 partnership employees.

(b) When **performing** labor or services [*are performed*] under contract for remuneration, notwithstanding ORS 656.005 (30), the partnership qualifies as an independent contractor. Any partnership licensed under ORS 671.525 [*or 701.021*] and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(24)(a) Corporate officers who are directors of a corporation actively licensed under ORS 671.525 or 701.021 and who have a substantial ownership interest in the corporation, regardless of the nature of the work performed. If all officers of the corporation are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such officers may elect to be nonsubject workers. For all other corporations licensed under ORS 671.510 to 671.760 or 701.021, the maximum number of exempt corporate officers [*shall be whichever*] is the greater of the following:

(A) Two corporate officers; or

(B) One corporate officer for each 10 corporate employees.

(b) When **performing** labor or services [*are performed*] under contract for remuneration, notwithstanding ORS 656.005 (30), the corporation qualifies as an independent contractor. Any corporation licensed under ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(25)(a) Limited liability company members who are members of a company actively licensed under ORS 671.525 or 701.021 and who have a substantial ownership interest in the company, regardless of the nature of the work performed. If all members of the company are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such members may elect to be nonsubject workers. For all other companies licensed under ORS 671.510 to

671.760 or 701.021, the maximum number of exempt company members [*shall be whichever*] is the greater of the following:

(A) Two company members; or

(B) One company member for each 10 company employees.

(b) When **performing** labor or services [*are performed*] under contract for remuneration, notwithstanding ORS 656.005 (30), the company qualifies as an independent contractor. Any company licensed under ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(26) A person serving as a referee or assistant referee in a youth or adult recreational soccer match whose services are retained on a match-by-match basis.

(27) A person performing language translator or interpreter services that are provided for others through an agent or broker.

(28) A person who operates, and who has an ownership or leasehold interest in, a passenger motor vehicle that is operated as a taxicab or for nonemergency medical transportation. As used in this subsection:

(a) "Lease" means a contract under which the lessor provides a vehicle to a lessee for consideration.

(b) "Leasehold" includes, but is not limited to, a lease for a shift or a longer period.

(c) "Passenger motor vehicle that is operated as a taxicab" means a vehicle that:

(A) Has a passenger seating capacity that does not exceed seven persons;

(B) Is transporting persons, property or both on a route that begins or ends in Oregon; and

(C)(i) Carries passengers for hire when the destination and route traveled may be controlled by a passenger and the fare is calculated on the basis of any combination of an initial fee, distance traveled or waiting time; or

(ii) Is in use under a contract to provide specific service to a third party to transport designated passengers or to provide errand services to locations

selected by the third party.

(d) “Passenger motor vehicle that is operated for nonemergency medical transportation” means a vehicle that:

(A) Has a passenger seating capacity that does not exceed seven persons;

(B) Is transporting persons, property or both on a route that begins or ends in Oregon; and

(C) Provides medical transportation services under contract with or on behalf of a mass transit or transportation district.

SECTION 2. ORS 701.021 is amended to read:

701.021. (1) Except as provided in ORS 701.010, a person or joint venture that undertakes, offers to undertake or submits a bid to do work as a contractor must have a current license issued by the Construction Contractors Board and possess an appropriate endorsement as provided in this section. For purposes of offering to undertake or submitting a bid to do work, a partnership or joint venture is licensed and endorsed if any partner or joint venturer whose name appears in the business name of the partnership or joint venture has a current license issued by the board and possesses an appropriate endorsement, **but a license to perform a type of work that is not work as a contractor or that is not within the board’s licensing authority under this chapter is not a license to undertake or submit a bid to do work as a contractor.**

(2) A person or joint venture that undertakes, offers to undertake or submits a bid to do work as a contractor in preparation for or in connection with a residential structure must have one of the following endorsements:

(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.

(i) Home energy performance score contractor.

(3) A person or joint venture that undertakes, offers to undertake or submits a bid to do work as a contractor in preparation for or in connection with a small commercial structure must have one of the following endorsements:

(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) Commercial general contractor level 1.

(h) Commercial specialty contractor level 1.

(i) Commercial general contractor level 2.

(j) Commercial specialty contractor level 2.

(k) Commercial developer.

(4) A person or joint venture that undertakes, offers to undertake or submits a bid to do work as a contractor in preparation for or in connection with a large commercial structure must have one of the following endorsements:

(a) Commercial general contractor level 1.

(b) Commercial specialty contractor level 1.

(c) Commercial general contractor level 2.

(d) Commercial specialty contractor level 2.

(e) Commercial developer.

