

# House Bill 3081

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

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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 701.035, 701.046,  
3 701.098 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 ORS 670.600 to be  
7 eligible for a license with the Construction Contractors Board.

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

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

10 (A) Sole proprietorships, partnerships, corporations and limited liability companies:

11 (i) With one or more employees; or

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

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

17 (b) The exempt class is composed of all sole proprietorships, partnerships, corporations and  
18 limited liability companies that do not qualify as nonexempt.

19 (3) If a person who is licensed as exempt under subsection (2)(b) of this section hires one or  
20 more employees, utilizes one or more workers supplied by a worker leasing company or falls into  
21 any of the categories set out in subsection (2)(a)(B) of this section, the person is subject to penalties  
22 under ORS 701.992 for improper licensing. If a person who is licensed as exempt under subsection  
23 (2)(b) of this section hires one or more employees, or utilizes one or more workers supplied by a  
24 worker leasing company, the person is also subject to licensing sanctions under ORS 701.098. The  
25 person must reapply to the board in the correct class.

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

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

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

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

5 701.046. (1) Except as provided in subsection (2) of this section, an applicant for a construction  
6 contractor license must submit the application on a form prescribed by the Construction Contractors  
7 Board. The application shall include, but not be limited to, the following information:

8 (a) The endorsement being sought.

9 (b) A list of construction debts involving the applicant, or an owner or officer of the applicant,  
10 if the order, award, penalty or judgment that establishes the debt was issued within the preceding  
11 five years.

12 (c) For each person described in paragraphs (h), (i) and (j) of this subsection, a Social Security  
13 number.

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

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

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

20 (g) Federal employer identification number, if the applicant is required to have a federal em-  
21 ployer identification number.

22 (h) The name and address of:

23 (A) Each partner, if the applicant is a partnership, limited liability partnership or foreign limited  
24 liability partnership.

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

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

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

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

29 (F) The manager and each member, if the applicant is a manager-managed limited liability com-  
30 pany.

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

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

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

34 (i) The name and address of the following if the applicant is a partnership, limited liability  
35 partnership, foreign limited liability partnership, joint venture, manager-managed limited liability  
36 company or member-managed limited liability company:

37 (A) Each partner in a partnership, limited liability partnership or foreign limited liability part-  
38 nership that is a partner, joint venturer or member of the applicant.

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

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

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

45 (E) Each member of a member-managed limited liability company that is a partner, joint

1 venturer or member of the applicant.

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

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

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

6 (A) Each partner of any partnership, limited liability partnership or foreign limited liability  
7 partnership that is the general partner of the applicant.

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

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

10 (D) The manager and each member of any manager-managed limited liability company that is the  
11 general partner of the applicant.

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

14 (F) Each officer of any corporation that is the general partner of the applicant.

15 (k) For each person described in paragraphs (h), (i) and (j) of this subsection, information as  
16 required by board rule regarding the following if related to construction activities:

17 (A) A final judgment against the person by a court in any state entered within five years pre-  
18 ceding the application date that requires the person to pay money to another person or to a public  
19 body if the judgment remains unsatisfied on the application date.

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

23 (C) A court action against the person in any state pending on the application date that alleges  
24 the person owes money to another person or to a public body.

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

27 (E) A conviction for a crime listed in ORS 701.098 [(1)(i)] (1)(j) entered within five years pre-  
28 ceding the application date.

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

31 (L) The basis on which the applicant meets the standards for independent contractor status un-  
32 der ORS 670.600.

33 (2) Subsection (1)(h), (i) and (j) of this section does not apply if the applicant is a company that  
34 offers securities registered with the United States Securities and Exchange Commission for sale to  
35 the general public.

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

38 (a) Is in compliance with ORS 701.091.

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

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

42 (5) An applicant shall conform to the information provided by the applicant on the application  
43 and to the terms of the application.

