

# D R A F T

## SUMMARY

Imposes requirement to procure and maintain workers' compensation insurance on independent contractor that is exempt from licensing by Construction Contractors Board and is residential contractor.

Permits board to revoke, suspend or refuse to issue or reissue contractor's license to licensee if licensee assists or contracts with person that licensee reasonably should have known was unlicensed, and unlicensed person performs work as contractor, or if licensee knowingly assists or contracts with unlicensed person and person performs work as contractor.

Specifies sanctions that board may impose on person for assisting or contracting with unlicensed other person that performs work as contractor.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to construction contractors; creating new provisions; amending ORS  
3 701.035, 701.046, 701.098 and 701.992; and prescribing an effective date.

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

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

6 701.035. (1) An applicant must qualify as an independent contractor under  
7 ORS 670.600 to be eligible for a license with the Construction Contractors  
8 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.

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

6 (b) The exempt class is composed of all sole proprietorships, partnerships,  
7 corporations and limited liability companies that do not qualify as nonex-  
8 empt.

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

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

21 (5) A person that is within the exempt class described in subsection (2)(b)  
22 of this section and is licensed as a commercial contractor **or residential**  
23 **contractor** shall procure and maintain workers' compensation insurance as  
24 authorized by ORS 656.128.

25 **SECTION 2.** ORS 701.046 is amended to read:

26 701.046. (1) Except as provided in subsection (2) of this section, an appli-  
27 cant for a construction contractor license must submit the application on a  
28 form prescribed by the Construction Contractors Board. The application  
29 shall include, but not be limited to, the following information:

30 (a) The endorsement being sought.

31 (b) A list of construction debts involving the applicant, or an owner or

1 officer of the applicant, if the order, award, penalty or judgment that estab-  
2 lishes the debt was issued within the preceding five years.

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

5 (d) Workers' compensation insurance account number, if the applicant is  
6 required to have workers' compensation insurance.

7 (e) Unemployment insurance account number, if the applicant is required  
8 to have unemployment insurance.

9 (f) State withholding tax account number, if the applicant is required to  
10 withhold state income tax.

11 (g) Federal employer identification number, if the applicant is required  
12 to have a federal employer identification number.

13 (h) The name and address of:

14 (A) Each partner, if the applicant is a partnership, limited liability part-  
15 nership or foreign limited liability partnership.

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

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

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

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

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

22 (G) Each member, if the applicant is a member-managed limited liability  
23 company.

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

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

26 (i) The name and address of the following if the applicant is a partner-  
27 ship, limited liability partnership, foreign limited liability partnership, joint  
28 venture, manager-managed limited liability company or member-managed  
29 limited liability company:

30 (A) Each partner in a partnership, limited liability partnership or foreign  
31 limited liability partnership that is a partner, joint venturer or member of

1 the applicant.

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

4 (C) Each joint venturer in a joint venture that is a partner, joint venturer  
5 or member of the applicant.

6 (D) The manager and each member of a manager-managed limited liability  
7 company that is a partner, joint venturer or member of the applicant.

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

10 (F) Each officer of a corporation that is a partner, joint venturer or  
11 member of the applicant.

12 (G) Each individual who has a controlling ownership interest in, or  
13 management authority over, the applicant and who meets criteria adopted  
14 by the board by rule.

15 (j) The name and address of the following if the applicant is a limited  
16 partnership:

17 (A) Each partner of any partnership, limited liability partnership or for-  
18 eign limited liability partnership that is the general partner of the applicant.

19 (B) Each general partner of any limited partnership that is the general  
20 partner of the applicant.

21 (C) Each joint venturer in any joint venture that is the general partner  
22 of the applicant.

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

25 (E) Each member of any member-managed limited liability company that  
26 is the general partner of the applicant.

27 (F) Each officer of any corporation that is the general partner of the ap-  
28 plicant.

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

1 (A) A final judgment against the person by a court in any state entered  
2 within five years preceding the application date that requires the person to  
3 pay money to another person or to a public body if the judgment remains  
4 unsatisfied on the application date.

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

9 (C) A court action against the person in any state pending on the appli-  
10 cation date that alleges the person owes money to another person or to a  
11 public body.

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

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

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

19 (L) The basis on which the applicant meets the standards for independent  
20 contractor status under ORS 670.600.

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

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

26 (a) Is in compliance with ORS 701.091.

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

28 (4) Subsection (3)(a) of this section does not apply to an applicant for li-  
29 censing with endorsement solely as a residential or commercial developer.

30 (5) An applicant shall conform to the information provided by the appli-  
31 cant on the application and to the terms of the application.

1        **SECTION 3.** ORS 701.098 is amended to read:

2        701.098. (1) The Construction Contractors Board may revoke, suspend or  
3 refuse to issue or reissue a license and [*the board*] may assess a civil penalty  
4 as provided in ORS 701.992 if the board determines after notice and oppor-  
5 tunity for hearing **that**:

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

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

9        [*(c) That the licensee has knowingly assisted an unlicensed person to act*  
10 *in violation of this chapter.*]

11        **(c) The licensee assisted or contracted with a person that the**  
12 **licensee reasonably should have known was unlicensed and the unli-**  
13 **censed person performed work as a contractor or otherwise violated a**  
14 **provision of this chapter.**

15        **(d) The licensee knowingly assisted or contracted with a person that**  
16 **was unlicensed and the unlicensed person performed work as a con-**  
17 **tractor or otherwise violated a provision of this chapter.**

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

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

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

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

30        [*(h)*] (i) [*That*] the number of licensed contractors working together on  
31 the same task on the same job site, where one of the contractors is classed

1 as exempt under ORS 701.035 (2)(b), exceeded the following:

- 2 (A) Two sole proprietors;
- 3 (B) One partnership;
- 4 (C) One corporation; or
- 5 (D) One limited liability company.