SECTION 3. ORS 701.098 is amended to read:

701.098. (1) The Construction Contractors Board may revoke, suspend or refuse to issue or reissue a license and [*the board*] may assess a civil penalty as provided in ORS 701.992 if the board determines after notice and opportunity for hearing **that**:

(a) *[That]* The licensee or applicant has violated a provision of this chapter.

(b) *[That]* The licensee has violated a rule or order of the board.

(c) *[That]* The licensee has knowingly assisted **or contracted with** an unlicensed **contractor or other** person to **perform work as a contractor within this state or has otherwise** *[act]* **acted** in violation of this chapter.

(d) *[That]* The licensee has knowingly assisted **or contracted with** a licensed contractor to perform work for which the contractor is not properly endorsed.

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

(f) *[That]* The licensee has knowingly provided false information to the board.

(g) *[That]* The licensee has worked without a construction permit where a permit is required and the work resulted in a complaint being filed with the board under ORS 701.139. For purposes of this paragraph, “construction permit” includes a building permit, electrical permit, mechanical permit or plumbing permit.

(h) *[That the number of licensed contractors working together on the same task on the same job site, where one of the contractors is classed as exempt under ORS 701.035 (2)(b), exceeded the following]* **A contractor that is classed as exempt under ORS 701.035 (2)(b) worked together with another contractor on the same scope of work on the same project, as the scope of work and the project are specified in any contract to which one or more of the contractors is a party, and the number of licensed contractors for the project exceeded:**

(A) Two sole proprietors;

(B) One partnership;

(C) One corporation; or

(D) One limited liability company.

(i) Consistent with the provisions of ORS 670.280, *[that]* the licensee or applicant, or an owner or officer of the licensee or applicant has been convicted of one of the following crimes in this state or an equivalent crime in another state:

(A) Murder;

(B) Assault in the first degree;

(C) Kidnapping;

(D) Rape, sodomy or unlawful sexual penetration;

(E) Sexual abuse;

(F) Arson in the first degree;

(G) Robbery in the first degree;

(H) Theft in the first degree; or

(I) Extortion.

(j) *[That]* The licensee or applicant has not, within 90 days after the date when payment was received from the public contracting agency, or contractor in the case of a subcontractor, made payment to any person for supplying labor or materials contracted for with a public contract for a public improvement plus the amount of interest due.

(k) *[That]* The licensee or applicant has repeatedly reported bad faith or false complaints of nonpayment against contractors or subcontractors.

(L) *[That]* The licensee or applicant has engaged in conduct as a contractor that is dishonest or fraudulent and that the board finds injurious to the welfare of the public.

(m) *[That]* The contractor has hired employees while licensed as exempt under ORS 701.035.

(n) *[That]* The contractor has utilized one or more workers supplied by a worker leasing company while licensed as exempt under ORS 701.035.

(2) The board may revoke, suspend or refuse to issue or reissue a license if the board determines after notice and opportunity for hearing that an applicant or licensee is unfit for licensure based upon information submitted to the board under ORS 701.046, submitted in a registration of securities

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

(3) The board may assess a civil penalty as provided in ORS 701.992 if the board determines after notice and opportunity for hearing that any person has violated ORS 701.021.

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

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

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

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

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

(E) Conduct as a construction contractor that is dishonest or fraudulent;
or

(F) Failure to pay a construction debt.

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

(5)(a) In addition to all other remedies, if the board has reason to believe that a person is engaging in an act, practice or transaction that violates this

chapter or a board rule, the board may issue an order directing the person to cease the act or to take corrective action.

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

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

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

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

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

(7) A certified copy of the record of conviction *[shall be]* **is** conclusive evidence of a conviction under subsection (1)(i) of this section.

(8) If the board suspends or revokes the license of an individual contractor or contractor business for a violation of subsection (1)(h) of this section, the board may not restore or reissue the license unless the individual con-

1 tractor or a responsible managing individual for the contractor business has
2 successfully completed the training and testing described in ORS 701.122.

3 **SECTION 4. (1) The amendments to ORS 656.027, 701.021 and 701.098**
4 **by sections 1 to 3 of this 2020 Act become operative on January 1, 2021.**

5 **(2) The Construction Contractors Board may adopt rules and take**
6 **any other action before the operative date specified in subsection (1)**
7 **of this section that is necessary to enable the board, on and after the**
8 **operative date specified in subsection (1) of this section, to exercise**
9 **or undertake all of the duties, functions and powers conferred on the**
10 **board by the amendments to ORS 656.027, 701.021 and 701.098 by**
11 **sections 1 to 3 of this 2020 Act.**

12 **SECTION 5. This 2020 Act takes effect on the 91st day after the date**
13 **on which the 2020 regular session of the Eightieth Legislative Assem-**
14 **bly adjourns sine die.**

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