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

45 701.098. (1) The Construction Contractors Board may revoke, suspend or refuse to issue or re-

1 issue a license and *[the board]* may assess a civil penalty as provided in ORS 701.992 if the board  
 2 determines after notice and opportunity for hearing **that:**

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

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

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

7 **(c) The licensee assisted or contracted with a person that the licensee reasonably should**  
 8 **have known was unlicensed and the unlicensed person performed work as a contractor or**  
 9 **otherwise violated a provision of this chapter.**

10 **(d) The licensee knowingly assisted or contracted with a person that was unlicensed and**  
 11 **the unlicensed person performed work as a contractor or otherwise violated a provision of**  
 12 **this chapter.**

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

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

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

19 *[(g)] (h) [That]* The licensee has worked without a construction permit where a permit is re-  
 20 quired and the work resulted in a complaint being filed with the board under ORS 701.139. For  
 21 purposes of this paragraph, “construction permit” includes a building permit, electrical permit, me-  
 22 chanical permit or plumbing permit.

23 *[(h)] (i) [That]* The number of licensed contractors working together on the same task on the  
 24 same job site, where one of the contractors is classed as exempt under ORS 701.035 (2)(b), exceeded  
 25 the following:

- 26 (A) Two sole proprietors;
- 27 (B) One partnership;
- 28 (C) One corporation; or
- 29 (D) One limited liability company.

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

- 33 (A) Murder;
- 34 (B) Assault in the first degree;
- 35 (C) Kidnapping;
- 36 (D) Rape, sodomy or unlawful sexual penetration;
- 37 (E) Sexual abuse;
- 38 (F) Arson in the first degree;
- 39 (G) Robbery in the first degree;
- 40 (H) Theft in the first degree; or
- 41 (I) Extortion.

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

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

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

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

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

8       (2) The board may revoke, suspend or refuse to issue or reissue a license if the board determines  
 9 after notice and opportunity for hearing that an applicant or licensee is unfit for licensure based  
 10 upon information submitted to the board under ORS 701.046, submitted in a registration of securities  
 11 described in ORS 701.046 (2) or discovered by a board investigation under ORS 701.225.

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

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

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

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

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

21       (D) Utilizing one or more workers supplied by a worker leasing company while classed as ex-  
 22 empt under ORS 701.035;

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

24       (F) Failure to pay a construction debt.

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

33       (5)(a) In addition to all other remedies, if the board has reason to believe that a person is en-  
 34 gaging in an act, practice or transaction that violates this chapter or a board rule, the board may  
 35 issue an order directing the person to cease the act or to take corrective action.

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

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

45       (d) An order described in this subsection becomes final if the person does not file a timely re-

1 quest for a hearing concerning the order or fails to appear at the requested hearing as scheduled.

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

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

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

11 (8) If the board suspends or revokes the license of an individual contractor or contractor busi-  
 12 ness for a violation of subsection *[(1)(h)]* **(1)(i)** of this section, the board may not restore or reissue  
 13 the license unless the individual contractor or a responsible managing individual for the contractor  
 14 business has successfully completed the training and testing described in ORS 701.122.

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

16 701.992. (1) Except as provided in subsections (4) *[and (5)]* **to (6)** of this section, any person  
 17 *[who]* **that** violates any provision of this chapter or any rule adopted by the Construction Contrac-  
 18 tors Board shall forfeit and pay into the General Fund of the State Treasury a civil penalty in an  
 19 amount determined by the board of not more than \$5,000 for each offense.

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

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

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

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

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

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

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

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

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

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

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

35 **(c) A penalty not less than \$2,500 nor more than \$5,000 and suspension of the person's**  
 36 **license for one year for a third offense; and**

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

38 *[(5)]* **(6)** The board may impose a civil penalty not to exceed \$100 for each violation of ORS  
 39 87.007 (3).

40 **SECTION 5. (1) The amendments to ORS 701.035, 701.046, 701.098 and 701.992 by sections**  
 41 **1 to 4 of this 2021 Act become operative on January 1, 2022.**

42 **(2) The Construction Contractors Board may adopt rules and take any other action be-**  
 43 **fore the operative date specified in subsection (1) of this section that is necessary to enable**  
 44 **the board, on and after the operative date specified in subsection (1) of this section, to ex-**  
 45 **ercise or undertake all of the duties, functions and powers conferred on the board by the**

1 amendments to ORS 701.035, 701.046, 701.098 and 701.992 by sections 1 to 4 of this 2021 Act.  
2 SECTION 6. This 2021 Act takes effect on the 91st day after the date on which the 2021  
3 regular session of the Eighty-first Legislative Assembly adjourns sine die.  
4 \_\_\_\_\_