

HB 4022-3
(LC 216)
2/6/20 (TSB/ps)

Requested by HOUSE COMMITTEE ON BUSINESS AND LABOR (at the request of Representative Paul Holvey)

**PROPOSED AMENDMENTS TO
HOUSE BILL 4022**

1 On page 1 of the printed bill, line 3, delete “656.027, 701.021 and 701.098”
2 and insert “701.035, 701.046, 701.098 and 701.992”.

3 Delete lines 5 through 27 and delete pages 2 through 5.

4 On page 6, delete lines 1 through 7 and insert:

5 **“SECTION 1.** ORS 701.035 is amended to read:

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

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

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

11 “(A) Sole proprietorships, partnerships, corporations and limited liability
12 companies:

13 “(i) With one or more employees; or

14 “(ii) That utilize one or more workers supplied by a worker leasing com-
15 pany.

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

21 “(b) The exempt class is composed of all sole proprietorships, partner-

1 ships, corporations and limited liability companies that do not qualify as
2 nonexempt.

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

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

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

19 **“SECTION 2.** ORS 701.046 is amended to read:

20 “701.046. (1) Except as provided in subsection (2) of this section, an ap-
21 plicant for a construction contractor license must submit the application on
22 a form prescribed by the Construction Contractors Board. The application
23 shall include, but not be limited to, the following information:

24 “(a) The endorsement being sought.

25 “(b) A list of construction debts involving the applicant, or an owner or
26 officer of the applicant, if the order, award, penalty or judgment that estab-
27 lishes the debt was issued within the preceding five years.

28 “(c) For each person described in paragraphs (h), (i) and (j) of this sub-
29 section, a Social Security number.

30 “(d) Workers’ compensation insurance account number, if the applicant

1 is required to have workers' compensation insurance.

2 “(e) Unemployment insurance account number, if the applicant is required
3 to have unemployment insurance.

4 “(f) State withholding tax account number, if the applicant is required to
5 withhold state income tax.

6 “(g) Federal employer identification number, if the applicant is required
7 to have a federal employer identification number.

8 “(h) The name and address of:

9 “(A) Each partner, if the applicant is a partnership, limited liability
10 partnership or foreign limited liability partnership.

11 “(B) The general partner, if the applicant is a limited partnership.

12 “(C) Each joint venturer, if the applicant is a joint venture.

13 “(D) The owner, if the applicant is a sole proprietorship.

14 “(E) The officers, if the applicant is a corporation.

15 “(F) The manager and each member, if the applicant is a manager-
16 managed limited liability company.

17 “(G) Each member, if the applicant is a member-managed limited liability
18 company.

19 “(H) The responsible managing individual designated by the applicant.

20 “(I) Each trustee, if the applicant is a trust.

21 “(i) The name and address of the following if the applicant is a partner-
22 ship, limited liability partnership, foreign limited liability partnership, joint
23 venture, manager-managed limited liability company or member-managed
24 limited liability company:

25 “(A) Each partner in a partnership, limited liability partnership or foreign
26 limited liability partnership that is a partner, joint venturer or member of
27 the applicant.

28 “(B) Each general partner in a limited partnership that is a partner, joint
29 venturer or member of the applicant.

30 “(C) Each joint venturer in a joint venture that is a partner, joint

1 venturer or member of the applicant.

2 “(D) The manager and each member of a manager-managed limited liabil-
3 ity company that is a partner, joint venturer or member of the applicant.

4 “(E) Each member of a member-managed limited liability company that
5 is a partner, joint venturer or member of the applicant.

6 “(F) Each officer of a corporation that is a partner, joint venturer or
7 member of the applicant.

8 “(G) Each individual who has a controlling ownership interest in, or
9 management authority over, the applicant and who meets criteria adopted
10 by the board by rule.

11 “(j) The name and address of the following if the applicant is a limited
12 partnership:

13 “(A) Each partner of any partnership, limited liability partnership or
14 foreign limited liability partnership that is the general partner of the appli-
15 cant.

16 “(B) Each general partner of any limited partnership that is the general
17 partner of the applicant.

18 “(C) Each joint venturer in any joint venture that is the general partner
19 of the applicant.

20 “(D) The manager and each member of any manager-managed limited li-
21 ability company that is the general partner of the applicant.

22 “(E) Each member of any member-managed limited liability company that
23 is the general partner of the applicant.

24 “(F) Each officer of any corporation that is the general partner of the
25 applicant.

26 “(k) For each person described in paragraphs (h), (i) and (j) of this sub-
27 section, information as required by board rule regarding the following if re-
28 lated to construction activities:

29 “(A) A final judgment against the person by a court in any state entered
30 within five years preceding the application date that requires the person to

1 pay money to another person or to a public body if the judgment remains
2 unsatisfied on the application date.

3 “(B) A final order against the person by an administrative agency in any
4 state issued within five years preceding the application date that requires
5 the person to pay money to another person or to a public body if the order
6 remains unsatisfied on the application date.

7 “(C) A court action against the person in any state pending on the ap-
8 plication date that alleges the person owes money to another person or to
9 a public body.

10 “(D) An action by an administrative agency in any state pending on the
11 application date that seeks an order that the person pay money to another
12 person or to a public body.