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

- 10 (A) Murder;
- 11 (B) Assault in the first degree;
- 12 (C) Kidnapping;
- 13 (D) Rape, sodomy or unlawful sexual penetration;
- 14 (E) Sexual abuse;
- 15 (F) Arson in the first degree;
- 16 (G) Robbery in the first degree;
- 17 (H) Theft in the first degree; or
- 18 (I) Extortion.

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

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

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

29 [(m)] **(n)** [*That*] the contractor has hired employees while licensed as ex-  
30 empt under ORS 701.035.

31 [(n)] **(o)** [*That*] the contractor has utilized one or more workers supplied

1 by a worker leasing company while licensed as exempt under ORS 701.035.

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

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

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

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

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

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

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

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

23 (F) Failure to pay a construction debt.

24 (b) If the licensee or applicant demands a hearing within 90 days after the  
25 date of notice to the licensee or applicant of the suspension or refusal to  
26 renew, then a hearing must be granted to the licensee or applicant as soon  
27 as practicable after the demand, and the administrator shall issue, pursuant  
28 to the hearing as required by ORS chapter 183, an order confirming, altering  
29 or revoking the administrator's earlier order. Notwithstanding ORS 670.325,  
30 a hearing need not be held where the order of suspension or refusal to renew  
31 is accompanied by or is pursuant to a citation for violation that is subject



1 to judicial determination in any court of this state, and the order by its  
2 terms will terminate in case of final judgment in favor of the licensee or  
3 applicant.

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

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

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

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

22 (e) The issuance of a board order under this subsection is subject to ORS  
23 183.413 to 183.497.

24 (6) In addition to all other remedies, [*if it appears to*] the board **deter-**  
25 **mines** that a person has engaged in, or is engaging in, any act, practice or  
26 transaction that violates the provisions of this chapter, the board may direct  
27 the Attorney General or the district attorney of the county in which the act,  
28 practice or transaction occurs, to apply to the court for an injunction re-  
29 straining the person from violating the provisions of this chapter. An in-  
30 junction may not issue for failure to maintain the list provided for in ORS  
31 701.345, unless the court determines that the failure is intentional.

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

3 (8) If the board suspends or revokes the license of an individual contrac-  
4 tor or contractor business for a violation of subsection [(1)(h)] **(1)(i)** of this  
5 section, the board may not restore or reissue the license unless the individ-  
6 ual contractor or a responsible managing individual for the contractor busi-  
7 ness has successfully completed the training and testing described in ORS  
8 701.122.

9 **SECTION 4.** ORS 701.992 is amended to read:

10 701.992. (1) Except as provided in subsections (4) [*and (5)*] **to (6)** of this  
11 section, any person [*who*] **that** violates any provision of this chapter or any  
12 rule adopted by the Construction Contractors Board shall forfeit and pay  
13 into the General Fund of the State Treasury a civil penalty in an amount  
14 determined by the board of not more than \$5,000 for each offense.

15 (2) Civil penalties under this section [*shall*] **must** be imposed as provided  
16 in ORS 183.745.

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

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

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

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

25 (c) Suspension of the person's license for six months for a third offense;

26 (d) Suspension of the person's license for three years for a fourth offense;  
27 and

28 (e) Revocation of the person's license for a fifth offense.

29 **(5) The board shall impose sanctions for violation of ORS 701.098**  
30 **(1)(c) and (d) on both the person to which the contract is awarded and**  
31 **the person that awards the contract as follows:**

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

3 (b) A penalty not less than \$2,500 nor more than \$5,000 for the sec-  
4 ond offense;

5 (c) A penalty not less than \$2,500 nor more than \$5,000 and suspen-  
6 sion of the person's license for one year for a third offense; and

7 (d) Revocation of the person's license for a fourth offense.

8 [(5)] (6) The board may impose a civil penalty not to exceed \$100 for each  
9 violation of ORS 87.007 (3).

10 **SECTION 5. (1) The amendments to ORS 701.035, 701.046, 701.098 and**  
11 **701.992 by sections 1 to 4 of this 2021 Act become operative on January**  
12 **1, 2022.**

13 **(2) The Construction Contractors Board may adopt rules and take**  
14 **any other action before the operative date specified in subsection (1)**  
15 **of this section that is necessary to enable the board, on and after the**  
16 **operative date specified in subsection (1) of this section, to exercise**  
17 **or undertake all of the duties, functions and powers conferred on the**  
18 **board by the amendments to ORS 701.035, 701.046, 701.098 and 701.992**  
19 **by sections 1 to 4 of this 2021 Act.**

20 **SECTION 6. This 2021 Act takes effect on the 91st day after the date**  
21 **on which the 2021 regular session of the Eighty-first Legislative As-**  
22 **sembly adjourns sine die.**

23 \_\_\_\_\_