13 “(E) A conviction for a crime listed in ORS 701.098 [(1)(i)] **(1)(j)** entered
14 within five years preceding the application date.

15 “(F) An indictment for a crime listed in ORS 701.098 [(1)(i)] **(1)(j)** filed
16 within five years preceding the application date.

17 “(L) The basis on which the applicant meets the standards for independent
18 contractor status under ORS 670.600.

19 “(2) Subsection (1)(h), (i) and (j) of this section does not apply if the ap-
20 plicant is a company that offers securities registered with the United States
21 Securities and Exchange Commission for sale to the general public.

22 “(3) The application described in subsection (1) of this section must be
23 accompanied by proof satisfactory to the board that the applicant:

24 “(a) Is in compliance with ORS 701.091.

25 “(b) Has the legal capacity to enter into contracts.

26 “(4) Subsection (3)(a) of this section does not apply to an applicant for
27 licensing with endorsement solely as a residential or commercial developer.

28 “(5) An applicant shall conform to the information provided by the ap-
29 plicant on the application and to the terms of the application.”.

30 Delete lines 14 through 16 and insert:

1 “(c) The licensee assisted or contracted with a person that the licensee
2 reasonably should have known was unlicensed and the unlicensed person
3 performed work as a contractor or otherwise violated a provision of this
4 chapter.

5 “(d) The licensee knowingly assisted or contracted with a person that was
6 unlicensed and the unlicensed person performed work as a contractor or
7 otherwise violated a provision of this chapter.”.

8 In line 17, delete “(d)” and insert “(e)”.

9 In line 19, delete “(e)” and insert “(f)”.

10 In line 22, delete “(f)” and insert “(g)”.

11 In line 23, delete “(g)” and insert “(h)”.

12 In lines 27 through 32, restore the bracketed material and delete the
13 boldfaced material.

14 In line 27, delete “(h)” and insert “(i)” and delete “That”.

15 In line 37, delete “(i)” and insert “(j)”.

16 On page 7, line 4, delete “(j)” and insert “(k)”.

17 In line 8, delete “(k)” and insert “(L)”.

18 In line 10, delete “(L)” and insert “(m)”.

19 In line 12, delete “(m)” and insert “(n)”.

20 In line 13, delete “(n)” and insert “(o)”.

21 On page 8, line 17, delete “(1)(i)” and insert “(1)(j)”.

22 In line 19, delete “(1)(h)” and insert “(1)(i)”.

23 Delete lines 22 through 28 and insert:

24 **“SECTION 4.** ORS 701.992 is amended to read:

25 “701.992. (1) Except as provided in subsections (4) [*and (5)*] **to (6)** of this
26 section, any person [*who*] **that** violates any provision of this chapter or any
27 rule adopted by the Construction Contractors Board shall forfeit and pay
28 into the General Fund of the State Treasury a civil penalty in an amount
29 determined by the board of not more than \$5,000 for each offense.

30 “(2) Civil penalties under this section [*shall*] **must** be imposed as provided

1 in ORS 183.745.

2 “(3) The provisions of this section are in addition to and not in lieu of
3 any other penalty or sanction provided by law.

4 “(4) The board shall impose sanctions for violation of ORS 701.098
5 [(1)(h)] (1)(i) on both the person to whom the contract is awarded and the
6 person who awards the contract as follows:

7 “(a) A penalty not less than \$500 nor more than \$1,000 for the first of-
8 fense;

9 “(b) A penalty not less than \$1,000 nor more than \$2,000 for the second
10 offense;

11 “(c) Suspension of the person’s license for six months for a third offense;

12 “(d) Suspension of the person’s license for three years for a fourth offense;
13 and

14 “(e) Revocation of the person’s license for a fifth offense.

15 “(5) The board shall impose sanctions for violation of ORS 701.098
16 (1)(d) and (e) on both the person to which the contract is awarded and
17 the person that awards the contract as follows:

18 “(a) A penalty not less than \$1,000 nor more than \$2,500 for the first
19 offense;

20 “(b) A penalty not less than \$2,500 nor more than \$5,000 for the
21 second offense;

22 “(c) A penalty not less than \$2,500 nor more than \$5,000 and sus-
23 pension of the person’s license for one year for a third offense; and

24 “(d) Revocation of the person’s license for a fourth offense.

25 “[5)] (6) The board may impose a civil penalty not to exceed \$100 for each
26 violation of ORS 87.007 (3).

27 “**SECTION 5. (1) The amendments to ORS 701.035, 701.046, 701.098**
28 **and 701.992 by sections 1 to 4 of this 2020 Act become operative on**
29 **January 1, 2021.**

30 “(2) The Construction Contractors Board may adopt rules and take

1 **any other action before the operative date specified in subsection (1)**
2 **of this section that is necessary to enable the board, on and after the**
3 **operative date specified in subsection (1) of this section, to exercise**
4 **or undertake all of the duties, functions and powers conferred on the**
5 **board by the amendments to ORS 701.035, 701.046, 701.098 and 701.992**
6 **by sections 1 to 4 of this 2020 Act.”.**

7 In line 29, delete “5” and insert “6”.

8
